

PRIVATE BILLS AND PUBLIC NEEDS

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Rule changes have created the chance for private members' bills to play a key role, but the track record to date has been dismal

by Lynda Chapin

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P RIVATE MEMBERS' BILLS could be a key tool in the re-integration of backbenchers into the decision-making process of government in Canada. They will redistribute power from the executive to the government's elected representatives. This will result in new approaches by the bureaucracy. It will also result in more sensitivity on the part of ministers to the view of the party caucus at large.

Private members' bills have the potential to support and reinforce government initiatives; new co-operation could be developed between the executive and the government members.

However, to date, the track record has been dismal. The treatment of private members' bills has left a trail of distaste and mistrust.

In 1988, private members' bills achieved a visibility that forced the Cabinet to take them seriously:

- David Daubney introduced a bill on the political rights of the civil servants.
- Paul McCrossan introduced a bill on banking charges to carry out the recommendations of the Finance Committee's report.
- Lynn McDonald introduced an anti-smoking bill.

The Clerk of the House of Commons, Robert Marleau, considers that the passage of bills such as Lynn McDonald's (C-204, June 1988) should give rise to new approaches by "the various interest groups".

Robert Hawkes, Parliamentary Secretary to the Government House Leader in the spring of 1988, stated, "When I am asked about parliamentary reform, I say that, inevitably, the direction that the Parliament of Canada is heading in is the generation of more and more bills by things like standing committees, which then have to be treated in a different way."

A private members' bill is legislation introduced by members of Parliament who are not in Cabinet. The bills "cannot require the expenditure of public funds or include specific financial provisions."

Opinion is divided on the importance of such bills prior to 1988. Private members' bills seem to have always been important outlets for M.P.s to get their concerns on the record and debated; this might explain why there are over 100 bills on the Order Paper at any given time. Yet the Research Papers from the Library of Parliament say that these bills were on the whole insignificant instruments in pushing the government to accept or develop a policy.

However, when one reads C.E.S. Franks, *The Canadian Parliament*, he notes that divorce legislation and the abolition of capital punishment had first been discussed in Parliament through private members' bills. He also cites an instance where John Reid, a Liberal backbencher, worked with James McGrath, a Conservative, to refer six private members' bills dealing with obscenity to the justice committee.

In 1978, Mr. Reid noted that, "For those members with a legislative bent, the opportunities are more readily available now than they have been in the past."

Then came the McGrath Committee Report of 1985, which stated, "The purpose of reform of the House of Commons in 1985 is to restore to private members an effective legislative function, to give them a meaningful role in the formation of public policy and, in so doing, to restore the House of Commons to its rightful place in the Canadian Political process."

The McGrath recommendations lead the way for increased importance of this tool. Before the rule change, the process to pass these bills was so erratic and cumbersome that they were usually talked out.

They were called in the order in which they were tabled; if the debate on a bill was not concluded on the first day of debate, it went to the bottom of the list and did not usually come up again before the session ended.

The changes did not give more debate time to Private Members' bills. They still have only four hours of House time each week, one hour of debate each day except Wednesday. However, the rules now provide for an order and a strict schedule of debating of bills and of moving them through the stages of parliamentary procedure.

There is a drawing (or choosing) of 20 items of business, proposed by private members, at the beginning of each session. The Deputy Speaker of the House holds the draw and throughout the session must conduct other draws to establish the order of precedence for 10 additional items, for which notice has been given by private members.

A Standing Committee on Private Members' Business is required to meet within five sitting days of the order of precedence being established. The committee shall select not more than six items on which votes will be held in the Chamber.

The votable items will receive a maximum of five hours' consideration at Second Reading stage. This would normally take five sitting days and the five days would occur one day every 20 days, although through all Party agreement the five hours of debate can occur on one day. After Second Reading, these bills are sent to committee for detailed clause-by-clause study.

Of significant importance was the development of criteria to determine whether a vote should be held on a private members' motion. These 11 criteria were published for the first time in a booklet prepared by the Clerk's staff—*A Practical Guide to Private Members' Business* in January 1988. They reflect a new attitude towards

private members' business; the criteria include:

- issues of national, regional or local significance—before this, private members' business normally dealt only with local significance as late as 1982.

