

Risk Assessment Analysis

Political Risk Assessment

Parliament and COVID-19: Governing Through a Pandemic

Prepared by the Leadership & Democracy Lab, University of Western Ontario

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Executive Summary

In the wake of the COVID-19 pandemic, legislatures around the world have struggled to fulfill their duties while adapting to physical distancing mandates and stay-at-home protocols. In March of 2020, the Canadian Parliament quickly suspended in-person proceedings when cases of the virus began to rise throughout the country. The House of Commons later began conducting ‘hybrid’ sessions, with some Members of Parliament attending in person while most joined digitally from home.

This report considers how the hybrid Parliament model affects governance in Canada. It examines how well the model adheres to the requirements that the Constitution places upon Parliament, and whether the model provides the opposition an adequate opportunity to review the actions of the sitting government. It further investigates how well Members of Parliament have been able to represent their constituents while conducting remote voting, combating cybersecurity breaches, and enduring the various other challenges

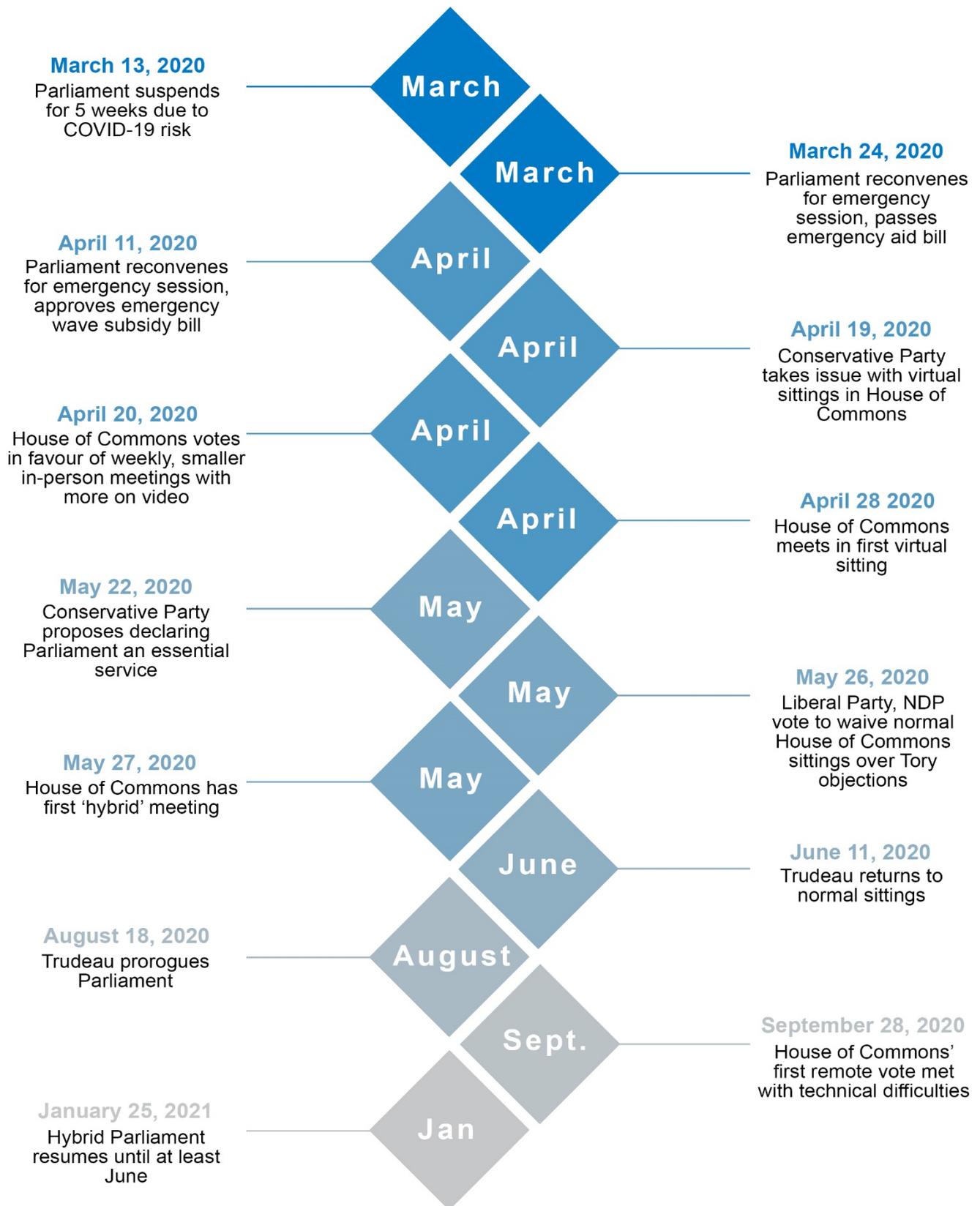
that accompany a sudden shift towards a semi-digital democracy. This report also reviews the impact that the pandemic has had on Crown corporations in Canada, and the role that Parliament might play in addressing the sudden loss of business that many of these corporations have suffered.

The threat of health epidemics presents both short-term and long-term implications for the daily operations of governments. Some view COVID-19 as a once-in-a-lifetime emergency, while others point to increasing interconnectedness, travel, and movement of goods as evidence that the spread of disease across the globe will occur more frequently and easily. This report proposes strategies to mitigate the challenges that the COVID-19 pandemic has presented to the Canadian Parliament, with the goal of facilitating the smooth functioning of an emergency hybrid Parliament in Canada for the duration of the pandemic, or in the event of a future health emergency.



Figure 1: The Canadian Parliament Building located on Parliament Hill, Ottawa, Ontario, Canada

Timeline



Constitutionality and Parliamentary Procedure Risks

The COVID-19 pandemic has prompted efforts to implement digital infrastructure due to the spread of the virus in social settings. These efforts have included a shift towards digital democracy, which poses a unique set of challenges that must be overcome to ensure the proper functioning of government as mandated by legislation and the Canadian Constitution. If these mandates are not considered, then the constitutional validity of legislation passed under this new digital arrangement might be compromised.

