

THE BACKBENCHER AND THE DISCHARGE OF LEGISLATIVE RESPONSIBILITIES

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The concept of "legislative responsibilities" is a very considerable one, and much more than is generally recognized, it penetrates the day-to-day existence of the backbencher. While some Members come with causes or interests to advance, it is by no means clear that they will be able to participate most effectively in the legislative process. That educative experience, however, is the subject of another paper.

administrative actions as well. The concept of legislative responsibilities goes beyond that to where a Member becomes an educator in attempting to win the necessary broad general support which is required to develop a legislative solution he has outlined.

Members can become advocates for legislation as a result of the work they do in their ridings, which provides them with an excellent

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We usually use the term "legislative process" when we consider new legislation or the amendment of existing legislation, this latter category being by far the area most dealt with by Parliament. It also includes legislation by regulation, an increasing practice. Such a concept has a certain solidity about it but I would go further and to argue that it also includes

window on how well a particular programme may or may not be working. This information, I might add, is not generally available to Ministers, nor is it available generally to senior civil servants; it is really available only to someone placed like an M.P. who can understand the problem which brought forth the original legislation and can follow the working out of the legislative solution.

Another important source of ideas and involvement for Members is the Committee system. If one wants to understand what government is doing, and how well it is discharging its function, the Committee system is one of the best facilities available for Members. It allows Members to learn in depth about those things which interest them, and it opens the door to important contacts both within and outside government. For the backbencher, the Committee system is both his best opportunity and his greatest frustration. Additionally, it is within the Committee system where the Member has his greatest opportunity to influence the actual words of the law.

I would point out that the Committee system is a substantial one. At present, it contains 19 individual committees listed in the standing orders. I estimate that about 65 Members carry the load of committees. The membership of the committees ranges from 12 to 30 members. Although Committees have the power to establish their own quorum necessary for the purpose of hearing witnesses, they usually accept the quorum necessary for decisions which is 50% plus one. Of course, this practice impedes the orderly operation of committees, but Members are not inclined to relax this practice. It wastes a great deal of the time of a conscientious Member, who must wait for a quorum to appear.

From time to time Special Committees are established by the House. For example, we have a Special Committee on Rights and Immunities of Members, one on the implementation of Television in the House and in its committees, a Joint Committee with the Senate on the National Capital Region.

In addition to the 65 Members who really maintain the Committee system, there are another twenty

to twenty-five "floaters". There are the people who seldom show up for the hard difficult work of Committees, but who are very much in presence during the final days of the discussion of a bill, or especially when there is the hope of a scandal. These people, from all parties are well known to the long suffering Committee Members.

What are the outlets for the legislative urge of Members? There are several, and I would like to deal with them in turn. But I should add that there are not many Members who are really interested in the various aspects of the legislative process as it operates. Most are interested only as it happens to apply to whatever they are interested in at the time. Often, because these members have not acquired the necessary skills, they find it difficult to perform their legislative function. I estimate that perhaps twenty to twenty-five members really know their way through the legislative process.

In first place by tradition is the Private Members' time. It is divided into three sections, one allowing a Member to present a proposal for a change or an addition to the public law in the form of an actual bill to the House. The second is the possibility of a Member to present a proposal in the time allotted for Members to present private bills dealing with private matters. These range, now, only to the establishment of banks and the incorporation of certain other companies whose federal charter demands a decision by Parliament -- for example, a private Member's bill currently before the House to amend Bell Canada's Charter. To indicate how this practice is dying out as a result of changes to the law, this is the only bill of its nature presented in this session; in the previous one, there were only two.

By and large, the function of Private Member's hour is to allow Members to present ideas for debate. Since a good many of them do come up for debate, the government must make some response. Whether the government likes it or not, it must take the proposal seriously and present its arguments to the House, since it knows that most Members (from whatever side of the House) regard the passage of Private Member's bills as a significant achievement for the backbench. Consequently, the government must take note of these bills, and determine how to respond to the ideas contained in them.

Secondly, a surprising number of them, over the past six years, have been dealt with. For example, the House recently approved my motion, seconded by Jim McGrath, a Conservative MP, to send six bills dealing with the obscenity section of the Criminal Code to the Justice Committee, which is holding hearings on them as this paper is being written. That took some negotiations with all parties as well as with the government. Backbenchers are not without power to negotiate.

Some ideas are put in place through this system that the Member may not necessarily want debated, but want considered. Out of this has come legislative action by government and also by provincial administrations. For the Member most interested in legislation, the Private Member's hour is an important opportunity, not only for what response the government must take, but also because it allows the Member to carry on his work of educating the public, the press, and the government. In my own career, I have found the Private Member's hour to have been invaluable.

Let me give a somewhat lengthy personal example of the impact of the Private Member's bill which is not debated.

