

An Important Procedural Innovation in Ontario

Far-reaching changes have transformed virtually every facet of the Ontario Legislature in recent years. New procedures for Private Members' business ensure that a certain number of Private Members' Bills are called for Second Reading; a number have been given second Reading and have gone to Committee, and one has passed into law. Not surprisingly, these provisions have attracted the lion's share of the attention directed to the procedural changes brought in at the end of 1976. To be sure, they do represent a highly significant change, yet another innovation is just as unusual and probably has a substantially greater influence on the conduct of public business and in overall political impact: this is the new rule which gives to a fairly small minority of the House the opportunity to send a Ministry or agency's annual report to a Committee for consideration. This article describes how the rule has been employed and briefly discusses some of its implications.

Provisional Order 7, adopted December 18, 1976, provided:

The Clerk of the House shall maintain a record in his office of those reports required by Statutes which have been tabled and those outstanding. The Government shall present all such reports within six months of the close of the reporting period, unless reasons are given to the House: Annual Reports of the

immediate past reporting period for each Ministry, and Boards, Commissions, and other Agencies reporting through each Minister, shall be tabled in the House before consideration of that Ministry's estimates, unless reasons are given to the House. On the petition of any 20 Members, any such report tabled shall be referred to a committee of the House.

This rule must be understood within the framework of minority government. It probably would not have come into being and it certainly would have had a lesser effect in a majority government setting.

Before embarking on an examination of Provisional Order 7, a word on its genesis may be of interest. In its fourth report (September, 1975), the Ontario Commission on the Legislature (the "Camp Commission") decried the Government's failure to table many reports as required by statute. Responsibility for this unhappy condition was laid at both Ministers' and Members' doors - Ministers for not taking seriously their statutory responsibilities, and Members for not objecting to this abrogation of their right to information. The Commission accordingly recommended that the Clerk's Office monitor the fulfillment of statutory requirements to table annual reports in the Legislature. In an altogether separate vein, the Commission suggested that one way for the Legislature to scrutinize and evaluate the myriad agen-

cies, boards and commissions it has created would be to provide that, on petition of a third of the Members of the House, an annual report could be referred to a Committee of the House for study. Although the actual wording did include the reports of the parent Ministries, there was no indication that this procedure would be applied to them.

The Select Committee which evaluated the Camp Commission recommendations on procedure advocated the maintenance by the Clerk's Office of an up-to-date listing of all reports required by statute, the tabling of reports within two months of the close of the reporting period (or before consideration of the Ministry's estimates), and provision for 12 Members to send a report to Committee. (Twelve Members are necessary under the Legislative Assembly Act to constitute a party.)

The Select Committee's recommendations were the subject of intense "behind the Chair" negotiations among the parties. During this process, neither the Government nor the Opposition fully realized the potential uses of the new rule. The expectation was that it would be used to permit closer evaluation of a particular agency, board or commission, or else to serve as a springboard for a wideranging evaluation of policy within a Ministry. Even this, of course, stood as a departure of very great moment, but more profound ramifications were to emerge later.

The basic principles of the Select Committee's recommendation were thus retained, though compromises were struck on six months' grace for tabling a report, and a petition of 20 Members rather than 12. Although the figure of 20 has been rationalized as being the quorum of the House, this figure simply represented a compromise between the Government and the Opposition parties. Nonetheless, the figure of 20 may be critical, since although the two opposition parties have enjoyed more than 30 Members since 1975, in previous years, one or both of them frequently hovered around the level of 20 Members.

The new orders had been in place for more than a year before Provisional Order 7 was used to send a report to a Committee. In the midst of an acrimonious confrontation over a proposed raise in health insurance premiums, the Official Opposition referred the annual report of the Ministry of Health to the Standing Social Development Committee. This manoeuvre allowed the opposition parties to focus attention more sharply on the issue, to prolong the controversy, and to shape it far more than would have been possible in the House, particularly since the premiums were to be raised by regulation and hence no legislation was before the House. In the end, the compromise over this issue was in great measure determined by the direction taken by the Committee's deliberations. Of course, the outcome would have been substantially different and the significance of the procedure under Provisional Order 7 much diminished had the episode not occurred in a context of minority Government.

The most telling aspect of this exercise was that, while the Committee was supposedly considering the annual report on the activities of the gigantic Health Ministry, it was in point of fact devoting its entire attention to one issue, and a singularly narrowly defined issue at that. When the rule was formulated, no one had envisaged that it might be used to focus on one specific issue, which was only tangentially raised in a report. If it went well beyond original intentions, however, the recourse to Provisional Order 7 in the 'OHIP affair' represented a particularly creative use of the rules for political purposes.

Because of the time spent by the Committee on the Ministry of Health Report, the time allotted to the Ministry's estimates was, by agreement, subsequently reduced from 20 to 11 hours. For the Opposition, this was clearly a price worth paying. As elsewhere, Estimates debates in Ontario are highly unsatisfactory to Members on both sides of the House. Save rare appearances by party leaders, Estimates are largely ignored by

the press, and debate is typically discursive and futile; Estimates are permeated by a feeling that many participants are simply going through the motions. Thus the opportunity to focus on a single issue and to structure debate in a more favourable manner than is possible in the House, renders Provisional Order 7 a formidable weapon in the Opposition arsenal, much to be preferred over the Estimates for most purposes.

