Removing Barriers to Private Members' Business

by Suhas G. Deshpande

From their nomination as candidates, through to their day to day lives as elected Members, the political party has a controlling hand in the public life of an MP. A backbench MPs only legislative function is often regarded as fulfilling House duty obligations, and voting as instructed by their party Whip. Canadians consistently express the opinion that if Parliament is to be a truly effective and responsive institution, the opportunity must exist for all Members of Parliament, not just Members of Cabinet, to introduce and seek passage of legislation which is in the best interests of their constituents. This paper examines the barriers faced by Private Members. The necessity of these barriers to the overall smooth functioning of the House of Commons is assessed against the need for backbenchers to represent their constituents as national legislators. Finally, suggestions for reform are offered as a means to ensure that Private Members can properly perform their legislative function within the context of a parliamentary system which has traditionally shunned this practice.

Standing Order 87 1(A) states that a random draw is to be held at the beginning of a session to select the names of up to thirty Members of Parliament who may introduce either a bill or a motion for consideration in the House of Commons.[1] The draw for Private Members business is the latest in a series of initiatives dating back to Confederation whose goal is to ensure that due consideration is accorded to the legislative initiatives of backbenchers with minimal use of House time.[2]

The present ballot system was established in February 1986 following the report of the Special Committee on Reform of the House of Commons (the McGrath Committee).[3] The draw was initially limited to twenty items,[4] with entry conditional upon submission of the item in its final form to the Journals Branch of the House of Commons.[5] Although the former provision has since been amended to allow for the selection of thirty items in the draw, the latter requirement remains unaltered. This rule was introduced to combat the practice of Members placing their name in the draw for the Order of Precedence without having an item ready to present to the House. The McGrath committee found that this practice was symptomatic of the general lack of importance attached to Private Members business.[6]

Although the ballot system established at the recommendation of the McGrath committee conserves House time in disposing of Private Members business, it has the ancillary effect of limiting the opportunity which Members have to present their legislation to the House. Beyond limiting the number of Members who may introduce an item at a given time, the manner in which the draw is conducted means that a Member may actually be obstructed from introducing legislation no matter how many times they enter the draw. Standing Order 87(2) provides for a supplemental draw of fifteen names when the number of candidates chosen in the initial draw has dropped to fifteen, without provision for Members whose names were not drawn in the initial ballot. In the absence of a provision which recognizes order of entry, a Members name may remain in the draw without being selected, effectively blocking them from performing a vital representative function.

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The restriction on the ability of Private Members to introduce legislation is the result of the exclusive control of the House agenda enjoyed by the Government of the day. Government control of Parliaments agenda has its origins in the traditional relationship between Parliament and the Crown. At one time, Parliament was summoned only when the Crown required money or increased authority through changes in the law. As the *de facto* Opposition in the political scheme, Members of the House of Commons required that the Crown listen to the grievances of the populace through their representatives in exchange for its support of the Crowns requests. Because of its own insistence, the House of Commons had authority to discuss the Kings business for a length of time and in a manner which it determined.[7] The importance attached to control of the House agenda both in a symbolic and an operational sense was apparent. After falling from the Crown to the Commons, control of the House agenda became the responsibility of the Government in the Commons.

Today, the Speech from the Throne contains the legislative agenda for the upcoming Session of Parliament. Because the legislative initiatives of private Members often differ from the priorities established by the government of the day, they are likely inconsistent with the agenda which the government has established for Parliament. Furthermore, the accountability which the government of the day has to the electorate to successfully implement its agenda means that it and not a private Member must be seen as acting on issues of concern to Canadians. The value of extending the control which private Members have over the House agenda at the expense of the government is questionable given the fact that backbenchers (especially on the government side) are held accountable by their constituents for the extent to which their party is able to implement its agenda. Furthermore, an extension of the ability of private Members to control House time for legislative purposes would only enhance the incentive which opposition Members have to disrupt the government agenda for political gain, and call into question the value of any such reforms from a representative perspective.

Control of the legislative agenda of Parliament by the government of the day recognizes the predominance of political parties in the Canadian Parliamentary system, and in the life of backbenchers. As long as backbenchers are held accountable for the fulfillment of party agendas, it is in their best interest that control of the House agenda remain in party hands. There is a strong argument to be made that it is also in the best interest of Canadian electors, who are more easily able to hold political parties accountable under a tight party system than they would be in the absence of a focus of accountability.

Designation of "votable items"

Standing Order 92(1) requires that the Standing Committee on Procedure and House Affairs meet within ten sitting days of the draw for Private Members Business to designate up to five bills and five motions as votable from among the thirty items which are drawn. Votable items are eligible for up to two hours and forty-five minutes of debate in the House before a vote is called. Non-votable items are dropped from the Order Paper after one hour of debate.

The practice of designating certain items "votable" is another product of the recommendations made by the McGrath committee. The committee recommended that of the twenty items which are selected, six should be designated votable by an all party committee composed of six private members called the Committee of Selection of Private Members Business.[8] In February 1986, the Standing Committee on Private Members Business was established by Standing Order to perform this task. Since that time, the task of selecting votable items has been performed by the following committees: the Standing Committee on Elections, Privileges, Procedure and Private Members Business, the Standing Committee on Privileges and Elections, the Standing Committee on House Management, and currently, the Standing Committee on Procedure and House Affairs.

