Parliamentary Conferences

by Blair Armitage

In June 1990 the Senate considered a motion requesting a conference with the Commons in order to discuss Senate amendments made to Bill C-21, An Act to amend the Unemployment Insurance Act and Immigration Department and Commission Act. The Commons had accepted some amendments, amended others further and rejected others. The Senate is insisting that the remaining amendments be accepted. Should such a conference materialize, it will be the first such occasion since 1947, when the two Houses met to resolve differences over amendments to the Criminal Code. This article looks at some political and procedural aspects of parliamentary conferences.

We must first differentiate between "conferences" and "free conferences". Initially, the conference procedure was quite awkward. "Managers" acting on behalf of either House would meet, exchange written messages and withdraw, without a word spoken. If, after two such meetings no resolution had been reached, then a free conference could be held to allow the managers to discuss their respective positions without any restriction save for general directions given them by their respective House.

This formal sequence was used once, in 1903, and found too cumbersome. In 1905 both Houses resolved that, in future, any conference could be a free conference and in 1906, incorporated these resolutions in their rules. Since the 1903 experience, all conferences have been "free".

Since Confederation, fifteen formal requests have been made for a conference between the two Houses. On only one occasion, in 1924, was a request ever denied. On July 19, 1924, the Commons requested a free conference with the Senate regarding contested amendments to Bill 255, *An Act to amend the Pension Act*. The Senate rejected the Commons' request, remarking that it " ... does not see the utility of a free conference at this late hour of the session". In fact, the session was prorogued later that same day. The bill, however, did receive Royal Assent. The Commons reconsidered the amendments of the Senate and subsequently agreed to them.

In the other fourteen instances, only three times did the free conference mechanism fail to effect a successful conclusion and subsequent Royal Assent for the bill under discussion.

No hard and fast rule exists for the size and composition of the management "team" representing either House. An examination of the political affiliations of managers sent by both the Senate and the Commons show several instances of teams of two, three, even four parties being represented. Only once has a one-party team been sent by the Senate. In 1940, the Commons named its managers in the same message in which it requested a free conference and the Senate felt obliged to respond in kind by sending an all-Conservative team, the rationale being that since the Commons was sending an all-Liberal team, the lines were already clearly drawn.

Bourinot says " ... [it] is not customary nor consistent with the principles of a conference to appoint any members as managers unless their opinions coincide with the objects for which the conference is held". In at least one instance, however, a senator acted as a manager, despite having moved a motion recommending that the Senate not further insist on its amendments. This would suggest that the Senate preferred to show solidarity when it came to its right to amend legislation.

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Essentially, then, conferences have been seen in the past as an effective means of formal intercourse between the two Houses on official business of Parliament. The British authority, *Erskine May*, contends that, in the United Kingdom, messages have made conferences obsolete but recent developments in Ottawa — no matter how they might turn out — demonstrate that close personal proximity with one's opposition in a bargaining situation tends to focus one's mind.

In one instance, related by F.A. Kunz in *The Modern Senate of Canada*, this phenomenon is clearly highlighted. A Commons team, having been given absolute authority to take a very hard line, came back with a report which amounted to a complete capitulation, much to the jeering dismay of their colleagues.

The only restraint on requesting a conference is that only the House in possession of the legislation involved may make the request. In Canada's case it has always been the Commons which has asked for the conference.

The Senate, in its message to the Commons acceding to a request for a conference, names its managers as well as the time, date and location (which it has always supplied) of the conference.

The number of managers sent has tended towards a pattern, but has a varied history. In early conferences, the Commons teams often outnumbered those of the Senate, sometimes doubling the number of Senate managers. In the period since 1925, however, equal numbers from either House has been the rule in practice, if not by formal resolution. These teams ranged from three apiece to six apiece, with three being the favoured size on four out of six such occasions. This pattern of matching team sizes was established by the Commons, since it responded on five of six occasions with its list of managers matching the list provided by the Senate.

Determining the staffing requirements of the conference is based on deduction, since public records of these meetings do not seem to exist. Professor Kunz, however, provides us with a clue: he writes "In the end the controversial clauses ... were redrafted by the Minister of Justice, the Deputy Minister of Justice, and the Law Clerk of the Senate in the presence of the managers." It might be inferred from this reference that such expert counsel as either side should desire would be permissible. Additionally, a recording secretary or clerk of the meeting would be required. It might also be deduced that meetings are not public. Therefore, official reporters would not be necessary, although interpretation services would continue as per policy for in-camera meetings.

The conference is convened at the time stipulated in the message from the Senate. When this time approaches, the names of the managers for the Commons are called out and they leave for the meeting. When the Commons managers are ready they await — standing and uncovered — the managers of the Senate. The Speaker of the Senate, upon notification that the Commons managers await, reads aloud the names of the Senate managers who rise and depart for the conference. It is important to note that the business of both Chambers is suspended during the conference.

It is not clear whether or not adjournments of short or long duration are permissible. While no injunctions are written down against this practice, it would seem that, at the very least, long adjournments (overnight, for example) would be highly unusual. The fact that business in both Houses is suspended while the conference meets indicates a high degree of urgency, as does the fact that managers from the Commons are, according to the authorities, supposed to remain standing throughout the meeting. While it might be argued that the conference could be adjourned to accommodate the schedule of both Houses and that the Commons managers should be allowed to sit, the "feel" of the whole procedure seems to indicate an emphasis on the importance of the event and its urgency. Whereas in the United States conferences are held on a regular basis, without interrupting sittings of either House, conferences in Commonwealth parliaments are rare and suggest a conflict of some import.

Once convened, the Senate managers stand, uncovered, and receive the formal message of the Commons, which states its objections to the Senate amendments. When a conclusion is reached, either to agree or disagree, the conference is adjourned and the managers report their recommendations to their respective House.

If the recent motion requesting a conference passes and the Commons agree, it will be interesting to see the outcome of the conference. An examination of the results of these meetings indicates that the Senate either prevails or comes to a compromise with the Commons which usually confirms the intent of their original amendments.