PRIVATE MEMBERS' BILLS

by Pierre Duchesne
Associate Secretary of the
National Assembly of Quebec
and
Director General of Parliamentary Services

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There was a time, in England, when legislation was never drafted or published until after Parliament adjourned; this meant that the statutes often included laws which had never been passed by Parliament. Until the reign of Henry VI, any Bill to be considered by Parliament was submitted in the form of a petition which Parliament granted or refused. Today's method of legislating - tabling Bills in both Houses as complete statutes- dates back to Henry VI, who sometimes took the liberty, as did Edward IV, of adding sections on his own, without consulting Parliament.

If we pause for a moment to consider the modus operandi of our legislative assemblies, we will soon realize how Parliament's legislative monopoly is greatly undermined; even though, at least in theory, legislative power is distinct from executive power, in practice it is the government which takes the initiative in preparing and tabling legislation.

What part does the Member of Parliament play as a legislator?

An article in Parliamentary Affairs (1) holds that, in the eyes of most students of the political system, power in today's parliaments is gradually shifting from the legislative to the executive branch. This shift can be attributed to four major factors: adherence by Members to party lines; a decline in the prestige enjoyed by those Members; a weak, complicated parliamentary system where things always move slowly; the great number of Bills to be passed, and finally the technical nature of much legislation, which requires that most Members possess advanced professional knowledge.

Given all these reasons, then, it should come as no surprise that the number of Bills introduced by Members has dropped considerably. And even so, what facilities are made available to the Members? What hope do they have of being able to continue to act as legislators in the traditional sense of the word, and pilot legislation through all its various phases?

The Table (2) recently carried out a

(1) Parliamentary Affairs, vol. XXXIII, no. 1, 1969/70.
(2) The Table, vol. XLVI, 1978.

survey in British-type parliaments around the world, with a view to answering certain questions: what opportunities do back-benchers get to introduce and pilot Bills? what restrictions are imposed on these Members with regard to the subject-matter of their Bills? what attitude does the government generally assume when such Bills are being studied? what technical assistance is made available to back-benchers? Finally, what proportion of Private Members' Bills is finally assented to?

The answers obtained show that, while in a vast majority of parliaments, back-benchers are allowed to table legislation, the time allowed for discussing this legislation is not sufficient to allow the sponsors the success to which they aspire. Although the Upper Houses generally allow more time for this type of legislation, hopes are quickly dashed when the Bills reach the Lower House.

A better illustration of our conclusions can be seen in extracts from the answers we received from some of the Parliaments.

In London's House of Commons, Government business is -- quite rightly -- granted priority at all sittings, although under the Standing Orders, 12 Fridays in each session must be devoted to Private Members' Bills. The first six Fridays are set aside for reading bills a second time, and the last six for studying those which have already passed second reading. Still, a Member may act in one of three ways to introduce a Bill: first, he may avail himself of the Standing Order which makes it possible for the first six Members to have their bills debated in second reading on a Friday; second, he may make use of the Standing Order which allows a Member ten minutes in which to outline the content of his Bill; and third, he may follow the usual procedure, which gives him practically no chance at all.

There is a fourth way, which should perhaps be mentioned: he may submit a Bill from the House of Lords.

The most popular of these methods is procedure under the "ten-minute rule" - the sponsor of the bill can at least be assured of a certain publicity, though it is certain his Bill will never be passed.

It seems that 15% to 20% of the Private Members' Bills tabled in the British Parliament receive Royal assent. That seems to me a considerable number.

For a Member of the House of Lords to pilot a Bill is considered a privilege. Since there is no limit to the discussion period, and since the Bill can deal with any subject except the imposition of public expenditure, bills tabled in the Lords are generally passed, although it does not necessarily follow that they will be passed in the Commons.

In Canada, Senators are given much the same latitude as Lords. The only Bills which cannot be tabled in the Senate are Money Bills and Bills dealing with provincial matters. For their work as legislators, the Senators are provided with all the professional and material assistance they need, even that of the government. While procedure is more flexible than in the Commons -- making it easier for a Senator than for a federal Member to introduce a Bill -- the chances of that Bill going through all the stages remain very slim, unless, of course, there is unanimous consent to it. Difficult though it may be to imagine, since the last War not one Bill introduced by a Senator has gone through all the stages.

Private Members' Bills in the Canadian House of Commons may deal with any subject at all, but they cannot order public expenditure. Even so, few of these ever become law. A government which wants to support a Bill will prefer to sponsor it itself, rather than allow a private Member to do so.

Ontario has its own way of blocking Private Members' Bills. Under the Ontario Standing Orders, any member may

table legislation which does not order public expenditure. Debate is restricted to Thursday sittings only. At the end of the debate on second reading, the Speaker asks whether the question can be put to the vote: if there are twenty "Nays", the Bill is dead. Why must there be twenty? Because rather than permit a debate lasting twenty times ten minutes - which for all practical purposes would use up the entire period allowed for studying the Bill - in this way objections can be lodged immediately.