This lesson was not lost on the Opposition, and within a few weeks, the annual reports of three other Ministries - Agriculture and Food, Energy and Environment - had been referred to Committees under Provisional Order 7. In the first instance, the aim was again to highlight a single point of contention -- merchandising of agricultural products. In the other cases, discussion of a somewhat broader range of issues was intended, though certainly not so broad as to include all, or even most of the topics included in the reports. More recently, Provisional Order 7 has been used for the first time to refer the report of a provincial agency (the Ontario Highway Transportation Board, the centre of several political skirmishes in recent years), to a Committee. At the time of writing, the Committee to which this report has been referred has yet to deal with it, and it ranks low in the Committee's priorities.

On paper, Provisional Order 7 adds little to the opportunities available to the Opposition for raising and pursuing an issue. Ample opportunities would seem to exist both in the House and in Committees through Question Period, Estimates, Concurrence debates, Throne Speech and Budget debates, emergency debates and so on for the opposition to carry the attack on particular issues. In political terms, however, this is not an accurate appraisal. In the first place, it is difficult to mount a concerted assault on the Government when the opportunities for so doing are sprinkled throughout the Parliamentary timetable; the attack becomes fragmented and lacks coherence.

Secondly, and far more importantly, rousing media attention is simply much easier with a vehicle like a Committee, which presents an unfolding story and has a high dramatic potential. All the same, the two most "successful" resorts to Provisional Order 7 centred on issues which lent themselves particularly well to extensive media coverage, and this will not likely be repeated in all circumstances. Furthermore, as the device is used more often, the novelty may wear off, and with it press interest.

One of the Members of the Procedural Affairs Committee, which was reviewing the Standing and Provisional Orders, commented that Provisional Order 7 "is something of a grab-bag within which you can discuss anything, often including something that isn't even in the damned report". This is not far from the truth, though the exceedingly nebulous language in which these reports are oftentimes couched offers any number of possibilities upon which the Committees could focus. It is of course possible, although this has yet to occur, that Provisional Order 7 could be used to allow a Committee to examine an entire policy field, without either the time constraints, or the requirement to limit debate to specified programmes or votes which characterize estimates. Furthermore, in this way the Opposition has a chance to investigate a particular issue or policy even if the Estimates of the Ministry in question have already been debated.

The requirement under the order that the Clerk's office maintain a list of reports required by statute may seem simple housekeeping, but it is a matter of some importance. (Curiously, this is a revival of a rule that was dropped from the Standing Orders in the 1930's.) Interested Members may now check on particular reports with a single phone call to a central location. Occasions on which Ministers have given reasons for the tardiness of reports falling under their ambit have been rare, although some number have been overdue. At the end of

the last session, by way of illustration, among the overdue reports were those of three Ministries. Significantly perhaps, no Member has risen on a point of order to complain of an overdue report.

An additional benefit accruing from Provisional Order 7 is the existence of an accurate, comprehensive list of agencies which by statute must report to the Legislature. This has brought to the fore some striking anomalies arising from the inconsistent manner in which requirements for the tabling of annual reports have been written into legislation creating new agencies. By way of illustration, the Denture Therapist Appeal Board must report to the Legislature, but there is no such requirement for the Ontario Human Rights Commission. Only slightly more than 100 of the province's more than 700 agencies, boards and commissions are legally bound to submit reports to the Legislature; still, this number does include the great bulk of large, important agencies. A recently adopted report of the Procedural Affairs Committee recommended that reports of all agencies be tabled. This stands to enhance the importance of Provisional Order 7 greatly.

Objections have been raised to the procedure permitted under Provisional Order 7 on several grounds. Perhaps the most frequently sounded criticism holds that it confers unwarranted power on a small faction of the House and thereby usurps the House's prerogatives. This is true to a degree, but it overlooks two powerful restraints on the invocation of Provisional Order 7. First, though an issue may be debated in a Committee and recommendations proffered, only the House may take action. If true in a technical sense, this ignores a key political point - the pressures for action which may be generated or accentuated by the Committee's activities. Secondly, it remains the right of the Committee to decide on the priority it wishes to set on the referred report - or the issue for which it serves as a proxy - and whether it

cares to deal with the matter at all. Indeed in one instance where Provisional Order 7 was employed to send a Ministry report to a Committee in the hope of singling out for attention a particular set of issues, the Committee gave only perfunctory "consideration" to the report, in effect deciding to ignore it.

The view has also been put forward that it is hardly outrageous to permit 20 Members to refer a matter to a Committee, simply for study, when the same number constitutes a quorum of the House for the conduct of the province's affairs.

Agreement is widespread, however, that the procedure is "messy" and that if 20 Members care to put an issue before a Committee, they should have a straightforward mechanism for so doing, rather than being forced to twist a rule to a use for which it was never intended. This is tied in with the larger question of Committees ordering their own business as well as considering matters not specifically referred to them by the House. The issue here is not whether Committees should be free to disregard their terms of reference, but whether they might not be more effective with broadly defined mandates, so that, like the Public Accounts Committee, they could, within policy fields, pick and choose their topics. This is a matter of current concern in the Ontario Legislature, and although specific problems have been resolved, in part through Provisional Order 7, the basic principle remains very much at issue.

This past December, Provisional Order 7 was incorporated into the Assembly's Standing Orders with only minor drafting changes. This rule represents an important departure, as an instrument for the Opposition, and in the evolution of the Committee system. Provisional Order 7 cannot be said to infringe on the Government's right to govern, but it clearly gives the Members of the Legislature a greater measure of control over the activities of the Assembly.