The *Constitution Act, 1867* divides the Canadian legislature into two chambers: The Senate and the House of Commons.¹ The Prime Minister and their Cabinet are accountable to the legislature through their presence in the House of Commons. Regular in-person sittings of Parliament are mandated by Section 5 of the *Canadian Charter of Rights and Freedoms, 1982* noting that there shall be a sitting of Parliament every 12 months.² A key role of Members of Parliament is to review and scrutinize the laws that the sitting government proposes and to hold the Prime Minister and the Cabinet accountable. Digitization of democratic services presents a new set of challenges, because legislative outcomes are still bound by constitutional texts and legislative rules to which remote governing processes must adhere to. Exceptional circumstances cannot permit a government to forego its fundamental constitutional responsibilities and the rules of law-making.

Validity of Legislation, Section 48 of the Canadian Constitution

The validity of legislation passed without the proper quorum is a risk to consider. Section 48 of the *Constitution Act, 1867*, provides that a minimum of twenty members of the House of Commons must be present in order for the House to exercise its powers.³



Figure 2: The inside of the House of Commons of Canada

This means that should twenty members not be present, any legislation passed could be rendered unconstitutional. This problem applies to the case of remote Parliament.

Emmett Macfarlane, an associate professor at the University of Waterloo, raises the key concern that MPs must be able to fully participate, which may require the restructuring of in-person activities, including voting.⁴ However, legislation passed by Members of Parliament who are working from home could be waived as invalid. In a testimony given before the Procedure and House Affairs Committee Philippe Dufresne, a Law Clerk and Parliamentary Counsel for the House of Commons, notes several important points.⁵ Courts will not interfere with the creation of legislation, but they will review it if questions are raised regarding its compatibility with the Constitution.⁶ The judiciary is not meant to be involved with the executive branch, and only act after a piece of legislation has been implemented. As well, though some judges also have historically compared the Constitution to that of a living tree, meaning it must be able to adapt by way of evolutionary interpretation,⁷ it is unclear whether this judicial philosophy applies to emergency pandemic

legislation, as it did not emerge through natural change. Emergency legislation indicates an abrupt and harsh change that is not organic.

Mitigation Strategy

Even if the courts found such legislation invalid for contravening Section 48 of the Constitution, there is some jurisprudence that might address this kind of issue. In 1985, in the *Reference re Manitoba Language Rights*, the Supreme Court of Canada issued a decision regarding the approximately 4,000 laws passed by the Manitoba government since 1890, which were written in only the English language.⁸ These unilingual laws violated both Section 23 of the *Manitoba Act, 1870*, and Section 133 of the *Constitution Act, 1867*. These documents require that all acts of Parliament should be enacted, printed and published in both official languages.⁹ Instead of simply nullifying these laws, the courts deemed these laws temporarily valid and granted the government four years to translate all of the laws in French to avoid lawlessness; invalid or otherwise, had the laws been deemed unconstitutional, this would have removed 4,000 laws from the society of Manitoba.¹⁰

Over the last year, the federal government has needed to exercise special powers through emergency legislation to govern during the pandemic. Although the amount of legislation is minor in comparison to the thousands of statutes reviewed in the Manitoba case, many of the emergency response efforts might have been unusable if ruled unconstitutional, which would have seriously inhibited the government's ability to address COVID-19. While the legislation passed in 2020 does not adhere specifically to this example, it does help predict the court's response in the case of the legislation being deemed invalid. If the emergency legislation was ruled unconstitutional, based on this example it is a possibility the court could permit a revote with a quorum physically present and temporarily uphold the invalidated legislation.

Validity of Legislation, Standing Order 29

Standing Orders of the House of Commons are written rules that regulate how the House operates. Standing Order 29 provides that a minimum of twenty people be present to exercise legislative powers.¹¹



Figure 3: The Supreme Court of Canada building in Ottawa, Ontario.

Standing Orders can be amended, and new Standing Orders can be adopted to supersede old ones. While this perhaps does help sanction the functioning of a remote Parliament, this does not affect the application of Section 48. While the latter applies to the Constitution, the former applies to House procedures. Should a Standing Order be violated, it means that the required practices for House procedures are being ignored. Ultimately, ignoring a Standing Order will have a similar effect as undermining the Constitution: calling into question the legitimacy of subsequent legislation.

Mitigation Strategy

To remove any possibility of such debate, the House of Commons could reinstitute the Standing Order to allow for legislation to be passed with a virtual quorum of 20 legislators. The amendment of Standing Order 29 can be passed by a mere majority of Members of Parliament.

Gary O'Brien, a former Clerk of the Senate, notes that even though virtual sittings are temporary, the House of Commons should conduct a detailed analysis or audit of new technologies and how they might impact House procedures.¹² This could be useful in terms of safeguarding virtual parliamentary proceedings and verifying that remote Parliament is a reassuringly safe way to conduct House matters. If the audit of the technology found that all House rules were able to be followed during digital proceedings, it would offer greater legitimacy to the hybrid Parliament model. In the absence of a physical quorum, this kind of audit could help make a case for a viable virtual presence.

Role of The Opposition

Section 5 of the *Charter of Rights and Freedoms* requires Parliament to assemble at least once annually.¹³ Its purpose is to ensure that the government remains visible and accountable to both the legislature and by extension the electorate.¹⁴

The role of the opposition has changed in a digital environment with a diminished physical presence. Digital democracy means debate and discussion that would usually happen in person needs to happen via digital platforms. Thus far, the Conservative Party of



Figure 4: Former Conservative Party leader Andrew Scheer addresses the House of Commons amidst the COVID-19 pandemic.

