

FEDERAL COURT OF APPEAL

B E T W E E N:

DAVID JOSEPH MacKINNON and ARIS LAVRANOS

Appellants

and

CANADA (ATTORNEY GENERAL)

Respondent

and

**DEMOCRACY WATCH and the UNIVERSITY OF OTTAWA PUBLIC LAW
CENTRE'S CANADIAN CONSTITUTIONAL LAW INITIATIVE**

Interveners

**WRITTEN REPRESENTATIONS OF THE INTERVENER,
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OVERVIEW

1. Democracy Watch's intervention is focused on the following issue: Given the fundamental constitutional principles of the sovereignty of Parliament, democracy, and parliamentary accountability, what should the legal framework and test be to determine if there are restrictions on the Prime Minister's prerogative power, as the head of the executive branch of government, to shut down the legislative branch of government?
2. Democracy Watch concurs with the Applicants' submissions, and the Federal Court's ruling, that the Prime Minister's exercise of the prerogative power of advising the prorogation of Parliament is justiciable. In addition to the Appellant's arguments and the Federal Court's reasons, the matter is also justiciable because it affects the rights of individual parliamentarians.
3. As ordered by this Honourable Court, Democracy Watch also makes submissions on the issue of mootness, agreeing with the Appellants and Respondent that this proceeding is not moot.

PART I: SUMMARY OF FACTS

4. This judicial review application involves a challenge by the Appellants of the constitutionality of Prime Minister Trudeau's advice to the Governor General on January 6, 2025, to prorogue Parliament and the Governor General granting that request.

PART II: QUESTIONS IN ISSUE

5. Democracy Watch concurs with the Appellants' position and submissions on justiciability, and the Federal Court's ruling on that issue.¹ Democracy Watch adds that the matter is also justiciable because a prime minister's exercise of prerogative power to prorogue Parliament affects the rights of each individual parliamentarian (and Parliament as a whole).

6. Accordingly, Democracy Watch's submissions address the following issues:

A. Is this proceeding moot?

B. Given the fundamental constitutional principles of responsible government, the sovereignty of Parliament, and democracy, what should the legal framework and test be to determine if there are restrictions on the Prime Minister's prerogative power, as the head of the executive branch of government, to shut down the legislative branch of government?

PART III: STATEMENT OF ARGUMENT

A. This proceeding is not moot

7. Democracy Watch concurs with the submissions of the Appellants and Respondent on the issue of the mootness of this proceeding. While the factual situation at issue in this proceeding is moot because the 44th Parliament has been dissolved, the three factors set out in *Borowski v Canada (Attorney General)*² all weigh in favour of this Honourable Court exercising its discretion to hear and decide the issue.

¹ *MacKinnon v. Canada (Attorney General)*, [2025 FC 422 \(CanLII\)](#), paras. 80-112 (hereinafter "MacKinnon (FC)").

² *Borowski v Canada (Attorney General)*, [1989 CanLII 123 \(SCC\)](#), [1989] 1 SCR 342, pp. 358-363.

8. There is an ongoing adversarial relationship between the parties, the issue is evasive of judicial review (due to the time-limited nature of prorogation), and the Court would be exercising its proper function by resolving the underlying legal issues about which the Appellants and Respondent disagree. That resolution will govern and affect future similar situations.

9. In *Democracy Watch's* past cases challenging the Prime Minister's advice to the Governor General and two provincial premiers' advice to their respective lieutenant governors to dissolve the legislature and call a "snap" election, both trial and appeal courts still ruled on the legal issues raised by those situations even though the elections had occurred because, as in this proceeding, the resolution of those legal issues would govern and affect future similar situations.³

B. Proposed legal test for determining if the Prime Minister's exercise of prerogative power of advising the Governor General to prorogue Parliament is restricted

i. Establishing a test is unavoidable in an unprecedented case

10. While this is not a reference question proceeding, the Federal Court stated that "the Court must have some understanding of the limits of the Prime Minister's authority to be able to determine whether he exceeded them in making the Decision."⁴ However, the Federal Court concluded that deciding whether it would be beyond the Prime Minister's authority to exercise the prorogation power for the purpose of avoiding a certain confidence vote "is best left for another day".⁵

