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Chair

Mr. Joe Preston

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• (1100)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): I'll call our meeting to order. We are here on the issue of Bill C-518, An Act to amend the Members of Parliament Retiring Allowances Act (withdrawal allowance).

We have Professor Ryder here with us today to help us a little bit, I hope. We'll start with the premise that you are.

Prof. Bruce Ryder (Associate Professor, Osgoode Hall Law School, York University, As an Individual): I'll do my best.

The Chair: Professor, if you have an opening statement we'd like you to start with that, and then the members will ask you questions.

Go ahead, please.

Prof. Bruce Ryder: Thank you very much, Mr. Chair. It's a great pleasure to be here, and I'm grateful to have my visit rescheduled so quickly after the tragic events of last week.

I hope I can share some useful thoughts about Bill C-518. I've prepared some speaking notes that I hope you have before you.

It's obviously a very straightforward and succinct bill. It aims to advance the objectives that underlie section 19 and section 39 of the Members of Parliament Retiring Allowances Act by filling a gap, really, or a loophole if you like, in the reach of the current provisions.

Those sections, as you know, now provide that a member of the Senate or House who is disqualified or expelled will receive a withdrawal allowance consisting of a return of contributions and interest, in lieu of a pension. However, if a member resigns—for example, to avoid impending disqualification or expulsion—he or she will continue to be entitled to receive a pension under the current state of the law.

To address this gap, Bill C-518 would add new subsections to the act, new subsections 19(2) and 39(2), that would extend the effect of the existing provisions to circumstances in which a member ceases to be a member in the following circumstances: If he or she has been convicted of an offence under any act of Parliament that was prosecuted by indictment and for which the maximum punishment is imprisonment for not less than two years, and if the offence arose out of conduct that in whole or in part occurred while the person was a member.

Then in its final provision, in clause 4 of the bill, it seeks to make clear that it applies to criminal conduct that occurred before the introduction of the bill.

I'm a constitutional lawyer and constitutional professor, and I thought it would be useful simply to share my view. I'm happy to elaborate on it if the committee's interested, but I don't see any issues regarding the constitutional validity of this bill. I don't see any provision of the Charter of Rights and Freedoms, or for that matter the Canadian Bill of Rights, that would be violated by Bill C-518.

I understand that some concerns have been raised about the consequences the bill would impose on behaviour that occurred before its introduction. However, it's open to Parliament to decide whether to impose consequences in this manner. Members of the committee may know that sections 11(g) and 11(i) of the Canadian Charter of Rights and Freedoms protect against the imposition of retroactive criminal liability—that is the creation of new offences that apply to behaviour that occurred before the coming into force of those offences, or the retroactive imposition of harsher sentences than existed at the time of the commission of an offence.

But as the Supreme Court of Canada has held, outside of the realm of criminal law, that is criminal liability, criminal sentencing, there is no requirement of legislative prospectivity embodied in the rule of law or in any provision of the Canadian Constitution. Indeed, when we step outside the criminal context, if we're in the civil context or the context of civil consequences, retroactive legislation is not unusual. Moreover, legislation imposing new civil consequences on criminal conduct that occurred in the past is not unusual either.

There is a presumption that statutes are intended to operate prospectively, and therefore not to alter rights or obligations as they existed before the date of the legislation coming into force. But this presumption can be displaced if Parliament makes its intent for legislation to operate retrospectively clear, as the final clause of this bill does.

In any case, if my understanding of the bill is correct, it doesn't seek to operate retroactively in a sense of taking away pension entitlements that have already vested. Rather, the bill imposes new consequences on members of the House or the Senate who cease to be members after the bill's enactment. They will lose their pension entitlements if they committed and are convicted of a serious crime whether before or after the bill coming into force.