Canada, the leading opposition, have been largely critical of the balance struck between their ability to carefully scrutinize government action and the need to quickly pass new measures, with only 5 percent of the Conservative MPs saying they are satisfied.¹⁵

Several pieces of emergency legislation were drafted with small groups of MPs and introduced only after a select group of representatives from all parties had already agreed to the provisions, hindering transparency in the legislative process. Bill C-13, a piece of emergency legislation that aimed to expand the federal spending power to address the pandemic, was negotiated between just over 30 MPs in the House of Commons.¹⁶ The next day, it was introduced under an omnibus motion and only had 90 minutes allocated to it for debate. This demonstrates how a small cadre of MPs negotiated the contents of an extraordinary piece of spending legislation. The federal Conservatives took issue with Bill C-13, stating they would prefer to review and approve of sums of money rather than “sign a blank cheque.”¹⁷

The Liberal government has adopted a closed-door committee-focused approach to addressing the challenges posed by the COVID-19 pandemic. This approach, while facilitating quick decision-making and response times to pandemic needs, creates a democratic deficit by removing the other parties from the conversation. This reduces the opportunity for the opposition to raise questions of scrutiny towards current

legislative operations conducted in the midst of the pandemic, as seen in the case of Bill C-13. Parliament cannot minimize transparency and open debate to expedite extraordinary legislative measures to address the pandemic.

Mitigation Strategy: Lessons from Around the World

Canada is not unique in its position of attempting to govern rapidly while adhering to its legislative process. The approaches undertaken by the United Kingdom, New Zealand, Australia, and the European Union present new strategies which may be of benefit to Canadian policymakers. These strategies present efficiency and effectiveness and might also be valuable during ordinary times to improve democratic accountability.

The United Kingdom and Australia

The United Kingdom and Australia both operated similarly in the response to the COVID-19 pandemic.¹⁸ Both jurisdictions allowed for debate to occur in the legislature before extraordinary measures were implemented, whether by facilitating a greater physical presence with social distancing or dedicating more resources towards fully transitioning the legislature to a virtual setting.¹⁹ Their opposition leaders successfully managed to scrutinize the emergency capabilities that are at the disposal of the respective majority governments. While the initial debates were fruitful, neither jurisdiction enacted standing mechanisms for the opposition to continue to scrutinize the government's measures. Still, these arrangements contrast the capabilities of Canada's opposition, who had much less opportunity for debate and in turn reduced debate and scrutiny of some extraordinary proposals.

The European Union

The European Union introduced a method to structurally accommodate digital democracy infrastructure that might address concerns raised by the Canadian opposition regarding the current arrangement. The European Union has repurposed its liaison offices to allow for Members of the European



Figure 5: Map of the Countries and regions part of the European Union

Parliament to opt to meet in offices that are located within their national jurisdictions.²⁰ Repurposing these liaison offices expresses the importance of the European Parliament's proceedings and engages localities in the European democratic process.²¹ In Canada, these arrangements can be explored through the repurposing of corporate offices or new physical infrastructure, which could dissuade closed-door committee approaches to legislation since MPs will have alternative, more local avenues for scrutiny.²² This arrangement could facilitate greater remote participation, further legitimizing the calls for a greater presence of the opposition during the emergency legislative process.

New Zealand

New Zealand has implemented a committee-based approach to ensure governmental scrutiny of proposed emergency powers.²³ This committee is composed of members of the opposition as well as the leading party and its proceedings are made public. This arrangement helps overcome a potential democratic deficit by permitting public and oppositional scrutiny to take place in legislative proceedings and between main legislative sessions. To further protect the role of the opposition during a pandemic, the Canadian Parliament should introduce a standing solution like the multi-partisan committee adopted by the New Zealand government.

Political Representation Risks

During the COVID-19 pandemic, Canada's hybrid Parliament has come to emphasize policymaking at the expense of representation and diverse legislative voices.²⁴ Inequalities of technological infrastructure across Canada have hindered the abilities of Members of Parliament to fully participate in virtual proceedings and engage with constituents. To combat these challenges, Parliament should adopt a pandemic protocol, which would be invoked by a non-partisan factor; for example, when the per capita infection rate of a virus in Canada reaches a government-approved level of test positivity per 100,000 people. Beyond this domestic trigger, there should also be added pressure to invoke this protocol if the World Health Organization announces a worldwide outbreak of disease. The pandemic protocol will outline steps that the federal government should take to mitigate barriers to representation in the event of another emergency.

A Lack of Tech Infrastructure in Parliament

Working from home has become the norm and MPs have had to conduct a large portion of their parliamentary duties and constituent interaction online. However, access to these online platforms is not equal among all MPs and has caused countless technical difficulties since the inception of the hybrid Parliament. For example, Conservative MP Kyle Seeback was unable to connect to the first virtual meeting because of his poor internet connection speed.²⁵

Internet Connectivity

In rural areas, these connection issues are exacerbated. A 'broadband gap' persists throughout Rural Canada, where there are lower average internet speeds in comparison to urban centers, and limited connectivity is seen in the most remote regions.²⁶ Recent numbers from the Canadian Radio-television and Telecommunications Commission show that only 40% of homes in rural communities have access to good internet download and upload speeds of 50 mbps