³ *Conacher v Canada (Prime Minister)*, [2009 FC 920](#) (hereinafter "*Conacher* (FC 2009)"), affirmed by *Conacher v Canada (Prime Minister)*, [2010 FCA 131](#), (hereinafter "*Conacher* (FCA 2010)"). *Democracy Watch v. British Columbia (Lieutenant Governor)*, [2022 BCSC 1037 \(CanLII\)](#), affirmed by *Democracy Watch v. British Columbia (Lieutenant Governor)*, [2023 BCCA 404 \(CanLII\)](#). *Democracy Watch v. New Brunswick (Premier and Lieutenant Governor)*, [2022 NBQB 164 \(CanLII\)](#), overturned by *Democracy Watch v. Premier of New Brunswick et al.*, [2022 NBCA 21 \(CanLII\)](#).

⁴ *MacKinnon* (FC), *supra*, paras. [88-91](#).

⁵ *MacKinnon* (FC), *supra*, para. [242](#).

11. However, in an unprecedented proceeding such as this one, it is appropriate and essentially unavoidable for the courts to articulate a test that will apply to and govern future similar situations—as the courts did, to take two notable examples, in *Oakes* by establishing the test under s. 1 of the *Charter*,⁶ and in *Libman* by establishing the egalitarian model.⁷

12. The Supreme Court of Canada (“SCC”) has held that courts must be vigilant in fulfilling their constitutional duty to protect the integrity of the system when politicians’ own self-interested policymaking choices threaten to undermine the foundations of participatory democracy guaranteed by the *Charter*.⁸

13. It is entirely appropriate for courts to be vigilant in fulfilling their constitutional duty to protect the integrity of our democratic system, especially where, as in this case, politicians from all political parties (especially the parties most likely to form government) fail to enact measures to restrict the prerogative powers of the Prime Minister because of their self-interest in allowing a prime minister from their party to exercise those powers without restraint.

ii. The Federal Court essentially established a test

14. While asserting that it would not establish a test and while not setting it out clearly as a test, the Federal Court nonetheless essentially established a fairly complete test for the scope of the Prime Minister’s authority to prorogue Parliament in its analysis and conclusion that Prime Minister Trudeau had not exceeded his authority in the situation at issue.

⁶ *R. v. Oakes*, [1986 CanLII 46 \(SCC\)](#), [1986] 1 SCR 103.

⁷ *Libman v. Quebec (Attorney General)*, [1997 CanLII 326 \(SCC\)](#), [1997] 3 SCR 569.

⁸ *Sauvé v. Canada (Chief Electoral Officer)*, [2002 SCC 68 \(CanLII\)](#), [2002] 3 SCR 519, paras. [9-18](#), esp. para. [15](#) (hereinafter “*Sauvé* (2002)”).

15. The Federal Court’s test is founded on past jurisprudence that unwritten constitutional principles are binding on both courts and governments⁹ and on its conclusion that this proceeding challenging the exercise of this authority is justiciable because the authority is exercised under and falls within the framework of Canada’s constitutional principles.¹⁰

16. The elements of the test established by the Federal Court concerning the scope of the Prime Minister’s authority to prorogue Parliament are as follows:

- a) The separation of powers in the Constitution means that the executive branch cannot unduly interfere with the operation of the legislative branch;¹¹
- b) The institutional aspect of the core constitutional principle of democracy underlies the responsible government convention, and the Constitution mandates government by democratic legislatures and that the executive is accountable to the legislature;¹²
- c) The core constitutional principle of the rule of law requires that the executive comply with the Constitution;¹³

17. The Federal Court then examined¹⁴ whether the prorogation at issue complied with the three-part test applied by the United Kingdom Supreme Court (“UKSC”) in its unanimous 2019 ruling in *R. (Miller) v. The Prime Minister* concerning a decision by the Prime Minister to advise the Monarch to prorogue Parliament, if the consequences of prorogation are sufficiently serious:

⁹ *MacKinnon* (FC), *supra*, para. [216](#), citing, among other rulings, *Reference re Secession of Quebec*, [1998 CanLII 793 \(SCC\)](#), [1998] 2 SCR 217, para. [54](#) (hereinafter “*Reference re Secession of Quebec*”).

¹⁰ *MacKinnon* (FC), *supra*, paras. [81-82](#), [106\(ii\)](#), [108-112](#), [223-224](#) and [247-248](#).

¹¹ *MacKinnon* (FC), *supra*, paras. [81-82](#) and [212](#).