The criteria exclude:

- electoral boundaries or constituency names—prior to this, many private members' bills dealt with constituency names.

A non-votable item is normally discussed for one hour and then it dies. It can, however, also be sent to committee, if debate on it is less than one hour. A vote can then be held referring the bill to a committee. A strange quirk in the rules.

Once the Private Members' bill is sent to committee, it again falls to the bottom of the list of 20 items of precedence to be rescheduled into the House for Report stage and Third Reading. It must then only wait a maximum of 20 days before coming up for debate. The Report and Third Reading stage of a bill is to be dealt with on two sequential sitting days.

Case Study: John Daubney

Conservative M.P. John Daubney introduced a private members' bill on the political rights of civil servants (C-273). After Second Reading on February 9, 1988, the bill was referred to a legislative committee, where it was considered between March and June 1988.

The subject was a controversial one for the government, involving the concepts of political neutrality of civil servants and ministerial responsibility. The Charter of Rights and several court challenges of Section 32 of the Public Service Employment Act made inevitable government amendments to its policy and legislation in this regard.

What is surprising in hindsight is

Private member's bills are no longer merely of local concern.

that, before the introduction of Bill C-273, the government did not work with Mr. Daubney to develop an acceptable bill.

This was the first instance of a legislative committee dealing with a bill of significance to the government. The committee had difficulty in determining procedures—whether Mr. Daubney, as a member of the Committee, could appear as a witness, whether the bill was the property of the House of Commons, once introduced, or was Mr. Daubney to claim paternity and defend it throughout its passage? The committee also recognized that the bill might have weaknesses because it had not had the scrutiny given to government bills—of experts in the civil service examining it for its implications.

It was in this context that the bluntest expression of mistrust of private members' bills was made; the chairman of the committee stated:

"We may not have the same attitude towards a colleague as towards a minister who, as the representative of the executive arm of government, has proposed this measure and must defend it Let me put it in clearer terms . . . I personally would like to see somebody in the witness chair who would know how it will impact on the Public Service."

A minister could testify to such an impact, but a private member could not. "Even if Mr. Daubney is willing to defend the bill, he has no basis other than himself for defending it. Consequently, all we are going to do is agree or disagree with Mr. Daubney."

Robert Hawkes, Parliamentary Secretary to the Government House Leader, and a member of the committee, made it clear that the government would take a hand in directing this bill:

"The department could be asked for an opinion on where the government is in relationship to this, because it does have a stewardship responsibility on behalf of the taxpayers The Minister will take very seriously the wisdom of this committee."

The committee reported to the House June 14, 1988—the bill had been extensively amended by unanimous consent, but Mr. Hawkes did not attend the last two committee sessions which dealt with amendments.

On August 10, William Winegard and Bill Kempling, both Conservative M.P.s, introduced amendments which Mr. Daubney judged unacceptable. He withdrew his bill from further consideration of the House.

Conservative M.P. Richard Grisé tried to clarify the government's position when the bill was withdrawn, saying there was no government interference.

Then, on August 30, the government introduced C-157, an Act to amend the Public Service Employment Act and the Auditor General Act, which essentially replaced Mr. Daubney's bill and included Mr. Winegard's and Mr. Kempling's amendments.

In looking at the quality of the two bills, one can immediately see that the government-sponsored bill is of a much higher quality in that the language is clearer and more explicit than that of the private member.

Case Study: Paul McCrossan

Paul McCrossan, Conservative M.P. for York Scarborough, announced his intention to introduce a private members' bill on banking charges. He did this the same day the Finance Committee released its report on this subject (June 6, 1988). The bill had the support of the entire Standing Committee and in fact, its introduction was to be seconded by the finance critic of the Liberal Party.

Mr. McCrossan's reason for the bill



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is of more than some significance: "The Committee didn't want to wait for the slow bureaucracy to develop a Bill or for the mandatory 120 days during which a Minister can respond to a committee's report," for action to occur on banking charges.

In other words, M.P.s were using their new powers to circumvent the deadliest form of denial available to a government—delay.

