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Standing Committee on Health and Social Development
Office of the Clerk
Legislative Assembly of Prince Edward Island
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Via email: assembly@assembly.pe.ca

25 June 2020

Dear Clerk:

Thank you for this opportunity to provide comment to the Standing Committee on Health and Social Development in respect of Bill No. 37, An Act to Amend the Emergency Measures Act.

The Standing Committee has heard from a witness who provided clarity, particularly for Her Majesty's Loyal Opposition, about limits that already exist on the powers of government as it pertains to various pieces of legislation. Nonetheless, amendments have been introduced and adopted that clarify in plain language certain limitations, however such inquiry and the subsequent clarification evades the driving forces behind Bill 37, is absent an identification need, fails to address the inherent and legitimate concern of the electorate with respect the potential for abuse of power and neglects the concern for the timing and context in which the amendment is presented.

The amendment would give the provincial cabinet the power to change or suspend provincial legislation during a declared state of emergency and for up to 90 days afterward.

It is true that Officials also said there was a review and consideration of similar legislation from other jurisdictions when drafting the amendment. The activities within other jurisdictions are not themselves a reason for change. And in the case of the Province of Ontario the extension of time for government to exercise executive power are specific and restricted.

Similar legislative amendment was presented before the Parliament of Canada by the governing party earlier this year and in the midst of the Coronavirus Pandemic, albeit for a considerably longer period. That proposal was defeated.

Federal Conservative MP Scott Reid, strongly opposed federal Liberal government's original proposals referred to the legislation as a "Henry VIII Bill" for allowing the executive to function without the approval of Parliament.

Mr. Reid provided a most succinct perspective on the federal proposal and his words should now be considered with respect to the horrendous proposal that has now made its way to Second Reading, the committee stage, in the Prince Edward Island Legislative Assembly.

“So, unless someone stands athwart the march of history, crying ‘No!’ a new convention will be established,” he wrote. “None of the incipient new conventions outlined above can be allowed to stand, or Responsible Government in Canada is over. Full Stop.”

Notwithstanding the sense that commentary to oppose the proposal now is futile, the sense that the Bill is *fait accompli*, this commentator offers reasons to advocate for its rejection. The rationale is based on recent legislative history in the Province where governments reporting to the Legislative Assembly have failed to meet their obligations to a fair and transparent democratic process and current examples in Canada and abroad.

Prince Edward Island’s proposed Henry VIII Bill will permit the executive branch of government to function unchecked by the democratically elected representatives of the people and other participants including media (who foster a transparent and democratic process through the outward transmission of information and by their forum for public opinion).

With respect to the failure to address the inherent and legitimate concern of the electorate with respect to the potential for abuse of power legislators should consider historical events.

The Provincial Nominee Program (PNP)

Recall that in the early days of the Provincial Nominee Program (PNP) —a program that allows an immigrant investor a fast track queue to Canadian citizenship through residing and investment in the province—there was occasion for government to broadcast the application process in order for Island businesses and residents to access the funds via a 24-hour posting on government’s website. If you were to apply the Policy on Communications of the Government of Canada (the author is unfamiliar with the provincial policy) such an undetectable advisory was surely presented in order to imply that the information was publicly available – suggesting that all Islanders had a shot, an opportunity to apply – and yet it wasn’t. A legitimate posting would have been presented via a variety of communications channels over a period of time, for example print media, social media, broadcast radio and through earned media (i.e. a media release, or interview, as opposed to paid advertising) and introduced 30, 60, 90 days prior to the deadline for application. It would be a fair analysis then to conclude that the only Island businesses and Islanders who would have access to that particular round of PNP monies would have been aligned with the governing party of the day. That this happened in the context of a non-emergency environment and where government was answerable on a daily basis to the legislature and other observers should inform legislators on the potential abuse of power by handing over absolute power to the fifth floor of Shaw Building for an extended period.

The E-gaming fiasco

One has to not only recall the events surrounding the e-gaming fiasco, but in so doing, first come to comprehend the fundamental problem with the scheme. As a casual observer it is profoundly evident that there remains need for legislators and the broader public to comprehend the serious circumvention of the legislative branch of democratic government and the unauthorized liberties and therefore improprieties of the executive branch. All Members of the Legislative Assembly, regardless of party affiliation, had an opportunity to review the provincial budget that was tabled.

The budget included a line item, which represented a loan to the Mi'kmaq Confederacy of Prince Edward Island, an amount of almost \$1 million. Most legislators and the broader public today would not pursue much line of inquiry particularly given a desire to engage in reconciliation and in a genuine desire to support a valuable community within our community. There was perhaps an assumption that the funds were for the betterment of the Mi'kmaq community. In reality the funds were a budget allocation that a certain team assigned to the e-gaming file could draw on for expenses. The Mi'kmaq Confederacy completely innocent of the impropriety had no hand in the arrangement. The problem was that MLAs who were not part of the inner circle were deceived and by extension the people of the province were deceived. They didn't know what they were voting on. The fact that this deception went down right under the noses of Members of the Assembly should be a transformative event so that when considering an Act to hand over power to a few over an extended period without legislative oversight there should be serious reservation. The Sarbanes-Oxley Act of the United States Congress 2002, "Public Company Accounting Reform and Investor Protection Act" was enacted as a reaction to a number of major corporate and accounting scandals, including those affecting Enron (the Enron scandal), Tyco International, Adelphia, Peregrine Systems, and WorldCom. These scandals cost investors billions of dollars when the share prices of affected companies collapsed, and shook public confidence in the US securities markets. While there is no need to invent new legislation to provide oversight of the provincial government, the E-gaming history should remain top of mind when balancing limits and liberties of the executive branch. Legislation flowing from the Prince Edward Island Legislative Assembly should seek to strengthen the democratic process through transparency and accountability.