¹² *MacKinnon* (FC), *supra*, paras. [197-203](#), [212](#) and [247-248](#). See also *Reference re Secession of Quebec*, [1998 CanLII 793 \(SCC\)](#), [1998] 2 SCR 217, paras. [32](#), [49](#) and [61-69](#).

¹³ *MacKinnon* (FC), *supra*, paras. [205-209](#) and [212](#).

¹⁴ *MacKinnon* (FC), *supra*, paras. [251-292](#).

will be unlawful if the prorogation has the effect of frustrating or preventing, without reasonable justification, the ability of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive.¹⁵

18. Relying only on the United Kingdom’s unwritten constitutional principle of sovereignty of Parliament and the conventions of responsible government, the UKSC restricted the power of the Prime Minister, as head of the executive branch but as only a single Member of Parliament (“MP”), to interfere in Parliament by advising the Monarch to prorogue Parliament, stating:

That situation does, however, place on the Prime Minister a constitutional responsibility, as the only person with power to do so, to have regard to all relevant interests, including the interests of Parliament.¹⁶

iii. The framework for a Canadian constitutional test for prorogation

19. Democracy Watch submits that while the basis of the Federal Court’s and UKSC’s tests are constitutionally and legal sound, the UKSC’s test is too permissive as it allows the Prime Minister to utilize prorogation as an abuse of executive power. The UKSC’s test also does not align with the scope and purpose of the fundamental core principles of Canada’s Constitution.

20. No matter the circumstances, a prorogation by the head of the executive always frustrates the legislative function of Parliament to some extent, given that it ends the business of the House of Commons and Senate and results in unfinished business dying on the order paper. It is true that private member bills are reinstated automatically at the beginning of the stage they were at when the prorogation occurred and government bills can be similarly reinstated, but only by unanimous consent or by the adoption of a motion after notice and debate. As a result, by proroguing, the head of the executive is unquestionably delaying Parliament’s consideration of bills and, therefore, its legislative function.

¹⁵ *R. (Miller) v. The Prime Minister*, [2019] UKSC 41, para. 50 (hereinafter “*Miller I*”).

¹⁶ *Ibid*, at para. 30.

21. When the head of the executive prorogues Parliament during a scheduled adjournment and the prorogation lasts no longer than the set adjournment time period, only the legislative function is frustrated. However, when the head of the executive prorogues during a scheduled adjournment of Parliament for a time period longer than the adjournment period, the prorogation does more than frustrate: it clearly prevents the ability of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive.

22. The UKSC established that only in “unusual circumstances” would a prime minister be required to provide further justification than simply that the prime minister wished to end one session of Parliament and begin another session; and that, even if such unusual circumstances existed, the court would still have to account for the fact that matters of political judgment may be involved and cautiously consider whether the consequences of the prorogation are “sufficiently serious to call for the court’s intervention.”¹⁷

23. With respect, the UKSC’s test does not align with the constitutional framework that the SCC has established in Canada. As most recently summarized in *Canada (Attorney General) v. Power*, when a conflict between constitutional principles arises, the proper approach is to reconcile the conflict in the pursuit of good governance and fundamental rights; in carrying out this exercise, the SCC noted, balancing “the need for both government autonomy and accountability” is “especially important in an era of increased transparency and accountability.”¹⁸

24. In this proceeding, the Prime Minister’s exercise of the prerogative power to advise the Governor General to prorogue Parliament conflicts with the fundamental constitutional principles

¹⁷ *Miller II*, *supra*, para. [51](#).

¹⁸ *Canada (Attorney General) v. Power*, [2024 SCC 26 \(CanLII\)](#), paras. [78-79](#) (hereinafter “*Power*”), citing *Harvey v. New Brunswick (Attorney General)*, [1996 CanLII 163 \(SCC\)](#), [1996] 2 S.C.R. 876, para. 69 (p. [917](#)).

of democracy (that is the basis of the convention of responsible government) and the sovereignty of Parliament,¹⁹ as well as the constitutional structure of the separation of powers.

25. It is clear under s. 38 of the *Constitution Act, 1867* that the Prime Minister has the prerogative power to advise the Governor General when to open Parliament,²⁰ subject to the requirement in s. 5 of the *Charter* that there must be at least one sitting of Parliament every 12 months. This prerogative power of the Prime Minister's is also fettered after an election by the constitutional principles of democracy and the sovereignty of Parliament, which require the government to demonstrate that it has the confidence of the House by introducing and having a majority of Parliament vote in favour of its Speech from the Throne.