These committees have developed a number of criteria to which the Standing Committee on Procedure and House Affairs may refer in selecting votable items. The only binding criteria is Standing Order 92(1), which requires that selection of votable items shall "not take into account the number of Members jointly seconding an item, but shall allow the merits of the items alone to determine the selection...". Eleven non-binding criteria were developed by the Standing Committee on Private Members Business in 1986 and 1987 to help guide its Members in the selection of votable items. These guidelines direct the committee to reject an item if it fits any one of a number of criteria. Among items which the guidelines recommend should be rejected, are items which are trivial or insignificant, of a regional or local nature, lacking in clarity, clearly unconstitutional, similar to specific matters declared by the government to be on its legislative agenda, substantially the same as items already considered by the House or other private members items deemed votable, and bills which deal with electoral boundaries or constituency names.

An item not deemed votable by the Standing Committee on Procedure and House Affairs may be designated votable if unanimous consent of the House is received at the time of debate. Although this procedure

is rarely successful, it preserves the principle that the House may override the decision of a committee.

> ***The selection of votable items lacks legitimacy because it remains a very closed process, without clearly enforceable criteria. Given the importance of the selection of votable items, this should be the most visible stage in the private Members business process.***

The restriction on the number of items which may be deemed votable presents a serious obstruction to the ability of backbenchers to act as legislators in Parliament. Twenty of the thirty items which are selected by ballot are effectively disposed of even before the House has had an opportunity to debate them. While there is value in debating an item in and of itself, many of the qualities which make this debate useful are absent because there is little or no hope of the item being adopted by the House. Very little attention is given to items deemed non votable by the national media and Members of Parliament alike because they have virtually no chance of attaining legislative status. As a result, absent is the incentive for proper consideration of issues raised in non-votable items.

The legitimacy of the practice of selecting votable items is brought into question by its lack of visibility. The selection of votable items is conducted out of view of most Members of Parliament, the public and the media alike. It is also without a comprehensive, enforceable set of criteria. This contrasts with the realm of government legislation, which is very visible and whose criteria are explained in the *Constitution Act of 1867*, and the *Constitution Act of 1982*, and are enforced by the Courts.

Conclusion

The current structure of private Members business lends itself to the criticism that backbenchers lack an open and fair means of introducing bills or motions in the House of Commons. Openness and fairness are two principles which should be paramount in all aspects of parliamentary government. The following recommendations are offered to address this deficiency:

1. Establishing fairness in the Private Members business draw:

The ballot should continue to be conducted for the purposes of establishing eligibility and Order of Precedence as well as to ensure that the number of private Members items do not become unmanageable for the allotted House time. However, the obstructive nature of the draw to Members who are not selected in several consecutive draws must be addressed. By amending Standing Order 87(2) to include the selection of Members names not selected in earlier draws, any Member who wishes to introduce an item would not be denied this opportunity simply because of the luck of the draw.

2. Establishing openness in the selection of votable items:

The selection of votable items should be made by the House of Commons rather than by a Standing Committee. Through an amendment to Standing Order 92(1), the sponsoring Member could introduce a motion at the conclusion of the first hour of debate on his or her item in the House asking that it be designated votable. The decision as to whether an item is votable would be conducted in an open and public manner.

In order to ensure that House time is not wasted, a comprehensive set of guidelines governing the eligibility of private Members items should be developed. A Member who feels that an item in any way breaches these guidelines would indicate their specific objection to the Speaker at the beginning of the Members time. In this manner, the Speaker would be able to control the manner in which House time is used.

Private Members business remains an avenue available to backbenchers which is little known by the public and media alike. It is a path which many Members are reluctant to traverse, given the low success rate. Efforts to ensure openness and fairness in this process would greatly enhance the incentive which Members have for introducing items in the House of Commons. ✦

Notes

1. I would like to thank the Table Research Branch and the Private Member's Business office for their assistance in the preparation of this paper. I would also like to thank Mrs. Jyotika Deshpande and Mr. Doug Band for critically reviewing an earlier version of this paper. Any errors or ommissions are my own responsibility, as are the views expressed in this paper.

2. The *Annotated Standing Orders* of the House of Commons contains a useful historical summary for tracking the evolution of Private Member's business. This summary makes it clear that keeping the use of House time for Private Member's business to a minimum has been sought since Confederation. See: *Annotated Standing Orders of the House of Commons 1989*, Speaker of the House of Commons, (Ottawa: 1989), pp. 301-307.

3. *Reform of the Special Committee on Reform of the House of Commons*, Queen's Printer for Canada, (Ottawa: 1985). James A. McGrath, PC, MP, Chair.

4. The number of items which are to be drawn was increased from twenty to thirty on April 29, 1992.

5. The McGrath report, p. 41.

6. *ibid.*

7. Ned Franks, *the Parliament of Canada*, pp. 126-128.

8. The McGrath report, p. 41.