Mr. Joe Preston
Chair
Standing Committee on Procedure and House Affairs

October 29th, 2013

Dear Mr. Preston,

We are writing to respectfully request that members of your committee reject the motion put forth to significantly reduce the rights of individual Members of Parliament.

The motion to require that members, who are either independent or are members of recognized parties with fewer than 12 MPs, submit amendments to your committee 48 hours prior to the start of clause by clause consideration of any bill is deeply problematic. The clear purpose of this motion is to reduce rights of Members of Parliament.

The context surrounding this motion should give committee members pause. The identical motion has already been tabled in both the Procedure and House Affairs and Finance Committees, and the same motion will soon be tabled in each of the other Standing Committees.

It is not plausible that it was actually drafted by the member who has submitted it for consideration. The only explanation for identical motions in multiple committees submitted by Conservative MPs is that the Prime Minister's Office is coordinating and mandating these actions.

The context is this: A party with the majority in the House is seeking to foreclose the one opportunity that MPs who are either Independents or in smaller recognized political parties have to present, speak to, and vote on amendments. By the backdoor, the PMO is attempting to change the legislative process. As this letter will detail, in all previous changes to legislative process, there has been substantive review and study.

Members of all parties should give such a move serious consideration. *The change that reduces our rights today could reduce yours tomorrow.* Meanwhile, it represents a violation of fundamental principles of Westminster parliamentary democracy.

Those principles are based on the notion that all Members of Parliament are equal. Each MP must have an equal opportunity to fully represent the concerns of our constituents. This

motion circumscribes those rights for the convenience of a majority. It is parliamentary vandalism.

Background on the treatment of parties of fewer than 12 members

For nearly all of Canada's first century, from 1867 to 1963, all Members of Parliament were not only equal in theory, we were equal in reality. The treatment of Members of Parliament who were not members of parties with a dozen members as distinct and different from those with membership in larger parties stems from a decision in 1963 that related exclusively to financial resources to larger parties.

Over time, the "12 person rule" has concretized to deny MPs in smaller parties, as well as Independents, rights to participate on committees, even though the 1963 rule only extended to allocation of financial resources.

In 1979, Speaker Jerome dealt with the matter in relation to the status of the five members of the Social Credit Party:

"We ought to be clear at the outset that it is not a transgression of propriety to mention the name of the political party of the members who are involved; it is the Social Credit Party of Canada. Its members are members of this House of Commons and their leader is the hon. member for Beauce. Those are the realities. The vote ... under no circumstances, may I say, can be taken to pass out of existence a political party, nor can it be taken to render as independent members the group which has been recognized as a party and which has in fact been seated together as a political party. The Social Credit Party exists as a political party and the five members exist as members of that party under their leader." (page 69 of *Hansard* for October 11, 1979)

In that same parliamentary session, Speaker Jerome ruled:

"It seems to me that the *responsibility of the Chair and the responsibility of the House of Commons is to protect whatever rights minorities do enjoy* and therefore it seems to me that I must conclude what it is that the members of the Social Credit Party are entitled to-.I think that what those members are entitled to respects the fact that they are members of a political party so long as it does not give them an advantage that they would not otherwise enjoy as five members and secondly so long as it does not deprive other members of their right to participate in some way." (pages 1008-9, *Hansard* , November 6, 1979, emphasis added).

It is quite wrong, as do some communications from media, and egregiously from other parties from time to time, to refer to MPs from the Bloc Quebecois or the Green Party as "Independents." Under our Constitution and under the Standing Rules of this House, we are members of recognized parties under the Elections Act.

It is not our intention to urge this committee to accept members of the Bloc, Green Party or the current four independent members to have rights to be full members of committees, or to have the rights of parties with members in parties exceeding the 12 MP threshold. The matter has been settled.

Even though the 1963 change only related to financing, over time various Speakers have ruled that the change has now evolved by convention into established practice. Changes made in 1970 further reduced the power of individual Members of Parliament.

The last significant effort to argue for full rights for smaller parties was in June 1994, when former MP Bill Blaikie made a valiant effort on behalf of the nine member NDP. The Speaker ruled against extending full party rights to smaller parties, but until now, ***no majority party has ever attempted to shut down the rights of individual MPs***.

History of rights to introduce amendments at Report Stage

Over our Parliamentary history, there have been a number of significant changes in the acceptability of consideration of bills at Report Stage.

The current rules surrounding Report Stage are grounded in a significant review and study that took place in 1968. As related in O'Brien and Bosc, there was an extensive review by a Special Committee on Procedure:

"In recommending that report stage be restored, the 1968 Special Committee on Procedure believed that stage to be essential in order to provide all Members of the House, and *not merely members of the committee*, with an opportunity to express their views on bills under consideration and to propose amendments, where appropriate. For all that, the intent of the Committee was not for this stage to become a repetition of committee stage. Unlike committee stage during which the bill is considered clause-by-clause, there was not to be any debate at report stage unless notices of amendment had been given, and then debate would have to be strictly relevant to those proposed amendments." (Obrien and Bosc, Chapter 16, page 777, emphasis added)

An incident in 1999 led to a significant change in legislative process. In December 1999, the Reform Party put forward 471 amendments at Report Stage to the implementing legislation for the Nisa'ga Treaty. Their efforts led to 43 hours of consecutive voting. This did not sit well with the majority Liberals.