26. Once Parliament is opened, its operations also require a balancing between the Prime Minister's prerogative powers – including the power at issue in this proceeding of advising the prorogation of Parliament – and these core constitutional principles and the separation of powers.

27. Conventions are not enforceable by the courts but courts can declare the existence of a convention and thereby delimit the scope of the convention where it is “open to debate as to [its] scope”.²¹ In this context, it is entirely appropriate for this Honourable Court, guided by core constitutional principles, to define and restrict the Prime Minister's prerogative power of advising the prorogation of Parliament. As the SCC has held, these principles “dictate major elements of the architecture of the Constitution itself and are as such its lifeblood” and “observance of and respect for these principles is essential to the ongoing process of constitutional development and

¹⁹ *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, [1989 CanLII 73 \(SCC\)](#), [1989] 2 SCR 49, [p. 103](#) (hereinafter “*Canada (Auditor General)*, 1989”). *Reference Re Canada Assistance Plan (B.C.)*, [1991 CanLII 74 \(SCC\)](#), [1991] 2 SCR 525, pp. [548 and 565](#). *Reference re Pan-Canadian Securities Regulation*, [2018 SCC 48 \(CanLII\)](#), [2018] 3 SCR 189, paras. [54-58](#).

²⁰ *Constitution Act, 1867*, s. [38](#).

²¹ *Conacher v. Canada (Prime Minister)*, [2010 FCA 131 \(CanLII\)](#), [2011] 4 FCR 22, paras. [5](#) and [12](#) (hereinafter “*Conacher*”).

evolution of our Constitution as a ‘living tree’ ”²² and they can establish binding and substantive legal obligations and limitations on government action.

28. In addition, while the preamble of Canada’s Constitution states that it is “similar to that of the United Kingdom”, the SCC has held that the preamble is an “aid to illuminate the provisions” of the Constitution but has no enacting force.²³ As a result, Canadian courts have discretion to evolve our Constitution, as a living tree, by defining the scope of our constitutional principles and how those principles restrict prerogative-based abuses of power in Canada.

29. Accordingly, when faced with a case that raises unprecedented issues, Canadian courts may permissibly fashion a new test within our constitutional framework to apply to the situation at issue in the case and to set a precedent for future such situations.

30. Further, unlike the power to open Parliament and the s. 50 power to dissolve Parliament,²⁴ there is no written provision in the Constitution establishing the power of the Governor General to prorogue Parliament without the prorogation being based on the Prime Minister’s unwritten prerogative power to advise a prorogation. The lack of a clear, written constitutional power to prorogue bolsters the role of Canadian courts in delimiting this power.

31. The SCC has also established that courts can issue a “purely prospective declaration of unconstitutionality” and that constitutional principles may require such a declaration;²⁵ and that courts have some flexibility in striking an appropriate balance between conflicting constitutional principles as long as the court’s discretion is exercised in a principled and justified manner, and in “a manner that best aligns with our broader constitutional order.”²⁶

²² *Reference re Secession of Quebec*, paras. [51-54](#).

²³ *Re: Resolution to amend the Constitution*, [1981 CanLII 25 \(SCC\)](#), p. [805](#).

²⁴ *Constitution Act, 1867*, s. [50](#).

²⁵ *R. v. Sullivan*, [2022 SCC 19 \(CanLII\)](#), [2022] 1 SCR 460, para. [60](#).

²⁶ *Ontario (Attorney General) v. G.*, [2020 SCC 38 \(CanLII\)](#), [2020] 3 SCR 629, paras. [89-99](#).

32. Given these factors and constitutional framework, Democracy Watch proposes that this Honourable Court establish a test that appropriately balances the unwritten power to prorogue and the core constitutional structure of the separation of powers and the unwritten core constitutional principles of the sovereignty of Parliament, democracy, and the rule of law.