•(1105)

In my view, this intention would be more clearly expressed if clause 4 of the bill were to be replaced by the language that was used in a similar provision adopted by the Nova Scotia legislature last year. The Nova Scotia bill, known as Bill No. 80, provides that a member of the provincial legislature will receive a withdrawal allowance rather than a pension if convicted of a serious indictable offence while a member, and then it adds these words “regardless of whether the offence occurred before or after the coming into force of this subsection.”

In my view, this language could be usefully incorporated into the new subsections 19(2) and 39(2) proposed by Bill C-518, and clause 4 could then be deleted from the bill. This drafting change would have the advantage of making Parliament’s intention clearer within the Members of Parliament Retiring Allowances Act itself.

Finally, I hope the committee will welcome a few technical drafting suggestions regarding the specification of the kinds of criminal convictions that will be caught by the bill. The bill provides that it will apply where a member is prosecuted by indictment for an offence with a maximum punishment of at least two years for conduct that occurred while a member. I understand that Mr. Williamson has signalled his willingness to increase the threshold to five years, as is the case with the Nova Scotia legislation I mentioned earlier, and to add a qualification requiring the conduct that gave rise to the criminal charges and conviction to be connected to the fulfilment of the member’s responsibilities as a member of the House or Senate. These strike me as changes that would improve the bill.

But I think it remains problematic to use the maximum penalty for an offence as the way of identifying the serious crimes targeted by the bill. This approach risks being over-inclusive. Let me just give an example. Consider the criminal negligence offence in the Criminal Code, which is in section 221—and we could pick many offences in the Criminal Code to make this point. This offence has a maximum sentence of 10 years. The offence of criminal negligence causing bodily harm has a maximum sentence of 10 years. It’s an offence that can cover a wide range of criminal behaviour from the very serious that could lead to something close to or at the maximum sentence of 10 years or to the relatively minor forms of criminal negligence, or relatively modest if you like, that might attract a small or perhaps not even any prison sentence. In my view, it would be unjust to deprive a member of the House or the Senate of his or her pension automatically upon conviction of criminal negligence if we’re dealing with criminal negligence that falls at the modest end of the spectrum. And we could say that about so many other offences in the code.

So I’ve been trying to think, as I’m sure you all have, about whether there are alternative means of identifying the convictions that amount to a serious crime that should trigger the loss of a pension. It seems to me that one possibility would be, as Mr. Williamson has proposed, to have a list of specific offences, but I think that approach has problems too. It’s really the opposite problem: it risks being under-inclusive. We may not be able to imagine all of the potential kinds of behaviour that could occur in the future that could be connected to a member’s parliamentary responsibilities that we would want to trigger this particular consequence.

Another alternative would be to focus on the actual sentence imposed on the member in a particular case. This is the approach that’s taken by section 750 of the Criminal Code which provides that public employment must be vacated if one is sentenced to imprisonment for two years or more. Focusing on the actual sentence imposed in a particular case rather than the maximum sentence that could have been imposed for a particular offence would be a more accurate way of isolating conduct that amounted to a serious crime.

But an even better strategy in my view would be to build upon the existing approach taken by sections 19 and 39 of the Members of Parliament Retiring Allowances Act. By leaving the determination of whether a member should be deprived of his or her pension in a particular case up to the members of the House or the Senate as a whole, it just seems to me that this is a fraught issue and requires the exercise of discretion on a case-by-case basis.

•(1110)

I think members of the House and members of the Senate as a whole are in the best position to decide, on a case-by-case basis, whether a crime was serious enough and strongly enough connected to the convicted member’s parliamentary functions or activities to warrant the removal of pension rights. I would encourage committee members to consider that approach.

Those are my remarks, Mr. Chair. Of course I welcome any questions or comments that committee members have.

The Chair: We thank you for your comments.

We’ll go to Mr. Lukiwski for a seven-minute round, please.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you very much, and thank you very much, Professor Ryder, for being here.

I have a number of questions. I’m sure we’ll have a couple of rounds at least.