The constant pattern in the balancing of rights in the House of Commons is of smaller parties defending existing rights, as they are whittled away by larger parties. Typically, the majority Liberals were ultimately successful.

It took two years to work through changes to the way in which legislation is reviewed in the House. By 2001, the rules under which we now operate emerged. Members of parties whose colleagues sit as members of parliamentary committees no longer have the right to put forward substantive amendments at Report Stage. Only independent MPs or those in recognized parties with fewer than 12 members can submit substantive amendments at Report Stage.

The Speaker has the right to ensure that the debates at Report Stage are not repetitious of debates before the committee in question. The Speaker reviews all amendments with the right to reject them or group them for consideration at Report Stage.

Now, the majority party does not even deign to engage in a full parliamentary review. No all-party committee is to review the rules. Instead, the same motion submitted to multiple committees simultaneously attempts to shut down our rights at Report Stage by extending a fake "opportunity" to submit amendments before parliamentary committees.

Background on the current motion

In fall 2012, Government House Leader Peter van Loan asked the Speaker to circumvent the rights of Members of Parliament who were not members of larger parties by suggesting a novel process for our amendments. He proposed to the Speaker that amendments from such MPs be subjected to a trial vote on one sample amendment. If that amendment should be defeated, his suggestion was that none of the smaller party or Independent MP amendments should be entertained.

The Speaker's ruling was clear. In citing *House of Commons Procedure and Practice*, Second Edition, at page 250, the Speaker ruled:

"It remains true that parliamentary procedure is intended to ensure that there is a balance between the government's need to get its business through the House, and the opposition's responsibility to debate that business without completely immobilizing the proceedings of the House. "

And he added:

"The underlying principles these citations express are the cornerstones of our parliamentary system. They enshrine the ancient democratic tradition of allowing the minority to voice its views and opinions in the public square and, in counterpoint, of allowing the majority to put its legislative program before Parliament and have it voted upon."

The Speaker rejected the Government House Leader's suggestion that a test motion be used to preclude consideration of amendments at Report Stage. However, the Speaker did leave the door open a crack by ruling, "Were a satisfactory mechanism found that would afford independent Members an opportunity to move motions to amend bills in committee the Chair

has no doubt that its report stage selection process would adapt to the new reality." (December 12, 2012)

In the review of Omnibus Budget Bill C-60 in spring 2013 committees first attempted led to nearly non-usable "opportunities." Members not members of committees were not allowed to table our amendments; and were deemed to have submitted them. Members who were "invited" in this fashion were tightly restricted to either one minute, or in the case of the Bloc, one and a half minutes, to describe their amendments.

We were not allowed to answer questions about amendments, nor respond to suggestions of friendly amendments. We were not allowed to vote on amendments.

In essence, what you are asked to adjudicate is an effort by a powerful Government party, with the majority of the seats in the House, to eliminate what few rights exist to influence legislation in the hands of only nine Members of Parliament.

The appropriate balance between the majority and minority in proceedings of the House is, as Speaker Milliken noted, "a fundamental issue." (March 29, 2007, page 8136 of Debates).

The following passage is very apt, although Speaker Milliken was dealing with a minority Parliament, the issues of balancing the rights of the majority and minority are the same:

"At the present time, the chair occupants, like our counterparts in House committees, daily face the challenge of dealing with the pressures of a minority government, but neither the political realities of the moment nor the sheer force of numbers should force us to set aside the values inherent in the parliamentary conventions and procedures by which we govern our deliberations.

"The Speaker must remain ever mindful of the first principles of our great parliamentary tradition, principles best described by John George Bourinot, Clerk of this House from 1890 to 1902, who described these principles thus:

> 'To protect the minority and restrain the improvidence and tyranny of the majority, to secure the transaction of public business in a decent and orderly manner, to enable every member to express his opinions within those limits necessary to preserve decorum and prevent unnecessary waste of time, to give full opportunity for the consideration of every measure, and to prevent any legislative action being taken heedlessly and upon sudden impulse.' "

Worsening this abuse of democratic process, virtually every bill in the 41st Parliament has been subject to time allocation. In the normal round of debates, absent time allocation, members in the position of independents have at least some opportunity to enter into debate with a speaking slot. With time allocation, there is almost never an opportunity for members outside of the three larger parties to make a speech, unless another party cedes a speaking slot. As a matter of practical reality, the only way to have a speaking opportunity in such time constrained circumstances is to have amendments tabled at report stage.

This approach, of rejecting any and all amendments while simultaneously abbreviating debate opportunities, is a perversion of the Westminster Parliamentary process. It is a new and hyper-partisan approach to the legislative process. The ability to table amendments at Report Stage and to offer the entire House an opportunity to improve bills before Third Reading is even more critical when the legislative committee process has ceased to function in the non-partisan way it did in the past.

We respectfully request that all members of this committee reject the motion before you.

Sincerely,

Elizabeth May, O.C, MP
Saanich-Gulf Islands
Leader, Green Party of Canada

Bruce Hyer, MP
Thunder Bay-Superior North

Brent Rathgeber, MP
Edmonton-St. Albert

cc: all Members of the Standing Committee on Procedure and House Affairs