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# Recent Committee Reforms in Ontario

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by Hon. Norman W. Sterling, MPP

*Parliamentary government requires a balance of ministerial responsibility and party discipline on one hand with a fair measure of opportunities for individual representatives on the other. Ontario's Provincial Parliament recently adopted two significant changes to the operation of its Standing Committees. The first allows the government to send bills to Standing Committees for early consideration. The second empowers committees to propose, study and draft legislation at the direction of its members. This article outlines these changes.*



In 1999 one hundred and three members of the provincial parliament (MPPs) were elected. The governing Progressive Conservatives had reduced the size of the House by 27 members as a cost-saving measure. Due to this dramatic adjustment in the landscape of the House, all three parties had already accepted the need for changes to the Legislature's operations to accommodate the smaller Assembly.

To ensure that legislative business proceeds smoothly, Ontario's three

party House Leaders routinely meet before a new parliament in order to negotiate changes to House Standing Orders, budgets and schedules. Ontario's situation in 1999 was similar to the one faced by House Leaders at the House of Commons following the election of four Opposition parties in 1993. The smaller Assembly in Ontario

made these negotiations more interesting and of a broader scope than would normally be the case. When the House resumed in October 1999, successful negotiations resulted in changes including a reorganized Question Period rotation and a reduction in both quorum and the number of Standing Committees.

All parties took this wide-open negotiating environment as an opportunity to propose reforms to make the contributions of individual MPPs more meaningful. In recent parliaments, backbenchers and opposition MPPs alike had found themselves spending more and more debate time in the Chamber in an increasingly partisan and polarized environment. Obviously, all parties shared a common desire to ensure that legislative time is "quality time," producing tangible results for Ontario taxpayers and a more fruitful and fulfilling experience for all members.

## **Preliminary (First Reading) Committee Hearings**

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In Ontario, as in most parliamentary jurisdictions, the life of a bill begins with its First reading introduction followed by the motion for Second reading and the resulting debate and decision on that motion. Upon the passage of Second reading, the principle of the bill is fixed. Any amendments now considered in Standing Committee or Committee of the Whole House, must adhere to the principle of the bill now established. Second reading debates on government bills traditionally include a speech by the Minister, or the Minister's repre-

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sentative, and protracted, partisan exchanges that stake the political ground of opposing views of the greater good. Often, by the time Second reading is complete, the Minister's and Opposition's positions are entrenched.

It seems part of human nature that once we publicly state an opinion, a change of position becomes more difficult. Allowing for committee consideration before Members go on record during Second reading debate may on occasion lead to a broader and uninhibited discussion in the committee itself, and a more informed debate at Second reading. Major adjustments are more difficult once Second reading is complete and the principle of the bill has been approved.

Ontario's new tool to avoid, at least on occasion, these pressures provides the Government House Leader with the power to send legislation to a Standing Committee before Second reading debate has begun. This committee stage allows for debate, public consultation and possible amendment of the legislation before the principle has been fixed. In theory, the debate at this committee stage could be broader than committee after Second reading, offering individual members more significant input into the legislation. All parties have greater flexibility to accept early changes without losing face. At the same time, ministerial responsibility is not compromised since the Minister continues to be responsible for the legislation ultimately carried forward.

Ministerial responsibility is also protected by the fact that no House time has yet been used on the legislation. One aspect of ministerial responsibility is to ensure all the important legislation necessary for governing the Province is considered and passed and that the promised agenda is completed within the mandate. This means House time is at a premium and a Minister cannot afford to spend days of debate on a bill, only to see it dismantled by a committee into a form that it is no longer consistent with government policy. Traditionally, establishing the principle of a bill at Second reading is the strongest protection against this happening. When a bill is sent to committee after First reading, the Minister runs the risk of having a radically altered product reported back to the House. There are fewer disincentives to taking this risk if no valuable House time has yet been expended on the bill. Indeed, early committee consideration could expedite the subsequent life of the bill if an improved and more broadly understood bill is reported back.