Median internet speeds in Canada, August 2020

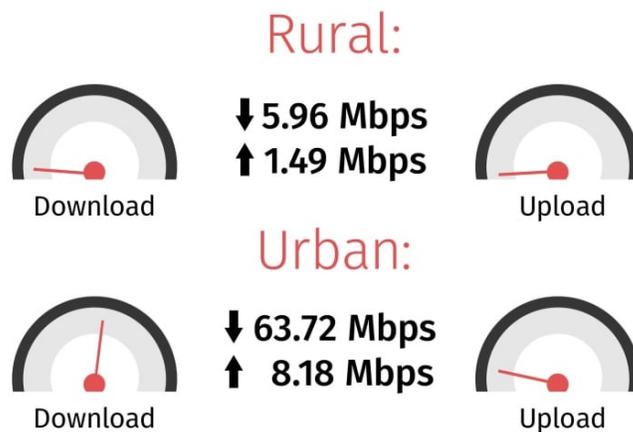


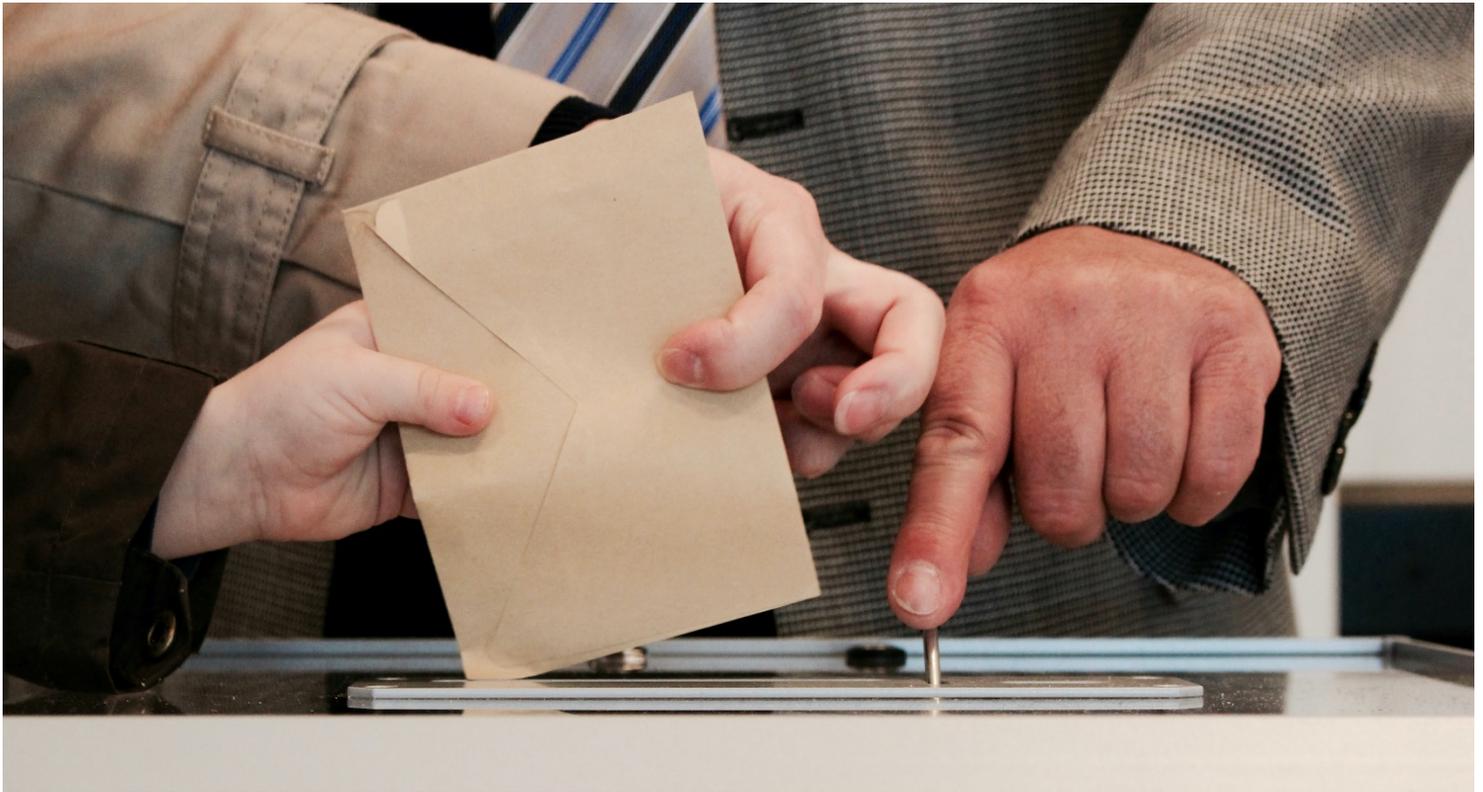
Figure 6: Internet speed comparison between the Rural and Urban areas

and 10 mbps, compared to nearly 86% for the rest of the country.²⁷ A Samara Canada study observed that the ability of MPs from these regions to communicate with their constituents, and their constituents' abilities to access these communications, were hindered by the lack of quality internet connection.²⁸ These technical issues can affect an MP's ability to represent their constituents and address their concerns at the federal level.

Mitigation Strategy

The government must prioritize funding to ensure that the internet connection for those MPs living in rural areas is comparable to those in urban areas. The Canadian government has announced that there will be an investment of \$1.75 billion into the Universal Broadband Fund, which will accelerate the goal to give all Canadians access to high-speed internet, no matter their location.²⁹

In the case of a pandemic, MPs must have the means to secure proper technical hardware. By providing equipment such as routers and computers, the technological access gap among MPs will be minimized, allowing MPs the equal ability to represent their constituents within a virtual Parliament.



Voting

The hybrid model seeks to allow a small number of MPs to be physically present to pass Bills, while all other MPs participate virtually. However, this has proven inadequate for fair representation as the House of Commons' first virtual vote was riddled with technical difficulties and miscommunications.³⁰ Although Commons Speaker Anthony Rota told Parliament that the technology was in place for remote voting in June 2020, numerous MPs had to try multiple times before their votes were properly recorded.³¹ Several MPs were unable to connect to the video vote and had to register their votes separately with Commons' Table Officers. It is unlikely that sittings in a hybrid Parliament will be sustainable without system upgrades and training. Without an effective remote voting system that addresses these connectivity issues, the ability of MPs to represent their constituents is at significant risk.

