Parliament and the Private Member

by Paul McCrossan

Our parliamentary system is organized on a party basis. There needs to be party discipline to make the system work. Therefore a fundamental tenet of working within the system is that one seldom has the luxury of voting against one's party except when the conflict with personal conviction or regional interest is most extreme. However, if parliamentary reform and the rights of private members mean only that members have an acknowledged right to disagree with their party's positions in such extreme situations, the reforms and the rights of private members would not amount to much.

Let me try to put philosophical underpinnings to my understanding of the parliamentary process. If members are to have more freedom, they must exercise it responsibly. Perhaps George Bernard Shaw expressed this idea best when he said, "Liberty means responsibility, that is why men dread it".

But the converse is also true. Restrictions on freedom of action should only be justified if lack of discipline threatens the viability of the political system. This view was expressed by John Stuart Mill when he said, "The sole end for which mankind are warranted individually or collectively in interfering with the liberty of action of any of their number is self-protection."

The poet Milton pointed out that sometimes the cries for personal freedom of action are actually thinly disguised attempts to avoid collective responsibilities. He wrote, "Licence they mean when they cry liberty".

Let me then try to sum up how I interpreted my choices amongst the party, the electorate and my personal convictions. Parliamentary reform in Canada ended up freeing the system for private members' bills to a great extent, but it has not had the same effect on government bills.

I had the honour to present the first private members' bill passed under the new system and was instrumental in seeing a second bill passed which went against the expressed wishes of many in the Cabinet.

I believe that, unless some fundamental party or government principle is involved, members should be free to vote as they see fit on those bills designated as votable by the Private Members' Business Committee. The first bill I mentioned was the *Public Pensions Reporting Act*. This act obliges the government to table at least every three years in the House estimates of all pension program expenditures, whether for social programs, for government employees or MPs, notwithstanding that governments had resisted for 15 years making these amounts public. The bill passed unanimously. The result was greatly helped by the firm support of the Auditor General who tabled a report (at the same time the bill was published) insisting that politicians could not conceivably set sensible policy objectives unless they had estimates, or access to estimates, of what they had already committed the country to.

The second bill in which I was involved was the *Non-smokers' Rights Act* introduced by NDP member, Lynn MacDonald. It was supported by the Canadian Medical Association, the Heart and Lung Society and the Canadian Cancer Society, amongst others. It provided for a smoke-free federal work-place and smoke-free federal public transportation facilities. It went considerably beyond government policy but was supported on a personal basis by the Minister of National Health and Welfare, and by a significant portion of the government caucus.

At the time, I was Chairman of the Government Caucus Committee on Health and Welfare Issues. Consistent with my belief that the bill could be made administratively workable in committee and that it was not a fundamental issue of government policy, I agreed to help Ms MacDonald organize government member support for the bill at second and third reading. I might point out that every single clause was extensively reworked in nearly six months of committee hearings. The bill passed narrowly at third reading, although every single member of Cabinet present in the House voted against it.

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Another private member's bill in which I was involved as a private member was the *Fair Banking Practices Act*. The House of Commons Finance Committee studied bank service charges in Canada for several months and, following their study, called in the five presidents of the largest banks in Canada to discuss our findings about the perceived abuses in the system. The bankers' reaction was blunt. They had no accountability to Parliament. Their only obligation was to obey the *Bank Act* period.

The Finance Committee tabled a report and a bill, the *Fair Banking Practices Act*, in my name on the same day. The President of the Canadian Bankers Association immediately called a press conference denouncing both the report, the bill and the parliamentary process. The Private Members' Business Committee reacted within one week by designating the bill as a priority bill which must be voted upon in Parliament.

Now here was the problem. The government did not particularly want to legislate banking practices, disclosure requirements, prohibited banking practices or required banking practices. But the banks would not cooperate. However, as soon as the Private Members' Committee designated the bill as a priority bill I was contacted within two days by the banks to see whether I would drop the bill if they instituted, voluntarily, all of the contents of the bill. They did, I did and the Canadian Bankers Association and the Finance Committee lived happily ever after.

> ***Within broad party guidelines on Private Members' Business, a member should and must have the freedom to reflect his electorate's or his personal conviction. But the major issue is what about public business.***

I think we all agree that some issues are of such intense personal or regional issue that bolting party discipline can be both understood and tolerated. For example, in the last Parliament MPs from both the Yukon and the Northwest Territories both spoke against and voted against the Meech Lake Accord as unfair to their electorate. No one, so far as I know, attempted to dissuade either of them and there were no negative repercussions for defying their party's policy afterwards.

Obviously there are issues of fundamental government policy such as budgetary measures which a government member cannot campaign against and remain in caucus. Similarly there are issues of strong personal conviction which may warrant resignation from a party. But these are relatively extreme examples. If the only freedom to oppose a party position is based on such extreme cases and with such extreme consequences, what rights are there for Private Members? Frequently a situation arises when your party may, in your view, be doing a disservice to the country, to itself, to your electorate or to your personal re-electability chances if it persists.