In Saskatchewan also, although the procedure has met with little success, one day a week is set aside for discussions of motions or Bills introduced by Members.

In Australia, Senators' Bills are often introduced but few ever reach third reading. Whenever there is a sitting, a Senator can table a notice of motion with a view to introducing a Bill. The next day, this notice of motion is declared either "formal" or "non formal" although in fact, most such notices are declared "formal". The Senator now introduces his Bill for first reading. One day a week is set aside for discussion of these Bills. They are studied in the order in which they are entered on the Order Paper, unless the Whips have agreed otherwise in the interest of certain priorities. These Bills are subject to the same restrictions regarding public expenditure and the imposition of taxes. We are told that only 3% of Bills introduced by Australian back-bench Senators ever find their way into the Statute books.

In Australia's House of Representatives, an hour and a half is set aside every second Thursday morning for studying back-benchers' Bills. A Member, however, can give notice that he will be discussing a motion rather than a Bill: according to the statistics, then, only six days a year are devoted to Private Members' Bills. No special measures are implemented to extend discussions beyond the time allowed unless, when the business of the day is announced, the government recalls a bill which was intended to die on the Order Paper. The usual restrictions apply to the content of back-benchers' Bills. Since very few back-benchers have introduced legislation (51 Bills in 76 years), a relatively high percentage of these Bills (10%) has received Royal assent.

While we could go on describing what happens in many other Parliaments, we shall limit ourselves to four: in New Zealand, an average of eight Private Members' Bills are submitted each session; only two, however, have been granted Royal assent in the last 40 years; in Barbados, no Bill introduced in the Legislative Assembly by a Member stands much of a chance of being passed, so the time generally granted to back-benchers is used for discussing motions; in the Bahamas, even though the Standing Orders allow back-benchers to introduce Bills, no such Bill has yet been assented to. Finally, in Sabah, Malaysia, it is impossible for any back-bencher to introduce a Bill or pilot it through the Legislative Assembly. No false illusions here.

What happens in Québec with regard to Private Members' Bills? (and I am still referring to public Bills.) The Rules and Standing Orders provide that approximately an hour and a half be devoted every Wednesday afternoon to Members' business. Under a very special order, soon to become permanent, Wednesday is a day like any other throughout the debate on the inaugural address, and during June and December: only government business can be discussed. In addition, privileged motions and motions relating to urgent matters always take precedence over any other business: one more obstacle confronting a Member who seeks to introduce a Bill. If all these obstacles are added up, few Wednesdays remain on which Private Members' Bills as such can be debated.

Only two consecutive Wednesdays may be set aside for debating any Private Member's Bill, and it is theoretically impossible - unless the unanimous consent

of the Assembly is obtained - to pass a bill through all the necessary stages in two sittings. Very rarely, then, does any Member dare to introduce a Bill unless he is after publicity.

I remember how, once, a Bill went through all the stages in two minutes - on the last day of the 1977 Session. Introduced by Mtre. Jean-Noel Lavoie, an Opposition Member, it contained one section which placed a ceiling on the salary of the director-general of elections. Because the government went along with this, speedy passage was possible.

One piece of legislation has just been assented to, which was introduced by a Private Member on the government side: A Bill to create the Caisse Centrale Desjardins. This bill was sponsored by a Member of the government because a similar precedent existed, and to avoid any partisan undertones. Of course it was studied during the hours normally devoted to government business, and no time limit was fixed for discussion.

In the normal course of events, there is no way any Member can have a Bill passed within the time limit provided by the Rules and Standing Orders; for this reason, all our Wednesdays are spent debating Private Members' motions. And that is the situation in Québec.

What does this information tell us? Does it not point up the fact that today there is little room for legislative initiative on the part of a Member or a Senator? Is this a malady to be found only in the so-called British-type parliaments?

Existence of this drop in parliamentary initiative is confirmed in Les Parlements dans le Monde (1). After conducting a vast survey in 56 countries governed under a vast assortment of political systems, the authors concluded that a government is no longer merely the agent responsible for applying the legislation passed by parliament: it is also seen as the principal authority behind the preparation of this legislation. This treatise discusses the reasons why parliamentary initiative has disappeared: the complexity of legislation, a lack of technical resources, and the restrictions regarding, among other things, expenses. And even if such a parliamentary initiative is taken, discussion on it is often impossible, since most of the legislation on the Order Paper concerns means proposed by the government for the implementation of its policy. It will come as no surprise that in France, for instance, while 53 Private Members' bills were introduced in 1962, only seven were passed; in 1963, 13 out of 93 were passed.

Should a reform be proposed, or must we adapt to the harshness of reality? In a column printed in the newspaper l'Action on February 11, 1967, Jean-Charles Bonenfant seemed to give in: Members must understand, he wrote, that today's laws are almost invariably proposed by technocrats and the Executive; the Members are no longer the people's only democratic representatives. In the same column, in 1973, Bonenfant maintained that to think that Private Members' Bills can become law - without government consent - is utopian.