About two or three years ago, I was approached by an individual who was receiving a Canada Pension Plan disability pension, which was indexed. As a result of Union-Management decisions, he was also covered by a private plan, which guaranteed him a monthly sum of money. As his CPP was indexed, it went up with the cost of living, but the insurance company's obligation went down, since its contract called for it to maintain the income at a particular level.

I entered into a lengthy correspondence with the Minister of Health. I spent considerable time with the Officials of the Department. They told me they could do nothing since the insurance company was only doing what its contract called for, and the solution was outside Federal jurisdiction.

I tried to deal with the Ontario lawmakers, but was not able to accomplish much.

At this point, I decided to draft a Private Member's Public Bill to deal with this matter. I had further discussions with the Department, and then further ones with the Department of Justice. Then I contacted the Parliamentary Law Clerk, and we designed a Private Member's Bill to deal with this situation.

Because of the constitutional situation, the bill was very difficult, certainly not satisfactory, but it did attempt to deal with the problem indirectly since the Federal Parliament could not get at it directly.

Within a few days of introducing

the bill in the House of Commons, I received a number of phone calls from Department Officials, and others. One of the most interesting was from the Association of Insurance Companies. He told me they recognized this problem, wanted to help solve it, indicated they disagreed with my bill, but felt it had pointed the way in some respects.

Then, we got in touch with the Ontario Pension Commission, which regulates the way in which companies providing pensions can operate. After some months of discussion and deliberations, in which I did not take part, the Ontario Pension Commission changed its regulations.

The result was to eliminate the abuse by fixing the amount companies had to pay under these clauses so that the indexing of one part of a person's income would not result in the loss of income from a source which was not indexed.

I was not the first person to have picked up this problem, but I was the first to propose a concrete solution, however unsatisfactory it may have been. The solution came from an agency of the Provincial Government, with the full cooperation of the Insurance Companies of Canada. It gives an indication of the complexity of our governmental system, and the need for those who would legislate to seek out allies.

And the bill, incidently, was never called for debate in the House of Commons. Yet it served its purpose even better than most of those which are debated. Probably, without the use of the Private Member's bill, this story might have had a quite different ending.

The House, when dealing with legislation, really is a forum for the parties. The House is a party

battleground, and if one wishes to go charging out into someone else's war, one has to take the consequences!

That statement should be qualified, however, because in reality the debate between the parties is concluded within two or three days. At that point, since the House has yet to discipline itself to the use of its time, the debate is likely to drag on, unnoticed by the press and public alike. Creative Members then have an opportunity to develop ideas in the general area covered by the legislation. Out of relief, everyone will listen to something new! But the House generally is not an accommodating arena to the backbencher interested in legislation unless, of course, he is a part of a party's team on that subject.

When legislation gets to the Committee, however, the circumstances change somewhat. While opportunities to change a particular bill significantly are not at all great, there are opportunities at times, usually having to do with significant opposition from the public or strong interest groups against the legislation. Competition policy is an excellent example. The Commons Finance Committee, at the end of last session, released a report on competition policy which is likely to be influential in determining how the government will deal with this problem. Those Members who participated in the work will have made, in all likelihood, a significant contribution to that particular legislative idea. This example is the same as the growing use of government background papers (what used to be called white and green papers), and their reference to committees for study and report. Members, through this technique, have had a greater opportunity to

participate directly in the legislative process. Additionally, there is the use of references to committees, the most interesting recent example being the report of the Justice Committee on the Penitentiary System, and the Committee's subsequent demand to be kept informed as to the government's implementation of the series of changes they had recommended.

A further example of the ability of the backbencher on the government side to react against legislative proposals is contained in the saga of Gun Control legislation. The first proposal put forward by the government was treated harshly in committee, and when it reached the House at Report Stage it became clear that there was not sufficient government backbencher support to ensure its passage. The internal opposition to the bill came from government supporters who represented rural areas.

In the next session, a much modified bill was introduced, and after a difficult passage eventually passed. It was significantly different than its predecessor. Those changes would not have taken place if those government backbenchers had not had the support of opposition backbenchers - or, depending on your point of view, vice versa.

There is a further aspect to committee work in the legislative sense, and that is the committee work on supply, or the estimates as they are more popularly known. According to the Standing Orders, the government must bring down its spending estimates for the year and have them referred to the various Standing Committees by 1 March. The Committees then have to 31 May to deal with them. At the conclusion of the process, an appropriation bill based on these esti-

mates is presented to Parliament in late June, and dealt with. In conjunction with the supply process, the opposition parties have 25 days in the House of Commons, spread throughout the Parliamentary year, but concentrated in May and June. During those days, they choose the topic for consideration. In addition to attacking the government, they can and do advance ideas requiring a legislative solution.