First, when you talk about its constitutionality, you say that you see no issues with it. To your knowledge, in Nova Scotia has there ever been a constitutional challenge to Bill No. 80, and if so, what were the results?

Prof. Bruce Ryder: I’m not aware of any. Of course, the bill was just passed last year by the Nova Scotia legislature. I don’t believe there’s been an opportunity to enforce it. I believe the answer to that question, sir, is no. I haven’t heard of constitutional objections being raised to it. I think the same is true of the existing provisions in sections 19 and 39 of the act.

Mr. Tom Lukiwski: One of the concerns I think all committee members had when we first started examining this bill was the retroactivity clause. Correct me if I’m wrong, but you’ve stated that you feel, with perhaps some minor amendments to Mr. Williamson’s bill, that there wouldn’t be an issue with retroactivity. In other words, you believe that it would be proper and could not be challenged if a retroactive element were contained in this bill, that is, if someone had either resigned and then it were later determined that they had committed a crime or if a crime had been committed prior to the coming into effect of this bill. Can you expand upon that a little? I’m a little unsure of exactly what you were trying to say.

Prof. Bruce Ryder: Regarding the provisions of the Charter of Rights and Freedoms that I referred to in section 11, there are two that deal with retroactivity, but it's clear that they're focused on the criminal context—the imposition of criminal liability retroactively, the alteration of a sentence for conducts retroactively. The Supreme Court of Canada has made clear that there is no constitutional prohibition on retroactive legislation outside the criminal context. That's what they've said, and I've cited the Imperial Tobacco case where that issue was raised and the court was very clear in making those statements.

But of course the law can always evolve and not all issues have been addressed yet. I suppose we could imagine a situation where the civil consequences are so harsh that the courts might be tempted to say that they amount to, for example, a form of punishment even though the consequences are civil, and perhaps amount to cruel and unusual punishments or are sufficiently analogous to a criminal kind of punishment retroactively—possibly. I mean, it's not out of the question, but there is no case law to support that yet, and the threshold is normally set very high even in the criminal context for thinking about what constitutes cruel and unusual punishment.

So with bill like this that is really quite measured in its approach, in the sense that it seeks to target just serious crimes and doesn't seek to punish—because a member is to the return of contributions with interest—but rather seeks to deprive a member of a publicly funded benefit as a result of the commission of a serious crime, I think it would be very difficult to describe it as a cruel and unusual punishment or anything analogous to criminal penalties.

But the existing state of the law, just to be clear about this, is that there is no prohibition on retroactivity outside the criminal context in the Canadian Constitution. That's why I don't think retroactivity is a constitutional issue related to this bill. And I think we could even have a discussion of whether the bill is properly characterized as one that is retroactive, because to take into account events that occurred in the past to impose consequences now or in the future is not normally what's understood by retroactivity. For example, one could think of qualifications for admission to a profession. It's very common in the legal profession and other professions to require that those seeking admission to the profession have good character, which can often involve an examination of past behaviour, including criminal convictions. I don't think anyone would suggest that it's inappropriate to take account of what has occurred in the past.

I don't think retroactive legislation, when we normally talk about it, is meant to include any legislation that takes into account behaviour that occurred in the past. It's usually understood as altering preexisting rights and obligations. I think there would be a more serious issue regarding retroactivity and it may be more appropriate to use the word retroactivity if we were seeking with this bill to remove a pension that had already vested from a retired member.

• (1115)

Mr. Tom Lukiwski: You mentioned that perhaps a better way to approach this bill is this. Rather than applying a specific time limit on conviction and sentencing or rather than a list of offences, which may be difficult as well, it should be up to the members to decide on a case-by-case basis. The comment I would make there is, does that not run the risk of partisanship then entering into the equation?