Mitigation Strategy

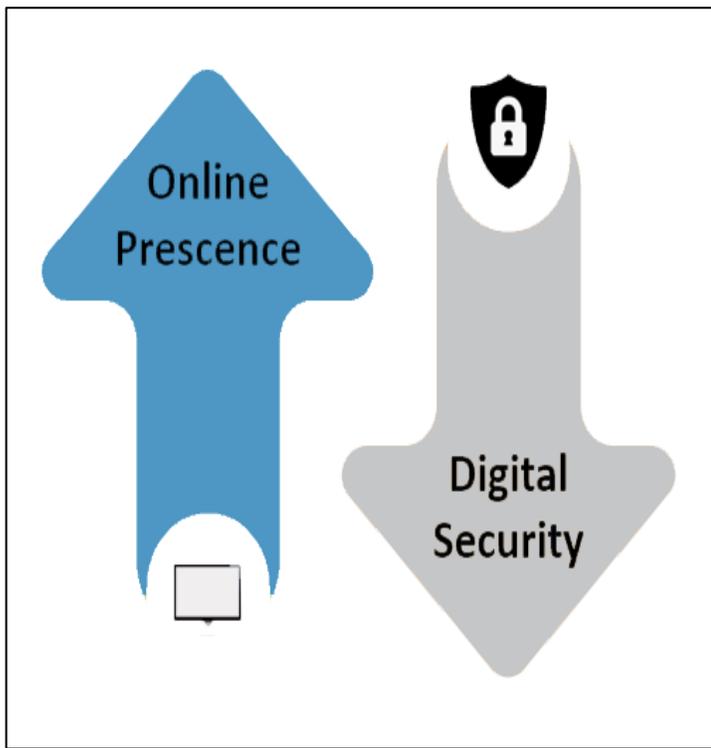
When the pandemic protocol is invoked, Parliament should prioritize improving technological infrastructure and provide digital literacy training for MPs to eradicate the existing gaps and ensure smoother policymaking and voting. Parliament might

also consider adopting different remote voting mechanisms during emergencies. Of course, equal access to any required technology must still be offered. In the European Parliament, voting is done through the use of secure email. MPs vote by printing out a form, then signing, scanning and emailing it back to the Parliament. This is a simple and reliable solution that requires low bandwidth, which will ensure that MPs who do not have high-speed connectivity can still participate in the vote.³²

Cybersecurity

Cybersecurity risks have increased following a shift towards digital democracy. Multiple government officials along with the head of Canada's Centre for Cyber Security have been the targets of cyberattacks demonstrating the more aggressive nature of cybersecurity threats since the digitalization of government.³³ The Minister of Digital Government reported that the Standing Committee on Government Operations and Estimates is:

“very aware that, as the use of digital tools and telework increases, so does the risk of these tools being the target of malicious cyber activity.”³⁴



This risk poses additional barriers to representation due to the trade-off between security and accessibility. There must be accessible resources for all representatives of government to work digitally, yet this creates an increased vulnerability to cybersecurity risks. Lower use of technology decreases the likelihood of cyberattacks due to the limited online presence. However, for MPs to fulfill their parliamentary duties under a digital democracy, they must build their virtual presence. Having the ability to connect and vote in meetings does not guarantee an MP's cybersecurity as with the increase in accessibility and use of technology, this results in a rise in vulnerability to cyberattack.

Mitigation Strategy

Increased measures must be taken to protect MPs without digital literacy and access to digital protection. Additional funding toward increasing MPs' digital literacy specifically focusing on protection against cyberattacks could provide a solution to the increased vulnerability. This funding should include training that educates MPs and the members of their teams on how to prevent and prepare for a cyberattack as well as what to do when the team has experienced a cyberattack. This strategy should take an intersectional approach to ensure that MPs who experience increased barriers to

accessibility to digital protection such as those in the Northern regions of Canada are equally protected from cyberattacks. This substantively equal allocation of funding toward the education of MPs will not only help to decrease the cybersecurity risks, but will also increase their ability to represent safely.

To decrease the risks of cyberattacks during a digital Parliament, there must be a secure voting platform for MPs to use. The Brazilian government began using the application Infoleg,³⁵ which is also used to provide citizens with government updates and includes exclusive services for representatives such as video conferencing services, attendance tracking and the voting process.³⁶ For politicians, there are two-stages of authentication prior to being allowed into the system such as a password and other recognition features using a smartphone's facial recognition or fingerprint capabilities.³⁷

In 2020, using this application in a virtual setting, the Brazilian legislature passed 20% more bills than in the previous year.³⁸ Attendance rose from 89.2% to 98.1% and voting participation rose from 71.3% to 86%.³⁹ On December 5, 2020, Global News reported that House of Commons technicians were looking into a new virtual voting system to find more efficient ways to vote virtually.⁴⁰ The Canadian Parliament should consider using an application similar to Brazil's Infoleg, as it has a two-factor authentication process for security, and participation has increased while using this application.