In these situations what is the balance between the party, the electorate and your personal conviction? I suggest that as long as the issue is open for discussion a member can and should try to influence the decision to reflect his personal conviction as well as his perception of the national, regional or the party interest. The issue is open for discussion far longer than is normally recognized in the political process.

For example, as long as an issue does not involve fundamental government policy, I believe a member should try to build a consensus in the appropriate legislative committee to change the policy.

There is a further element to this thesis. The member should always remember that provisions in a bill or in a government policy standing in the name of a minister may not be a matter of his deep conviction at all or even of party policy, but simply a matter of bureaucratic convenience. In these cases, the real problem may be to convince a Minister that his personal interests, let alone the government's interests, are not well served by the legislation standing in his name.

Do I have examples? I have lots of them arising out of my work on both the Finance and the Health and Welfare Committee in the last House. For example, provisions in the *Canada Deposit Insurance Corporation Act* could have resulted in the public knowing of any financial institution that the Superintendent felt was headed for financial difficulty. I cannot imagine a faster way of encouraging a run on a bank than obliging an official to disclose when an institution is in difficulty. But the bill before Parliament had that effect, and the officials from the Finance Department insisted that the bill be passed as is. The unanimous approach of the Finance Committee was to refuse to pass anything until the provisions were changed.

A second example; in spite of a unanimous all-party report that links between financial institutions and commercial enterprises be severely curtailed, the government was about to allow the take-over of our largest trust company, Canada Trust, by Imasco, imposing no strings whatsoever on the deal.

The Finance Committee had tabled a report calling for severe constraints on these links, and the government was not prepared to move. I took the unusual step of moving concurrence in the House, of the Finance Committee's Report, which caused a half day of debate.

During that half day of debate, not one single member of any party would stand up in his place and speak in favour of allowing the unfettered take-over of Canada Trust. The following day the Minister called me in and told me that she had informed Imasco that the deal would not go ahead. There would be no parliamentary support unless severe constraints were put on their control of the exercise of the company.

A third example is that, although interest rates fell in Canada by 7% from 1982 to 1987, credit card interest rates for all but one of the large banks did not budge one basis point. The Finance Committee initiated its own study and, with the help of three large financial institutions, was able to demonstrate why rates were too high and by how much.

The Committee tabled a report not recommending that interest rates be lowered legislatively, but just that an investigation be made by the government into anti-competitive behaviour by the banks if credit card interest rates were not reduced by 3% in 30 days. It took two weeks.

Although the Finance Committee supported legislation to control and restrict related all-party transactions as I just mentioned, among financial institutions, when the government finally brought legislation into the House it was so badly flawed as to threaten the legitimate operations of most Canadian financial institutions. When the Committee confronted the Minister with these flaws, he would not withdraw the clauses. The Committee reacted by refusing to pass the bill.

At one point the Chairman of the Finance Committee and myself met with the Deputy Prime Minister who at that time was the House Leader. We said the committee was prepared to publicly vote down the Minister if he persisted in insisting that this clause be passed. The result was a quick adjournment of the Committee, followed by the Minister moving to delete the clauses himself.

One of the aspects that is obvious is that just as it is difficult for a member to break publicly with his party, it is equally difficult for the party to have a member break publicly with it.

Let me cite one more case where I came close to publicly breaking with the government. When the government brought in its taxation reform for financial institutions, it ignored the Finance Committee's recommendations and brought in a tax which had two major flaws, one political and one economic.

The political flaw was that it enraged the industry and in a period six months before an election would mobilize insurance agents who, in Canada at least, are a potentially potent political force against the government. The second flaw was that in spite of attempting to raise taxes, the bill was so badly flawed that it would not raise any money anyway.

After discussions with Finance proved fruitless I again approached the House Leader to advise him of what I saw as the potential political dangers in the bill, and that if the government insisted that the measure proceed, I would publicly break with the government and speak against the bill. As a result, the Deputy Prime Minister set up several special meetings very quickly and the Minister withdrew the bill and substituted another.

What can be learned from these experiences? First, there is considerable scope for putting forth aggressive positions based on personal convictions or constituency or regional concerns. Second, the manner in which it is done is as important, if not more important, than what is actually being attempted. Third, if a member finds himself heading for a public break with his party, he should inform his House Leader as early as possible and be prepared to make his case.

I might finish off by quoting Cicero about knowing the rules of the club, however unofficial, and making sure you work within the rules. Cicero said: "We are in bondage to the law in order that we may be free".

Parliamentary reform will work to give the Private Member freedom, only if the member scrupulously follows the letter of the parliamentary law.*