Prof. Bruce Ryder: Of course, I think that is a risk. That is a disadvantage of that approach. But when one considers the alternatives and the long traditions of Parliament having autonomy through parliamentary privilege to decide the appropriate forms of discipline for members in a particular context, it seems to me that at the end of the day, notwithstanding the risk of partisanship, members of the House or Senate truly are in the best position to understand what kinds of conduct are inconsistent with the integrity of Parliament, with the capacity for Parliament to perform its functions and maintain the confidence of the Canadian people, and to do that with flexibility and responsiveness to the particular circumstances.

The other alternatives seem to me to have more significant flaws. I'm not suggesting that any approach is perfect. It just seems to me to be the best one.

The Chair: Thank you, Mr. Lukiwski.

We'll go to Mr. Scott, for seven minutes, please.

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you, and thank you Professor Ryder for being with us.

I wanted to finish up Tom's line of questions in a housecleaning kind of way. Through the Imperial Tobacco case, it seems that in an almost black and white decision Major says that it can only apply criminally because that's what the text says.

Whether or not in the future, for example, the principles in the criminal law section start to feed, say section 7, the principles of fundamental justice in serious civil or administrative consequences, which is my own view, so that retroactivity is kind of an inchoate, it's a candidate for recognition in section 7.... That's not the issue. The issue is that it has to be clearly penal at the moment.

You're absolutely certain that this cannot be characterized as penal and that it's not an alteration of the sentence at all. Yet, you've indicated that it's really not about punishment but about deprivation of benefits.

Just to nail that down, so we can move on to how to do this better, is that right?

• (1120)

Prof. Bruce Ryder: I think you know that you can never lure a law professor into saying absolutely certain, so I'm not going to fall for that.

Mr. Craig Scott: I'm so used to getting my way here.

The Chair: I thought we were going to get that.

Prof. Bruce Ryder: I'm about as confident as one can possibly be at this point in time in the evolution of the law. I take your point that it may well be that the law will evolve in that direction, but it would have to require legislation that shocked our consciences in a much more profound way.

I really do think that this legislation is building on the existing approach in the legislation and it's doing so in a way that resonates with the public. As I've mentioned earlier, I think it does so in a measured fashion.

It doesn't feel to me like a proposal that has a punitive element that would raise the ire of the judiciary to think about evolving the jurisprudence in the directions that you've suggested, Professor Scott.

Mr. Craig Scott: No longer.

Prof. Bruce Ryder: Well, we like to think you still are.

Mr. Craig Scott: I want to move on to help make clear the reason you suggested. You've effectively suggested moving what is now going to sit in the amending act as a retroactive or retrospective kind of clause and putting it into the wording of the bill, so that it will actually sit in the members of Parliament act.

My understanding, and correct me if I am wrong, is that you think that that serves a transparency function. It will be known, if it's actually sitting in the act, that it has this retrospective aspect and you don't have to go chasing an amending piece of legislation to know that fact.

Is that part of the reasoning?

Prof. Bruce Ryder: Absolutely.

Mr. Craig Scott: Am I right in thinking then that you're saying it's nonetheless a function of Parliament, and therefore this committee, to consider whether something that's retrospective, retroactive, or close to it is the best thing to do even if it's not constitutional?

Prof. Bruce Ryder: Even if there's not a constitutional issue.

Mr. Craig Scott: Even if there's not a constitutional issue, yes.

Major himself says:

The absence of a general requirement of legislative prospectivity exists despite the fact that retrospective and retroactive legislation can overturn settled expectations

—but here you might not have the best intentions, but might have reasonable expectations—

and is sometimes perceived as unjust. Those who perceive it as such can perhaps take comfort in the rules of statutory interpretation that require the legislature to indicate clearly any desired retroactive or retrospective effects. Such rules ensure that the legislature has turned its mind to such effects and “determined that the benefits of retroactivity [or retrospectivity] outweigh the potential for disruption or unfairness”.

That's kind of the space I would assume that we're now in.

Prof. Bruce Ryder: Yes.

Mr. Craig Scott: And that even if it's not unconstitutional unfairness, it would be appropriate for us to think about whether there are the kinds of expectations or kinds of fairness that would justify this clause or not.