Disenfranchisement of Marginalized Communities

Amidst the pandemic, the responsibilities of many women have been altered. A survey conducted by Ipsos demonstrated that women have been taking on larger responsibilities in household chores and family care during the pandemic.⁴¹ On an average pre-COVID day, women spent about three times as many hours on unpaid domestic work as men.⁴² With more people at home, due to quarantines, the need for household care has multiplied, effectively exacerbating the disproportionate burden on women.⁴³

Representation of Women during the Pandemic

The idea of a gender gap in labour is not new. The double burden suggests that many women face a double day of paid work outside of the home and unpaid work inside it.⁴⁴ Due to these increased responsibilities, there has been a decrease in gendered representation in Parliament. During the emergency parliamentary session in March, only 25% of the normal 29% of MPs who are women were present.⁴⁵ The effects of the current parliamentary gender gap, where women constitute 50% of Canada's population, but only approximately a quarter of Canada's Parliament, will be exacerbated because of the increased constraints of the double burden during the pandemic.⁴⁶ This poses an issue for the inclusivity and efficiency of policymaking, which benefits from the participation of both men and women. The presence of women in legislative bodies makes a significant difference to what is discussed and the kind of legislation that is advanced.⁴⁷ Furthermore, inclusive leadership leads to greater success, which emphasizes the criticality of ensuring that women MPs are properly represented in Parliament, despite pandemic-related restrictions.⁴⁸

Mitigation Strategy

Other governments around the world have implemented measures that might help address this barrier to representation. For example, Spain utilizes a remote voting tool that features an asynchronous function where MPs can vote within a two-hour period. This allows the opportunity to vote and participate in creating legislation while performing additional at-home responsibilities.⁴⁹

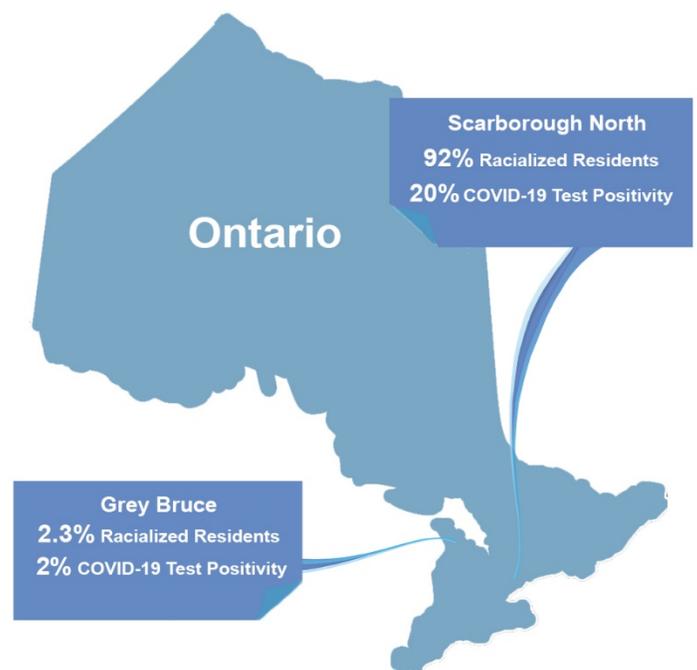
Standing Committees of the House of Commons are permanent, while Special Committees are appointed by the House to carry out specific studies of special importance and dissolve after they have crafted and submitted a report to the House.⁵⁰ There is currently a Standing Committee on the Status of Women which examines the programs and legislation of agencies that address the status of women in Canadian society.⁵¹ Due to the pandemic, the government should create a Special Committee for Women in Parliament during COVID-19. This Committee's report would outline the

unique challenges that women in Parliament face due to the pandemic, including the additional responsibilities of the double burden. The report should also propose a series of recommendations to address these issues and provide equitable support for women in Parliament. These solutions should remain effective beyond the time of the pandemic to address the longstanding challenges of equitable representation in Parliament.

Racialized Representation and COVID-19

During the pandemic, most MPs must work from home in the constituency that they represent. However, the severity of COVID-19 is not equal among all ridings. According to a study completed by Public Health Ontario, 20.2% of COVID-19 cases from the report resided in neighbourhoods with the lowest levels of diversity, whereas 65.6% resided in neighbourhoods with higher levels of diversity.⁵² According to the 2016 census, the population of the Scarborough North riding is comprised of 92.2% racialized minorities.⁵³

In November 2020, northeast Scarborough had the highest test positivity for the entire province of Ontario, at more than 20%.⁵⁴ On the other hand, the racialized minority population of the Grey Bruce municipality is 2.3%.⁵⁵ In November 2020, it was reported that the test positivity rate in Grey-Bruce was



2%.⁵⁶ This indicates that more racially diverse neighborhoods are experiencing disproportionately higher rates of COVID-19, making them more vulnerable during the pandemic.

As a result, those MPs living in ridings with the highest levels of diversity will likely lose the opportunity to travel to Ottawa due to stay-at-home orders for their regions. Additionally, these MPs may be at a heightened risk for contracting COVID-19, which may affect their ability to attend any parliamentary sittings, and to represent their constituents from any location if they are sick.

Mitigation Strategy

When the pandemic protocol is invoked, the investments into technological equipment for MPs working remotely and the digital infrastructure of a virtual Parliament at large will help facilitate MP participation from more vulnerable ridings. This ensures that the MPs from racialized ridings who face travel restrictions will be contributing at the same level as those attending in person.

Equitable healthcare initiatives across all ridings including increased testing centers and heightened data analysis might also help to address this issue.⁵⁷ The Scarborough Health Network announced that its hospitals have been flooded with COVID-19 patients who make up 48% of current ICU patients.⁵⁸ Despite this need for stronger healthcare support, Scarborough received the same initial distribution of vaccines as a smaller community hospital in East York, which is not experiencing the same level of urgency.⁵⁹

Many have advocated for an equitable healthcare support strategy that addresses the pandemic's heightened impact in racialized communities.⁶⁰ This solution would help to ensure that MPs can more effectively represent their constituents as there will be less risk of contracting the virus and less risk of being unable to attend in-person sittings because of travel restrictions, both due to high COVID-19 infection rates in racialized communities. While this solution would likely have to be implemented at the provincial level, the implications that it might present for



Figure 7: MP Niki Ashton from Manitoba (Churchill-Keewatinook Aski) invites constituents to a virtual town hall event

access to political representation at the federal level during a pandemic should be considered.