John B. Stewart, in The Canadian House of Commons (2), speaks of the pitiless massacre of Members' motions and Bills seen under today's Constitution. Responsibility for governing a country, he writes, is now in the hands of Ministers, not Members. It is the Ministers who should be compelled to take the (legislative) initiative.

The British Parliament's Select Committee on Procedure, in its fourth report, submitted during the 1964-65 Session, favours this kind of legislation and suggests that procedure be amended, particularly as regards the balloting system, the number of sittings to be devoted to these Bills, and the creation of additional committees to which they

(1) Les Parlements dans le monde, Union Interparlementaire (1977).
(2) Stewart, The Canadian House of Commons.

might be referred. It would appear that this report fell on barren ground: the same Committee made virtually the same recommendations in its second report, submitted during the 1970-71 session.

Michael Ryle, writing in The Political Quarterly (1), commented on an article in that publication, which called for reform to give this type of legislation a better chance. He stressed the importance of Members' Bills: first of all, they provide an opportunity to discuss things not included in the government's program and to sound out the government's opinion; secondly, they make it possible to raise questions which no party would dare raise on its own and which it would be difficult to accept as party policy - for instance homosexuality. The author concludes that if this type of legislation is to survive, it must not be allowed to acquire second-class status, and there should be no impediments to its progress. In this way the debate can be more open. P.A. Bromhead (2) describes this dilemma and writes that, on the one hand, all Members of any democratic legislature should have the right not only to introduce Bills but to debate them fully and to vote on them; on the other hand, in today's world, responsibilities of state are so heavy that it is not suitable for a private Member to sponsor a Bill.

Bromhead writes that in France and in the United States, the right of the people's representatives to act as legislators remains sacrosanct. This right is part of tradition, and must remain intact. A Member's parliamentary initiative is respected: at least his Bill will always be referred to a committee for study. Under the British system, on the other hand, the elected Members' basic rights have fundamentally changed over the years - the time allotted to Members has been gradually cut down, and the scope of Members' Bills reduced - so that today, all any Member can do is ask questions, see to his constituents' personal problems and - albeit rarely - introduce legislation which will be considered second-class. To repeal the right of Members to introduce Bills would be to throw the system off balance, so the right is maintained. Indeed, the Member's right to submit legislation has been called the safety valve of the democratic system: perhaps the only way a government could pass a politically unpopular bill would be as a Private Member's Bill.

If Members' legislative initiative is to be maintained, then, the procedure will have to be changed.

One of the most interesting suggestions for providing increased opportunity for the debating of Members' Bills was made by Laski (3): provided a bill immediately receives the support of a large number of Members, it should be referred to a special committee for study. This committee would report to the House. If the report is favorable, the government will be required to allow all the time necessary for the study of the Bill.

While this seems like a new role for parliamentary committees, those in Hungary, Switzerland and Yugoslavia are already playing it: any parliamentary committee may put forth suggestions, after which the members of that committee, acting individually or as a group, then introduce legislation.

Another - simplistic - suggestion has been put forth by Bromhead: Members should deliberately shorten the time period allowed for their speeches, so that more of them can have a chance to introduce legislation and vote on it. The influence exercised by certain Private Members' Bills which have been assented to and have found their way into the statute books substantially justifies maintaining the system.

Nor is the concept of the Member as

(1) The Political Quarterly, 1966.
(2) Bromhead, Private Members' Bills in the British Parliament.
(3) Parliamentary Reform 1967, p. 123.

legislator ignored in Québec. Several ways of expanding this role are being examined, including the possibility of back-benchers preparing delegated legislation. In addition, a more flexible interpretation is being sought of the provisions governing the right of every Member to introduce public legislation. Perhaps the rules can be made less rigid, to allow Private Members' Bills - at least in theory - to be studied on their merits, and thus removed from the category of "second-class" legislation.

Under our Rules and Standing Orders any Member may introduce a Bill, and nowhere is it expressly stipulated that motions for second and third reading of a Private Member's Bill are subject to any special rules; although the Rules and Standing Orders lay down specific procedure for Bills introduced by "interested persons". (Private Bills), they in no way restrict the study of these Bills. Why, then, should a Private Member's Bill not be granted the same importance as a government bill or, at the very least, be placed on the same footing as bills introduced by "interested persons"? Perhaps rules of practice could be drawn up based on those regulating the study of both government bills and private legislation. A Member's public bill could be submitted to a parliamentary committee before second reading, for instance, without a public hearing.

Those who agree that back-benchers' legislative initiative should be increased will surely see much to support in this reform.

Those who no longer believe that Members should submit legislation will have to make a greater effort to define the role of the back-bencher - and that problem is far from being solved.

We should always remember, though, that there was a time when Parliament had nothing to do with either the drafting or the publication of legislation.