Would that be a good way of seeing it?

Prof. Bruce Ryder: I agree. I think that's very helpful.

The change that I suggested, drawing on the Nova Scotia bill and making the application of these amendments to criminal conduct that has occurred prior to the coming into force of the bill, is, as you suggested, valuable. I think it's valuable from the point of view of transparency and clarity, and because the courts say about legislation that it will be presumed to operate prospectively unless Parliament has made its intention clear that it is to operate with respect to events that have occurred in the past. So I think it's very helpful in that way.

But to pursue your other line of thought, why is it that retrospective legislation in a civil context, even if it may be constitutionally valid, can nevertheless seem inappropriate and generate some controversy? I guess it's because, and you've alluded to this, that when we change people's rights and expectations retrospectively, there can often be an unfairness. They have planned their lives in accordance with the existence of those legal rights, and to change them can often be seriously unjust. We've had many instances of that and controversies about that, which have led to important judicial rulings.

I agree. I think it's worth thinking about and reflecting on that. Even if this is a constitutionally valid approach, is there something unfair about it? Does it fall into that category of retrospective legislation that should give us some pause? I think that's where I would say to the committee that with this particular bill, in my view, you ought not to be particularly troubled about that.

The reason for that is, again, because it's a relatively modest extension of the principles that are already embodied in section 19 and 39 of the act. In other words, I would think that a member of the House or a member of the Senate, convicted of a serious crime in a manner that's connected to their Parliamentary responsibilities, would not have a legitimate expectation that they would remain a member of that body.

I hope that's not an unfair suggestion. If that's right, then all we're doing, as I suggested earlier, and as Mr. Williamson has said, is filling a gap in the existing scheme. We're filling a loophole, as he put it because there's a way around the risk of disqualification or expulsion by resigning before it happens. If one has been convicted of a serious offence, that's a way in which one can maintain one's pension.

It seems to me that by closing that loophole, we're giving effect to what would be a fair and reasonable expectation in the circumstances rather than interfering with one in the way that.... I agree, sometimes retroactive legislation can operate very unfairly, but this doesn't strike me as an example of that.

● (1125)

The Chair: Thank you very much.

Thank you, Professor Scott.

We'll go to Mr. Lamoureux for seven minutes.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Thank you, Mr. Chair.

To take on a question to your last comment, Professor, if the primary purpose of the legislation is to close the loophole, in your opinion, is there a simpler way of doing that as opposed to what we have before us?

Prof. Bruce Ryder: Of course we can imagine some kinds of behaviour by a member that might not amount to a criminal offence but would nevertheless put Parliament in a terrible light in the public eye. It seems to me that the current focus of concern, and not just with members of Parliament but also in other legislative bodies across the country, as we see reflected in the Nova Scotia bill as well, has been members engaging in serious criminal conduct. There's the sense that there's a pressing need to make sure that those who are convicted of serious criminal conduct while they are members that is in some way connected to their Parliamentary responsibilities shouldn't be able to retain a pension that is funded to a significant degree by the public.

If that's the focus, and I understand that is an appropriate focus, I don't think we can avoid the attempt the bill makes to draw the line, to try to distinguish more minor criminal offences from more serious ones. When you think of all the different ways that we can try to draw that line, I don't think there is an easy answer—and we've all been grappling with that.

There is the range of alternatives that I discussed earlier.

Mr. Kevin Lamoureux: I'm wondering if I'm looking at it in too simple a fashion, in the sense that the member seems to say that it would appear that there's a current consequence if it's deemed by the House and you are removed from office. One of the primary reasons, if not the primary reason, for the legislation is that an MP or a senator might take pre-emptive action by resigning prior.

So the issue is whether or not there is a simpler way to prevent the MP or senator from being able to take such an action to prevent the consequence of losing their pension.

• (1130)

Prof. Bruce Ryder: I'm not sure if there is a simpler answer.