Constituent Alienation

Due to the pandemic, the workload of MPs has increased.⁶¹ Samara Canada reports that the biggest operational difficulty experienced by MPs and their staff was dealing with the overwhelming number of inquiries from community members. During the first few months of the pandemic, about 85% of MP respondents identified that keeping up with the high volume of communication from their constituents was the top challenge they faced.⁶²

Constituency focus is a function that MPs must undertake as elected representatives.⁶³ Listening to local issues and voicing constituents' concerns in Parliament are functions that constituents expect and respond positively to. According to numerous opinion polls, citizens believe that some form of constituency service is the most important part of an MP's role.⁶⁴ This is also seen in the reasons for voter turnout decline. In a survey completed by Elections Canada, the majority of Canadians attribute voter turnout decline to negative



Figure 8: MP Niki Ashton from Manitoba (Churchill-Keewatinook Aski) invites followers to join an online speaking engagement.

public attitudes toward the performance of politicians.⁶⁵ As a result, MPs must work diligently to maintain the trust of their constituents and focus on the issues that are most pressing to them.⁶⁶ This is especially important during the era of COVID-19, where citizens have increased concerns and in-person communication is unattainable.

Mitigation Strategy

Along with the proper technological infrastructure, MPs should be prepared to utilize this technology in an effective and creative manner. By being familiar with various methods of communication, MPs can better listen to the issues of their constituents and represent them on a national level. MPs should use this knowledge to take advantage of digital communication and more highly prioritize virtually interacting with their constituents. MPs such as Niki Ashton and Rachael Harder have been actively using online platforms such as Facebook and Instagram to stay engaged with their constituents.⁶⁷ Through methods such as Facebook Live or email newsletters, MPs can keep track of the high volume of constituent questions by addressing general concerns. By answering common inquiries on a large scale, there will be fewer repeat questions sent to MPs, effectively allowing them to prioritize the more pressing requests. In doing so, MPs will also provide their constituents with an alternative route to accessing their representatives,

a function that is always important and increasingly so during a national emergency.

The Case of the Northern Territories

With digital communication becoming the norm, the lack of equal internet-connectivity across Canada has been emphasized, especially for those living in the Northern Territories.⁶⁸ Much of the communities in the North are connected to the internet through satellite, which is a slower connection compared to broadband. Mumilaaq Qaqqaq, a Nunavut MP, has raised concerns about access to virtual Parliament from Baker Lake, Nunavut.⁶⁹ This issue poses a barrier to the representation in Parliament of MPs who work remotely from Canada's North, and also affects their constituent's ability to connect with their MP.⁷⁰

In 2020, Prime Minister Justin Trudeau announced an investment of \$1.75 billion to help connect Canadians to high-speed Internet across the country.⁷¹ The government must pay special attention to the particularly scarce internet connection in the North as COVID-19 has brought to light another issue of equity and representation through a lack of internet connectivity.

Pandemic Induced Risk for Crown Corporations

What are Crown Corporations?

Crown corporations are entities typically established by either an Act of Parliament or are incorporated under the Canada Business Corporations Act, created to fill a need that the government thinks the private sector will be unable or unwilling to fill.⁷² They do not entirely fit within the mandate of the government, nor do they fully belong in the commercial arena. Crown corporations therefore enjoy the increased efficiency of operating as a company in the private sector and the benefit of being able to receive government funding while remaining independent from the ruling party's political agenda. As such, Crown corporations are created in what the government deems to be the national interest. They are seen as an "instrument of public policy" by the Treasury Board of Canada.⁷³

Each Crown corporation has a designated cabinet minister who appoints the company's board of directors and CEO. The minister acts as a liaison between the government and the corporation and is held accountable for its activities.⁷⁴ Since most Crown corporations receive funding from the government, their operations must be transparent in order to be accountable to the tax base.

Financial Risk

Crown corporations provide vital services to Canadians; they should be prepared for the risks that might accompany a future pandemic. The main consequence of the COVID-19 pandemic across most economic sectors has been a significant decrease in demand for many goods and services. A future pandemic is likely to have similar repercussions. Crown corporations are often created in order to provide goods or services that meet the needs of Canadians neglected by the private sector; this combined with a general economic downturn explains why many Crown

corporations are seeing revenue decreases induced by lack of demand.

Decrease in Revenues

In its first quarter, ending June 30th, the Canadian Broadcast Corporation saw a nearly 15% decrease in their revenues compared to the same period last year, mostly due to a decrease in demand for TV advertising as a consequence of the pandemic induced economic downturn.⁷⁵ The Canadian Dairy Commission saw their revenues drop more than \$23 million during their first quarter ending April 30th because of a decrease in dairy purchases from the restaurant industry due to government shutdowns.⁷⁶ Airports, which are subsidiaries of Transport Canada, have suffered crushing losses since the beginning of the pandemic; flight traffic in Canada was at its highest in September at around 15% of 2019 levels.⁷⁷

No Crown corporation has gone unscathed by the economic impacts of the COVID-19 pandemic. With hundreds of thousands of flights every day across the world under normal circumstances and globalized shipping routes, the spread of viruses is inevitable, and pandemics may occur with a higher frequency; Crown corporations should be prepared to face future revenue decreases.

Cost Increases

The COVID-19 pandemic has caused a spike in the cost of labour. This is due to a variety of factors including pandemic induced pay increases, overtime pay, updated healthcare benefits and other special circumstances. Since many Crown corporations are deemed essential services by the government and are required to stay open, they should be prepared to face increased costs.



The Canada Post is a notable example of a Crown corporation experiencing the effects of labour cost increases. Canada Post reports through the Minister of Public Services and Procurement and is responsible for transporting and delivering domestic parcels.⁷⁸ Despite the postal company reporting a record high level of parcels being transported, it also sustained losses of \$378 million in Q2 2020 as compared to a loss of \$50 million in the same quarter in 2019 – a notable difference of \$328 million. This is mostly attributed to a \$310 million increase in operational costs, a large part of which was a result of higher labour costs including special employee leave, overtime, and wages related to COVID-19. In addition, a renegotiation with the Canadian Union of Postal Workers (CUPW) resulted in increased eligibility for post-employment healthcare benefits for its members, raising costs by \$114 million. For this reason, Crown corporations should have strategies in place to overcome this likely consequence of future pandemics.

