

# Effective Opposition vs. Efficient Government

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D E R R E K   K O N R A D <sup>†</sup>

I am pleased to be here representing the Canadian Association of Former Parliamentarians (CAFP), an association that has hundreds, indeed thousands of years of political and parliamentary experience.

It is rapidly becoming a formidable organization in the field of democratic and parliamentary issues.

I had been planning to speak about the need for political nomination reform as the Association has recently undertaken a study of political nominations as currently practiced. The abuses that characterized early elections in Canada have largely been eliminated due to the professional work of Elections Canada. They have not been entirely eliminated from the system however, they have simply migrated downward to the riding associations as recent headlines demonstrate.

Nomination reform is not my topic today. You will however be hearing from the Canadian Association of Former Parliamentarians on that topic in the near future. What I will be speaking about is an epic procedural battle that took place in the House of Commons over the Nisga'a Treaty. The Nisga'a Treaty created a land base for the Nisga'a First Nation and provided for a form of self-government.

The Reform Party opposed the Treaty because it established self-government for the Nisga'a in the same legislation that created the reserve. Constitutional experts who appeared before the Standing Committee on Indian and Northern Affairs expressed concerns because reserves, once created, become constitutionally protected. By joining the two elements in a single piece of legislation, the governance provisions may not be subject to legislative amendment in the future, if and when changes are found to be desirable.

The dynamics of Parliament, both in the House and in committee do not allow for meaningful participation by opposition parties. Frequently, legislation is introduced to committee with the statement that the government will not consider amending the legislation. The Nisga'a legislation was one such bill.

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So, what is a principled opposition to do?

Since reasoned argument based on facts is not going to effect change, extraordinary measures must be taken in order to raise the profile of an issue, to mobilize the public and to put pressure on the government to adopt proposed amendments.

Prior to the development of the House strategy, the Reform Party launched information blitzes in British Columbia and Members of Parliament held public meetings on the issue throughout the province. At the same time the government, the Nisga'a and their supporters ran their own campaigns in support of the treaty. The net effect was that British Columbians were well informed about the issue while the rest of Canada was largely ill informed.

A strategy would be required that would draw the attention of Canadians from coast-to-coast. It was determined that stalling the bill in committee would not be an effective strategy.

So what strategy would draw the attention of Canadians and the government? Amendments introduced in the Commons at Report Stage were thought to be the most effective means of raising the temperature and the more the hotter. A former clerk of the House of Commons was brought in as a consultant to help draw up a number of substantive amendments.

Our strategy called for limited resistance in committee but to let the legislation pass without offering total resistance, in effect a strategic retreat. After we let the bill go, congratulations were extended to the Reform members who, I must admit, felt both exultant and somewhat hypocritical. Little did the government know what was in store.

Over 600 amendments were prepared and submitted to the Speaker's office. This was done on a Thursday to keep the government unaware of what was up until it was too late to do anything about it. After the clerks had finished combing through the amendments, they were left with 471 that were deemed "substantive." Buried in the amendments was the one Reform really wanted. It divided the land claim from the self-government provisions. All other amendments were to pass unopposed if that one amendment was adopted.

The party's strategy was designed to break the government's resistance to our proposal and as such was comprehensive. The usual practice when voting is to have the Speaker introduce an amendment and then ask if he can dispense with the reading. A single "Nay" requires the reading of the entire amendment. Each amendment was read in full and none were disposed of on division. Each amendment was subjected to a roll call vote.

The entire process took 42 hours. On a personal level, I got a 2 hour break after 24 hours of continuous voting. My wife tells me that several minutes after falling asleep I sat up, cried out “Nay!” and fell back.

The Nisga’a vote was the longest recorded vote in the history of the British Commonwealth.

So, what were the results of this historic vote?

Public attention from across Canada was focused on the issue.

The government did not cave in and the legislation passed without amendment.

The government ultimately amended Standing Order 76.1 to give the Speaker the authority to disallow the tactic in the future.

Does it matter?

The power to influence the government and raise the profile of issues through tactical battles has been diminished. In view of the fact that, according to a well placed source, reasoned debate doesn’t cut it, the loss of this procedural tactic is significant. As new tactics are developed they are tried and immediately disposed of by governments dedicated to enacting their legislation without amendment or effective opposition.

In order to be effective, opposition parties need some extraordinary tools in their toolboxes. Without them, Parliament is in danger of sinking to the level of theatre as the government dominates all aspects of the legislative arena. Parliament must be about more than speaking (and not listening). The need for efficiency should not completely trump democracy.

Minister Valeri said earlier today that if he were re-elected in a majority government, collaboration and co-operation would continue. This is not a strength of the system; rather, it exposes a weakness in the system as it depends on good will rather than on procedural rules that empower legislators as they attempt to influence government.

Is there room for optimism? Not if governments continue to bulldoze all legitimate procedural tactics to pressure the government. Principled opposition to proposed legislation needs an outlet for expression and the prospects don’t look encouraging.