Mr. Kevin Lamoureux: When you think of the Nova Scotia Bill No. 80 as a whole, do you feel it's a better bill than what we are talking about today?

Prof. Bruce Ryder: I think they are very similar. The differences in the wording are modest, and there are a couple of important differences. One is that language I referred to earlier, making it clear that it applies to a conviction that occurred either before or after the coming into force of the act. I think that's valuable language that's worth incorporating.

I haven't studied Bill No. 80 in any depth, but my understanding is that there was also a provision that allowed for the withdrawal of funds from the pension entitlement for dependants, and I'm sure that has been part of your conversation as well. That may be a provision that's worth considering so that the denial of the benefit to the member who has committed the serious crime doesn't impose hardship on spouse or children.

Mr. Kevin Lamoureux: Finally, on the whole issue of the maximum penalty and how that triggers the ultimate consequence, I thought it was interesting that you said that ideally it's the parliamentarians who would decide, but it seemed to be your second choice of the actual sentence. I have sat on a quasi-judicial body, a youth justice committee, and I find that there is a great deal of discretion. Judges themselves have discretion and no doubt the seriousness and consequence of losing a pension would all be factors

when a judge takes a look at negligence or whatever it might be with a member of Parliament.

If we do not have your first choice of parliamentarians making the decision, is it fair to say that your clear second choice would be sentencing as opposed to the maximum limits, and then could you expand on that as to why?

Prof. Bruce Ryder: I think that would be my second choice, and there may be other options I haven't thought of. I haven't spent as much time studying this bill as members of the committee, but the reason that's a better alternative is, yes, a judge will be exercising discretion and taking into account a range of factors. But, of course, at the end of the day the sentence will be tailored to the severity of the crime, and since that's what we're trying to do with this bill—acknowledge that not all criminal offences are equal and not all criminal convictions are equal and that sometimes one can be convicted of a crime in circumstances that may not be particularly serious and may not have any kind of close connection to parliamentary responsibilities—those seem to me to be the two key factors: the severity of the crime and how strongly connected it is to a member's parliamentary responsibilities or activities.

I trust members of the House or the Senate to evaluate those factors more effectively than anyone else, and after that, if that first choice isn't available, I think the second-best choice would be to defer to judges who are taking into account all the circumstances of a particular case when setting a sentence. I think to rely on the maximum sentence available for an offence is not the right approach, and I think it could easily be amended.

Mr. Kevin Lamoureux: Thank you.

The Chair: Thank you, Mr. Lamoureux.

We'll go to Mr. Lukiwski for four-minute rounds, please.

Mr. Tom Lukiwski: I want to get a little more precision and clarity on something you said earlier with respect to Bill No. 80 in Nova Scotia and how Mr. Williamson's bill might be further improved if we took some of the language from Bill No. 80.

I believe you said—once again, correct me if I'm wrong—that perhaps deleting clause 4 of Mr. Williamson's bill and replacing it with some of the language currently contained in Bill No. 80 would be an improvement to this bill.

If I'm right, could you just expand on that a little? I want to get my head around exactly what we might be able to do if we feel it's an improvement.

• (1135)

Prof. Bruce Ryder: I want to be clear: it's not really any change in substance. It's really a question of clarity, visibility, and elegance in the drafting in a modest way, if you like. I say this because I think it's a little bit awkward right now having clause 4 at the end saying that the changes would apply whether or not the conduct at issue that led to the criminal conviction occurred before or after the coming into force of the act.

I'm not trying in any way to change the substance of that idea. I'm only suggesting that there's some value in having it visible, present, inside the Members of Parliament Retiring Allowances Act itself, and to do so with the simple phrase, "regardless of whether the offence occurred before or after the coming into force of this subsection," that is used in the Nova Scotia provision.