Mitigation Strategy: Government

Given Crown corporations' positions as unique providers of goods and services not otherwise offered by the private sector, the Government of Canada has a certain responsibility to keep them afloat. As such, Crown corporations are entitled to ask for increased funding from the government to compensate for inevitable cost increases and revenue decreases. However, certain Crown corporations and their subsidiaries do not have the same access to

government funds. These corporations will instead have to consider borrowing money from financial institutions.

Mitigation Strategy: Strategic Foresight

Other strategies should be implemented in the future beyond receiving supplemental funding or taking out loans. Crown corporations should consider using a technique called “strategic foresight” - a theory and practice in which companies hypothesize and decide on a select number of potential future scenarios that would affect their company.⁷⁹ They then alter their current operations to strategize and adapt in the chance that they occur.

Steps to strategic foresight include⁸⁰:

1. Identifying driving forces likely to shape future markets and operating conditions
2. Investigating how these forces will affect one another
3. Imagining various relevant future scenarios
4. Examining current operations and brainstorming response strategies based on these possible scenarios
5. Using these new models to create various strategies for the future and discussing implications

Effective strategic foresight must be performed continuously. Constant iteration and forward-looking initiatives are important for managers to be able to create an agile company whose current actions can be altered to fit predictions of the future.

Mitigation Strategy: Cost Cutting

Royal Dutch Shell, better known as Shell, had a noteworthy success over its competitors due to its use of scenario planning in the early 1970s when Herman Kahn, an ex-RAND⁸¹ analyst, brought forward the idea to Pierre Wach, an executive at Shell. Together, they analyzed various possible future scenarios that would occur once oil-rich Middle Eastern nations started to appear on the world stage and began to prepare. When the 1973 OPEC oil embargo occurred and the first oil shock ensued, Shell had already prepared for a similar situation and found itself in a superior position to its competitors, managing to outperform them.⁸²

Crown corporations can take further inspiration from agile private sector firms and their techniques to mitigate these risks. Despite the fact that addressing increasing revenues is challenging for non-agile business models with strict regulations and mandates like Crown corporations, cost-cutting initiatives are another option that have proven to be extremely effective for private corporations. The great financial crisis of 2008/2009 proved that companies that were able to implement feasible cost-cutting programs quickly were able to strongly outperform their competition.⁸³ Crown corporations should follow a similar strategy which will allow them to react to the circumstances around them more efficiently and effectively. History has shown that companies who entered crises prepared fared significantly better than their competition who did not develop a strategy prior. In the past, these “prepared companies” have generated revenues and profit margins 14% and 7% higher than their competition respectively.⁸⁴ There are four main areas that companies should focus on when trying to adjust their cost models:

1. Increasing resources for areas of future strategic importance
2. Reducing inefficiencies
3. Minimizing effects of organizational weaknesses
4. Decreasing resources and costs in areas of non-strategic importance

More concretely, Crown corporations might consider closing offices and having employees work

from home in order to decrease spending on office costs (maintenance, heating, utilities). Any spending that a Crown corporation deems to be unnecessary should be immediately cut. Examples of such costs could be paying for travel or training programs. As a last resort, the Crown corporation could consider temporarily furloughing employees.

Case Study: VIA Rail Canada

VIA Rail Canada is a non-agent Crown corporation that operates at an arm’s length from the Government of Canada. Its purpose is to provide a cost-effective and reliable railway service for Canadians across the country, allowing them to travel domestically with ease.

Risks

The economic effect that VIA Rail has felt from the COVID-19 pandemic has been drastic:

- VIA Rail’s capacity has been reduced by 93%, decreasing its revenues by 97.6% in Q2 2020 compared to the same quarter in 2019.⁸⁵
- Revenue per Available Seat Mile (RASM) has decreased from \$21.24 to \$7.19 and Cost per Available Seat Mile (CASM) has increased from \$45.52 to \$425.5 in 2020.⁸⁶
- COVID-19 has vastly increased the capital required by VIA Rail with \$119.6 million being provided by the government in Q2 of 2020 compared to \$74.4 million in 2019.⁸⁷

As a result of the drastic decrease in revenues, VIA Rail has had to cut their expenses in order to try and keep losses to a minimum. While they were able to decrease expenses by \$12.4 million during the 2nd quarter, a large portion of this reduction is attributed to temporarily laying off some of their employees. On July 24th, VIA Rail announced 1,000 unionized employees were temporarily let go. In August, an additional 30 non-unionized employees were laid off as well.



Mitigation Strategy

The COVID-19 pandemic has revolutionized the way that people think about crowded spaces and commonly touched surfaces. Any method of bacteria or germ transmission between people will be re-evaluated which poses a challenge for companies that rely on shared spaces and surfaces like VIA Rail. Looking forward, many companies are moving towards biometric technologies in order to help overcome this problem. VIA Rail should follow suit and look into implementing biometric solutions to identify passengers, scan tickets and also implement contactless payment solutions to help assuage the fears of its passengers.

Airports around the world have been increasingly leveraging biometric technology in order to manage higher passenger volumes and create better customer service. The Narita International Airport in Japan has been working to introduce facial-recognition technology that limits or negates document handling between customers and employees, increasing hygiene and reducing the need for close personal interactions.⁸⁸ Via Rail should look to these airports for inspiration and invest in resources in this area of future strategic

importance in order to reduce the need for boarding pass and ID handling and reduce waiting lines where large numbers of people congregate. This will not only give their passengers peace of mind and convince them to use their services again but will also help decrease any negative impact in the case of a similar future pandemic.

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