Orders-in-Council – stifling democracy

Orders in Council P.C. 2020-298 May 1, 2020

Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted: SOR/2020-96

The author is neither a gun owner, nor an advocate for gun ownership, so much as a guardian of democracy and the rule of law. On 1 May of this year, in the midst of a global pandemic the Government of Canada passed an Order-in-Council banning some 1,500 legally owned firearms. To borrow the words of Kate MacQuarrie as printed in the 8 May 2020 edition of *The Guardian* [Charlottetown] “There are many reasons why Canadians generally and not just firearms owners, should be deeply concerned by this (1 May announcement to ban what government called ‘military-grade assault-style weapons’)”. Ms. MacQuarrie correctly identifies that it is inconsistent with rule of law society that a citizen is deprived of property without debate in the legislature and the customary enactment of legislation. The Order-in-Council occurring as it did in the midst of a pandemic and in the absence of debate, that is, the legislative process where witnesses and public reflection could be considered at the committee stage, meant that those affected could not convene a meeting with one another and there was no opportunity to engage with their Members of Parliament. The legislation, which to an impartial observer, lacks legitimacy when considered under the litmus test of democratic process. It is presented as a ban on high-powered centre-fired semiautomatic rifles designed to kill the largest number of people

in the shortest amount of time. However, the list includes, according to Ms. MacQuarrie, includes single-shot shotguns and related weapons for the stated reason that they are not suitable for use in hunting when they are commonly used as such. Ms. MacQuarrie provided a follow-up opinion published on 26 May that informed the reader that since the enactment of the OIC, hundreds of firearms unnamed in the OIC have been reclassified and placed on the Firearms Reference Table (FRT) and without notice to otherwise law-abiding gun owners. “Many gun owners here in P.E.I. incorrectly think the ban doesn’t affect them.” The FRT is not publicly available, leaving law-abiding gun owners unknowingly in violation of the law. Legislators, this is a current account of government taking advantage of a crisis – a pandemic and an added violent homicide crisis – to imposing its agenda. It is incumbent upon you to justify why government would need total control during the emergency, just as it is for you to justify why that power should be extended for months after the lifting of the emergency.

Closer to home, in addition to questions that arose just this week regarding the sale of “504 acres of land” near the Municipality of Three Rivers, approximately 16 approvals via Order-in-Council for land transactions related to Island Holdings of Saint John, New Brunswick were completed earlier during the pandemic. The Minister of Agriculture provided clarity on the transaction of the former – the Cabinet approval was required in order to comply with the Lands Protection Act, while the latter are annual leases that require approval each year. There is nothing untoward here, however, one has to pause for a moment to consider that, with the expansion of time the increased volume of Orders-in-Council will make the role of the Opposition and others untenable. The researching and the limits within question period would curtail scrutiny.

Government power with Parliamentary democracy

British Parliamentary tradition demands requires strong party solidarity, which translates into a structure in which the governing party of the day already has considerable power to move forward with its agenda. (Unlike the congressional system, which in theory, builds consensus across party lines.). Notwithstanding the drama that may play out in the news, when government introduces legislation there is a good chance it will be enacted, with or without amendment. The justification then for an extended period of extraordinary powers then is called into question.

One should considerable legislative activity that falls outside the public debate. Governments rely on a professional, impartial public service, however there is a balancing act and one of the equalizing factors is the legislature. There exists an absence of debate on many policy initiatives, which means the status quo is determined by the governing party, or the public service, or forces beyond. Canadian who legally owned guns found themselves suddenly in possession of illegal weapons. When given unchecked power one should imagine broadly what might happen over an extended period where government is run by a politburo on the fifth floor of Shaw Building.

Today, we may have a government for which there is considerable public confidence, however legislators must always be cognizant that legislation lives on and the extension of privileges today will extend to the next government and the one after that. Even through the lifecycle of any particular government confidence can fade and the propensity to desire to hand over more power fades with it.

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Considerable effort has now been expended on this legislation and the natural course is to report back to a committee of the whole and adopted. The fact that other jurisdictions have made changes to their applicable legislation in recent memory and that fact that efforts have been spent are not rational for enacting the amendments. The late hour call this week for public input is evidence of that rush to the finish line. This Bill should be put on ice; it should die on the Order Paper and the topic explored more thoughtfully and without the race to wrap it up before the legislature prorogues.

All of which is respectfully submitted.

Brian Doyle