Mr. Tom Lukiwski: I keep going back to this whole discussion of retroactivity, and it seems to be the one major issue that we've identified as somewhat problematic in this bill. Again, just for the record, to make sure I've got my head wrapped around this correctly, you don't think, particularly if we amended or changed the language somewhat, as you've just suggested, that there would be an issue with retroactivity in terms of any challenges to the bill itself?

Prof. Bruce Ryder: That change I've suggested is really for clarity and visibility. I don't see it as a change in substance at all. At the constitutional level, there is currently no prohibition on Parliament or provincial legislatures passing legislation that operates retroactively outside of the criminal context. That's the current state of the law. We're concerned enough about retroactivity and the potential for unfairness that there's a presumption of interpretation of legislation that it is intended to operate prospectively, unless the contrary intent is made clear. So we want to make clear here that this is a bill that will apply to conduct that occurred in the past.

Mr. Tom Lukiwski: I suppose—

Prof. Bruce Ryder: Then we could say that does potentially give rise to unfairness and maybe to kinds of unfairness that the courts would be concerned about and, perhaps, at a constitutional level, in interpreting the charter in the future. As I said earlier, I don't think that pushing the law forward in that regard—because that would be a new kind of concern—is going to happen in this case because the courts, I think, will only be moved by a very serious unfairness.

Mr. Tom Lukiwski: Yes, I was just about to say as my final comment that if there were to be legitimate concerns, or if there were to be examples of undue hardships and unfairness, one quick fix would be to change the language of the bill to say, "upon coming into effect of the bill," going forward. Then there would be no issues whatsoever. Would that not be correct?

Prof. Bruce Ryder: Right. But as I said, I don't think there are any issues with the current state of the bill either.

Mr. Tom Lukiwski: Okay.

Prof. Bruce Ryder: It would certainly remove that concern from the conversation.

The Chair: Thank you.

Mr. Chisholm, welcome to committee today, by the way. Four minutes to you.

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): Thank you very much, Mr. Chairman.

I'll be sharing my four—hopefully, two and two—minutes with my colleague.

The Chair: As you should.

Mr. Robert Chisholm: Thank you very much, Mr. Ryder, for your presentation. I'm interested in the other aspect of the fairness question that has been raised and was certainly part of the debate and discussion around Bill No. 80 in Nova Scotia, particularly in section

16, clauses 7 and 8, which talk about spouses and dependants. This seems to make some sense and has been well received, so I wondered if you would speak to that as being something we could include in the current bill under discussion.

•(1140)

Prof. Bruce Ryder: Obviously that's an issue of policy for parliamentarians to decide, but it does seem to me to be consistent with the overall objectives of the bill, which are to ensure that someone who has committed a serious crime while a member does not draw upon the public purse to receive a pension entitlement after behaving in a way that is such a betrayal of our expectations of parliamentarians.

That's the objective of the bill. Pension entitlements, of course, can serve to benefit the recipient but also dependants. To punish the dependants by association, so to speak, doesn't seem to be consistent with the objective of the bill. If it's possible to adopt an amendment along those lines, it seems to me that it could avoid some serious hardship without posing a significant risk, I think, to the objectives of the bill.

Mr. Robert Chisholm: Right. I believe we've made subsections 16(7) and (8) from Bill No. 80 available to the analysts.

Thank you.

The Chair: Madame Latendresse.

[*Translation*]

Ms. Alexandrine Latendresse (Louis-Saint-Laurent, NDP): Thank you, Mr. Chair.

I will ask my questions in French, since we all have access to simultaneous interpretation, if needed.

I would like to come back to your presentation. In the beginning, you said that you felt that the best way to fill the gap was to go directly through the House of Commons or the Senate. Mr. Williamson said that the bill's purpose was to fill the gap.

The two houses currently have a process for expelling a senator or a member. Do you think that using the existing process is a good idea? The same type of process and criteria have to be used when a senator or a member is being expelled. Just because someone has resigned, they are not suddenly entitled to everything they would not have been entitled to had they gone through the aforementioned process.