Mr. McCrossan said on June 6, 1988 when he introduced Bill C-292, "This Bill will provide a means of implementing the nineteenth Report of the Standing Committee on Finance and Economic Affairs."

It did so through two provisions: prohibiting the waiver of consumer rights upon the opening of a bank account and disclosure standards for future banking practices as well as prohibition of certain bank service charges.

Mr. McCrossan made a point of thanking all members of the Committee for their support of the bill when he introduced it into the House.

The government introduced legislation (C-140) and announced a new policy to respond to the committee's report at the end of June—only 24 days after the committee's report was tabled in the House. The measures dealt with disclosure, elimination of certain charges and improvements to procedures to deal with consumer complaints.

However, it was another 47 days before Mr. McCrossan finally asked to have his bill withdrawn, on August 17, 1988. His reasons for doing so were not the government's policy and legislation but his personal survey and conclusion that: "all six major banks are now fully in compliance with my bill."

Case Study: Lynn McDonald

When Ms. McDonald's anti-smoking bill, C-204, passed Second Reading just before Christmas 1987, the government seemed taken by surprise at the number of Conservative M.P.s who supported it. The Minister of National Health and Welfare, Jake Epp, had his own bill before the House, C-51, which prohibited certain publicity measures of tobacco companies. His attitude was that he would not interfere with the progress through the House of a private members' bill.

This resulted in two things:
— no government spokesman was appointed to the committee to play the role Mr. Hawkes played on C-273,

Members resent it when the gov- ernment interferes.

through which departmental advice could be funnelled into the Committee.

— there was no natural channel of communication between the M.P.s and the ministers concerned.

The bill put the prohibition of smoking ahead of government regulations in place at that time. Representatives of both Transport and Consumer Affairs appeared before the legislative committee.

Consumer Affairs was concerned that the bill proposed that tobacco be listed on the hazardous products' list, which could possibly prohibit the sale of tobacco.

The Ministry of Transport had safety and financial concerns. Prohibition of smoking on all flights, including those of more than two hours, could lead to withdrawal symptoms by passengers. This might make long-distance flights unsafe. The separate ventilation of smoking areas at places of work and in airports and train stations and the provision of separate train cars for smokers, could be costly.

There was also concern about additional federal regulations on the private sector (fishing vessels and shipping companies) which operate under federal law. Concerns existed in the federal-provincial area, as the bill would cover interprovincial trucking and bus companies which the federal government had left to the provincial governments.

The committee hearings occurred over a two-month period. The committee reports show attempts by departmental legal experts to amend the bill to bring it back within the policy of the government. What is not recorded are the arguments between Transport Canada lawyers and Ms. McDonald at the side of the room, as the lawyers tried to convince Ms. McDonald to amend the bill.

When the bill got to Third Reading, 14 cabinet ministers voted against it, but

it was adopted, and passed the Senate on June 28, 1988. Senator Royce Frith stated in the Senate that some departments (not ministers) were still pressing for amendments.

Once again, the language and structure of the bill were of poor quality—something recognized by the M.P.s who did not have the inclination to deal with it. It would have opened up again the policy disputes so arduously closed but not really resolved.

Evidence of the power of this bill, however, was that VIA, one of the agencies protesting that it would cause the company to incur costs of \$25 million, instituted, at least on the Windsor-Quebec corridor, the provisions of the bill before it came into force. The government introduced its amendments to the bill; these were given Royal Assent June 28, 1989. The minister of labour said they were necessary to make the bill "workable". Even with amendments, Ms. McDonald's ideas survived and became law.

Conclusion

There can be several conclusions about private members' bills:

1. An appropriate role for the executive in the development of these bills has not yet been determined. There appears to date to have been little consultation by the private members with a minister on the substance of a bill. More effort and attention needs to be paid to the bills by the executive and the civil service.
2. The quality of the bills is inferior to that of government bills. Members are mistrustful of bureaucratic advice to improve the legislative language.
3. However, members are uneasy about approving the bills until they can be sure that all the implications are known. They are conscious of the importance of creating the law of the land.
4. The government can control any bill as if it were a government bill by amendments at the Report stage. This may result in bad feelings and embarrassment, as the government justifies its interference. □

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