The importance of the estimates in the committee is that this is the time at which the Committees are unfettered by terms of reference set by the House. Anything coming under the responsibilities of a department whose estimates have been referred to a Committee is grist for that Committee's mill. The Committee can investigate any aspect of that department's activities and often areas that are not covered by the department's activities.

As an educative process, work in the Committees is probably the most effective forum for Members, although it is not the most pleasant of work, and worse, from a pragmatic point of view, it generates little or no publicity unless one can discover a scandal of appropriate dimensions. Since Committees have come on the scene, the opportunities for learning what government does and does not do, have greatly expanded, and the possibility of engaging both Minister and Senior Civil Servants directly in discussion has had, in my opinion, an educative impact on all. Members can confront the people running programmes directly with their concerns; and then can deal with the policy aspects either with the Minister in committee or take them to the House. The Opposition Member has an advantage at this stage, as he and his party have access to the 25 supply days, an opportunity denied to government

backbenchers.

The last opportunity for backbenchers lies in two specialized Committees, as well as special ones which are created from time to time. The former, such as the Joint Committee of the Senate & House on the Constitution or on the National Capital Commission add a particular dimension to the study of a problem. These Joint Committees tend to have greater clout than special committees established by either House.

The two latter type of committees mentioned above are the Committees on Public Accounts and the Regulations & Other Statutory Instruments, the latter being one result of an earlier joint Committee on statutory instruments. This Committee has its own terms of reference, in addition to whatever work may be sent to it by the House.

Public Accounts is a committee which works closely with the Auditor General. It has had opportunities to influence legislation as a result of investigations carried out following suggestions in the Auditor General's report. For example, the recent background paper on Crown Corporations resulted as a direct consequence of the Public Accounts Committee's investigation into Atomic Energy Canada.

The Regulations and Other Statutory Instruments Committee has one of the more interesting and important jobs to do. Its task is to check up on all of those orders issued by the Federal government coming under its title. Since there has been a tendency for Parliament to entrust more regulatory power to the government, this role is most important. This function, at times, resembles that of a quasi-court. It provides an important check on the government's legislative

function. Additionally, this committee is currently studying the government's background paper on Freedom of Information.

The most important constraint on the role of the private member is his party affiliation. With the advent of television in the House of Commons, party policy is becoming much more important than it had before. This operates to constrain Members, for now the Party feels it must present as uniform a position as possible on a greater variety of measures than it was thought necessary before.

I cannot emphasize this point too much. Members are conscious that they entered the House as party members. This fact is part of the environment of politics. It limits what role a backbencher can envisage for himself. It is necessary, as well, for the functioning of the House. The effort needed to develop the necessary discipline in the chamber of the House with 264 Members (after the 1978 election this will be 282), all with a sizable ego, would be virtually impossible without the use of party. So the emphasis is to be a part of a team. Another consideration is that there are no rigid rules as to how or what a Member can do when he is elected. There is no one role. Often Members are overwhelmed by their choices in the relatively unstructured atmosphere of the House and of politics in general. Some thrive in this arena, and others find it impossible.

CONCLUSIONS

For Members, the changes in developing the Committee system, begun in 1965 and brought to the present status in 1967, have opened the system to permit more direct personal involvement in the legislative process. This system has provided him with a

great deal of relevant information, broken down barriers between Civil Servants, Ministers and Members, and developed, I believe, a much better feedback mechanism for all parties in the legislative process.

Although I did not mention it before, the Committee system has also opened the legislative process to "outsiders" by allowing them to come and make direct presentations to committees. This opening of the system has been helpful to all, even though it has not been without its pains.

Traditional means of participating in the legislative process are still of considerable importance. The time devoted to private member business is of vital importance to members with a legislative bent. It is still used extensively, and there have been a series of reforms to ensure that the opportunity to use this time is spread around more than it used to be. In addition, there seems to be a willingness by government to cooperate more than had been the case to ensure that private members' bills get more decent treatment than the hasty burial which had been the case.

Of course, one of the most important areas where a backbencher can exercise a legislative function results from his participation as a member of a political party in the development of party policy. In some ways, this can be the most important part of a backbencher's legislative outlook. I have not dealt with that aspect of his activities. I have not dealt with the impediments to reforming the legislative function which is

implicit not so much in the nature of the system itself, but rather from the fact that the floor of the House of Commons, and to a lesser extent in all of its emanations is a battleground between parties and, occasionally, ideas.

For those Members with a legislative bent, (we do not all share that impulse) the opportunities are more readily available now than they have been in the past. As one associated closely with the parliamentary process for some 14 years, I believe the opportunities for legislative participation have increased substantially for the backbencher. Nonetheless, I believe that Members will continue to persevere for more opportunities to participate more directly in the legislative process, which means trying to open up the process more, and to avoid the constraints imposed by party.

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