33. What should form the basis of such a test? As the Federal Court noted, the core constitutional principle of democracy forms the basis of the convention of responsible government and requires that the executive branch (i.e., the government) demonstrate that it has the confidence of the House of Commons – which, in effect, means demonstrating that the government’s proposals are supported by a majority of the MPs in the House.²⁷ The principle of the sovereignty of Parliament is also based on the premise that “any position taken by the majority must be taken to reflect the sovereign will of Parliament”²⁸ and the “majority rule” basis of both principles is rooted in the fundamental constitutional principle of democracy.²⁹

34. This proceeding addresses a situation in which one MP heading the executive branch – the Prime Minister – advised that Parliament remain shut down beyond the end of its scheduled adjournment, thereby interfering unduly in the legislative branch’s functions (in violation of the separation of powers) by preventing sitting MPs from taking positions on legislation and other issues and also preventing Parliament as a whole from carrying out its constitutional functions as a legislature and as the body responsible for the supervision of the executive.

35. This Honourable Court has, to date, declined to utilize constitutional principles to restrict the exercise of the Prime Minister’s prerogative powers concerning Parliament, or to apply the UKSC’s unanimous ruling in *Miller II* to the situation of the Canadian Prime Minister advising

²⁷ *Re: Resolution to amend the Constitution, supra*, pp. [857-858](#).

²⁸ *Canada (Auditor General), 1989*, p. [103](#).

²⁹ *Reference re Secession of Quebec*, para. [63](#).

the Governor General to dissolve Parliament and call an election earlier than the date fixed by statute, based on the reason that dissolution is distinct from prorogation.³⁰

36. However, this Honourable Court did not preclude applying the *Miller II* principles to a prorogation situation. This may be because dissolution provides the political remedy for the other parties represented in Parliament (and for voters) of winning the election. Indeed, the UKSC in *Miller II* specifically differentiated between dissolution and prorogation, and also prorogation and adjournments and recesses which must be approved by a majority of MPs.³¹

37. In contrast to dissolution, there is no political remedy for the other parties in a prorogation situation. Parliament is shut down and so the other parties cannot initiate any legislative action or resolution to counter the prorogation; they cannot vote non-confidence in the government nor can they question the government or hold committee hearings. Only the Governor General can re-open Parliament and, by convention, can only do so on the advice of the Prime Minister who shut down Parliament. Thus, Parliament will remain shuttered until the Prime Minister wishes to re-open it (or until a vote on a supply measure is needed to finance the government's operations).

38. To conclude that the Prime Minister's discretion to prorogue Parliament has never been restricted in any way and, therefore, should never be restricted ignores and uproots Canada's "living tree" doctrine. Such a conclusion also runs contrary to the SCC's binding requirement that conflicting constitutional principles be reconciled by upholding good governance and fundamental rights and balancing government autonomy and accountability.³²

39. To say that the Prime Minister's discretion is unfettered as long as the government has the confidence of Parliament is essentially to say that there are no restrictions because if the

³⁰ *Conacher v. Canada (Prime Minister)*, [2010 FCA 131 \(CanLII\)](#), [2011] 4 FCR 22. *Democracy Watch v. Canada (Prime Minister)*, [2023 FCA 41 \(CanLII\)](#), paras. [30-33](#).

³¹ *Miller II*, *supra*, paras. [3-6](#).

³² *Power*, *supra*, paras. [78-79](#).

government lost the confidence of Parliament, the Prime Minister's only options are to resign or advise the dissolution of Parliament and the calling of an election. This would allow a Prime Minister to advise prorogation moments before a vote of non-confidence occurs.

40. If the Prime Minister's discretion to advise prorogation is unfettered then the government has autonomy but no accountability, and the fundamental rights of Parliament to legislate and hold the government to account – including by voting non-confidence in the government – are clearly violated. Again, this does not comply with the SCC's requirement to balance government autonomy and accountability, nor does it align with Canada's broader constitutional order.

iv. A Canadian constitutional test for prorogation

41. Democracy Watch recognizes the need to ensure courts are not adjudicating matters of political judgment. However, when self-interested choices by legislators allow for abuses of power (including the choice not to enact measures to restrict abuses), courts "must be vigilant in fulfilling their constitutional duty to protect the integrity" of Canada's democratic system.³³

42. What test would balance government autonomy with accountability, and the Prime Minister's prerogative power with the principles the sovereignty of Parliament and democracy, in a way that best aligns with Canada's unique, broader constitutional order, including maintaining the separation of powers to prevent the executive branch from unduly interfering with the legislative branch, nor the courts in parsing political judgments?