Do you think the same kind of a system could be used?

Prof. Bruce Ryder: I understand French well, but I have more difficulty speaking it.

Ms. Alexandrine Latendresse: No problem.

[*English*]

Prof. Bruce Ryder: I'm quite sure you understand the existing procedure for expulsion or disqualification better than I do, so I'm not sure I can be terribly helpful on this question, but let me just react generally.

In principle, it doesn't seem to me that it needs to be an elaborate procedure that could lead to the judgment of the House or the Senate that a particular criminal conviction meets the threshold for triggering the loss of a pension. I'm not sure if the existing procedure is an elaborate one or not; I'm just not familiar with the details.

It would seem to me, for example, that a debate, an opportunity perhaps for the member whose conduct is being debated to contribute to that debate and have his or her views heard, leading to a motion and a vote on the issue, would be sufficient. I don't know how different that is from the existing process, but it seems to me that the important thing is to have an opportunity for debate, an opportunity for the member whose behaviour is at issue to contribute to that debate, and for a vote to be held after a full debate. That would seem to me to be a sufficient procedure.

The Chair: Thank you.

I have no one else on the speakers list. I'll take any one-off questions, if there's any new ground that hasn't been covered.

Professor Scott.

Mr. Craig Scott: I have just one follow-on. It's sometimes the case that values we associate with the Constitution, or say the charter, aren't themselves engaged purely as charter or constitutional issues, but that we borrow from those values. With respect to the question of my colleague, Mr. Chisholm, the impact is on family members who may, for example, have a restitution order in court. Or maybe it should be limited to those who are in situations where they're not continuing to live with the former member, because we can't separate who is benefiting them. The point would be that if the impact on innocent parties were deemed to be severe, from the point of view of fairness, would that in and of itself boost the concerns under the retroactivity discussion?

Keep in mind that we're talking about expectations and fairness. If this creates one more circumstance in which family members could be affected, does it add to the seriousness with which we should be looking at the retroactivity issue?

My second question is this, and it's one that we asked Mr. Williamson. His answer was compelling in its own terms, I have to say, but maybe didn't go all the way. He said that MPs and Senators shouldn't be treated any differently from normal people, ordinary people, outside of these realms. If somebody gets thrown in jail or

fined or whatever, family members are always caught up in the consequences. This does have a particular impact on MPs and senators, and their family members are affected no differently than if somebody were thrown in jail for something else.

This made sense, except that this particular consequence is limited to parliamentarians. Ordinarily if somebody commits a crime, they don't lose their pension. So it's very tailored. The question there is, does that add any added element of unfairness? I'm not saying it touches the Constitution, but is that second element, where family members of a particular group of people are more likely to be treated differently than others, at all an issue? Or is it just such a minor subset that it shouldn't be considered a problem?

• (1145)

Prof. Bruce Ryder: I think that's an excellent point. Let me just say that I'm absolutely certain that you're right about that.

Some hon. members: Oh, oh!

Prof. Bruce Ryder: It's not a point that I had thought about, but again it makes sense. As I was suggesting earlier, it doesn't lead me recoil from this bill from the point of view of fairness or justice. It feels consonant with what strikes me as fair in the circumstances, if we can find a way to isolate the truly serious crimes that are connected to a parliamentarian's responsibilities.

But to punish others—who, as you've pointed out, may have perfectly legitimate expectations grown up around their capacity to share in the pension entitlement in a way that secures their financial futures—for having formed that expectation doesn't feel right. If the members of this committee could find a way to propose to the House an amendment that would improve the overall fairness of the bill, I think that would be an excellent contribution.

Mr. Craig Scott: Thank you.

The Chair: Is there no one else?

Professor Ryder, thank you for coming and sharing with us today. You've given us great insight on this and we're glad you persevered after last week to be able to come back this week. We thank you for coming.

We'll suspend for a couple of minutes. Then we'll go in camera for some committee business.

[Proceedings continue in camera]

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