43. Democracy Watch proposes the following Canadian constitutional test as the legal framework that this Honourable Court should establish for prime ministers' advice to prorogue:

- i. Has notice of a motion of non-confidence in the government been given in Parliament, or has a vote on a matter of confidence (e.g. a supply measure) been scheduled in

³³ *Sauvé* (2002), *supra*, paras. [9-18](#), esp. para. [15](#).

Parliament? If yes, then the Prime Minister is prohibited from advising a prorogation until the motion or vote is decided.

- ii. If the answer to (a) is no, have the leaders of opposition parties who represent a majority of MPs in the House of Commons clearly and publicly indicated, inside or outside of the House, that their parties' MPs intend to vote non-confidence in the government? If yes, then the Prime Minister is prohibited from advising a prorogation outside of, and longer than, a scheduled adjournment period of Parliament.
- iii. If the answer to (b) is no, have a majority of MPs voted in favour of a prorogation occurring at a time that is outside of and/or longer than a scheduled adjournment period of Parliament? If yes, then the Prime Minister is permitted to advise a prorogation at a time that is outside of and/or longer than the scheduled adjournment period.

44. The second part of this test, taking into account the clear expressions of opposition party leaders' intent to have MPs in their party's caucus vote non-confidence in the government, is key to complying with the SCC's requirement that good governance and fundamental rights must be upheld and balance struck between government autonomy and accountability to Parliament.

45. If the test is only whether notice of a motion of non-confidence has been tabled in the House of Commons (in other words, whether opposition party leaders have clearly indicated in the House that their parties' MPs intend to vote non-confidence in the government) then the only time a Prime Minister would be prohibited from proroguing Parliament would be in such a situation. The Prime Minister would remain free to prorogue Parliament without notice while Parliament is in session, or during any adjournment, for a period of up to one year (before the *Charter* s. 5 requirement would force the holding of a sitting of Parliament for at least one day) or until the government required Parliament's approval of spending.

46. Allowing the head of the executive, one MP, to shut down Parliament for such an extended period of time after opposition party leaders have clearly indicated their intent to vote non-confidence in the government – a prorogation that allows the executive branch to operate

without Parliament open to hold it to account and legislate – does not uphold good governance or the fundamental rights of MPs individually and Parliament as a whole, and does not balance government autonomy and accountability. Instead, it violates the core constitutional structure of the separation of powers by granting one MP power over the majority of MPs; it allows that one MP to abuse their power; and it thwarts rights of individual MPs to effectively represent their constituents and the right of Parliament to hold the government to account and to legislate.

47. The third part of this test allows for flexibility in the timing and length of a prorogation if it is supported by a majority of MPs, in compliance and alignment with the constitutional principles of democracy and the sovereignty of Parliament. In a majority government situation, the government will very likely always have the majority support needed for a prorogation at a time outside of, or longer than, a scheduled adjournment. In a minority government situation, the ruling party could negotiate with one or more parties to support a longer prorogation because of an unusual situation, such as the leader of the ruling party intending to resign.

48. One could add a fourth part to this test, namely: Has the Prime Minister offered clear evidence of an unusual circumstance that falls within the scope of the operations of responsible government and the sovereignty of Parliament that necessitates a prorogation period to take place outside a scheduled adjournment period and/or to be longer than the adjournment period?

However, Democracy Watch's view is that the third part of the test already accommodates such an unusual circumstance if it ever arises, and adding this fourth part would not only grant the Prime Minister too much power over the sovereignty of Parliament, it would also lead to the courts being involved in adjudicating political judgments. Paragraphs [264-291](#) of the Federal Court's ruling in this proceeding indicate the difficulties and dangers of involving the courts in parsing, weighing and determining the justifiability of political judgments.

49. The three-part test set out above balances constitutional principles in a way that best aligns with Canada's broader constitutional order and is also workable in every future situation.

50. This Honourable Court should, respectfully, evolve Canada's living tree constitutional framework by establishing such a test. Doing so is a proper exercise of its judicial function and will clearly indicate that, if it is the will of a majority of MPs, Parliament can establish different or more specific rules for prorogations that would, for example, allow for a prorogation during situations such as the ruling party holding a leadership contest during a minority government situation. As the Federal Court's ruling notes, Parliament has already enacted statutory provisions governing, and restricting, prorogations.³⁴

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of January 2026.

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³⁴ *MacKinnon* (FC), *supra*, para. [187](#).

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PART IV: TABLE OF AUTHORITIES

CASES	Cited in paras.
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