Other Canadian jurisdictions have rules with similar provisions to allow earlier committee consideration of legislation, but Ontario's is unique. Ontario's procedure should not be equated with the House of Commons' procedure which allows the Government House Leader to send legislation to committee shortly after Second reading debate has begun. This federal process allows for a

limited debate at Second reading (180 minutes), effectively shortening the subsequent stages of a bill's consideration. Ontario's preliminary committee provision in no way shortens the ensuing stages of a bill. After preliminary committee concludes, the bill proceeds to a normal Second reading and subsequent stages. Backbench Government and Opposition members do not lose House debate time as a result of this new standing order. In fact, if no co-operation is forthcoming, engaging in an early committee consideration could prolong the overall process for the Government.

Neither is the Ontario procedure similar to Saskatchewan's Non-controversial bills committee. Preliminary committee hearings in Ontario are conducted by a normal Standing Committee, with membership in rough proportion to that of the House. There is no presumption that bills sent to committee under this procedure are non-controversial. At the same time, it is fair to say that non-controversial bills are well suited to preliminary committee consideration and may often be the subject of the First reading committee process.

The first test of the new provision came when the Standing Committee on Regulations and Private Bills began conducting hearings on a bill to regulate franchised businesses (*The Franchise Disclosure Act*). Franchises are a popular business form in Ontario but are relatively unregulated compared to other business structures. The *Franchise Act* is an experimental step into a broad new area of law for Queen's Park. These features make the bill an ideal beneficiary of the sort of less-partisan head start that the preliminary hearings provision can provide.

### **Committee-Made Legislation**

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In 1989, Ontario's Parliament offered MPPs a new channel through which to initiate debate by adopting what was most recently, Standing Order 124. Through the Order, any individual committee member, on behalf of his or her caucus, could direct a committee to research and consider certain issues. Though limited to one topic of study per year per caucus, when initiated, the committee was compelled to proceed with the proposed subject of inquiry, effectively holding the entire committee hostage to debate a particular partisan project.

On paper, this process was structurally similar to the testimony-heavy committee hearings a visitor would expect to see in the U.S. Congress. But just as congressional systems seem incapable of harbouring strong party discipline, so too did the partisan political culture of Ontario's parliamentary system warp the introduction of this seemingly congressional process. While the Standing Order was designed to facilitate careful debate where an issue needed thoughtful, multi-partisan study, the rule

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evolved into a tool for partisan “photo-opportunity” hearings and an additional forum to pursue a partisan agenda.

Ten years later, the house leaders agreed to replace this old process with a new Standing Order 124 (see inset). MPPs can now initiate legislative research on an issue with the support of 2/3 of the committee’s membership. Caucus driven topics forced onto the committee agenda are replaced by member initiated projects which can only be pursued through cross-party cooperation. Cooperation does not go un-rewarded. Where there is agreement to proceed with consideration of a topic, the participating committee members can now replace parliamentary talk with legislative action. With the continued support of the committee, study can result in the drafting of legislation and an order for the committee Chair to bring legislation onto the floor of the House.

Where the old process encouraged MPPs with showmanship skills, the new system rewards consensus-builders who can offer their colleagues ideas too constructive to turn down. In fact, the Order was written to force an MPP to gain the support of 2/3 of the Committee precisely because that was the threshold needed to guarantee multi-party participation.

While an individual MPP can set this new legislative drafting process in motion, the support of other members is needed to complete it. At present, Ontario’s committees (excluding the chair) are made up of 4 Conservative, 2 Liberal and 1 New Democrat MPP. With this committee structure in place, even if MPPs stick closely to party lines, the 2/3 threshold forces members to think and work across party lines. Even a united opposition must win some government support, and government backbenchers must gain some opposition support, before the new standing order can be effectively used to propose bills.

Once it is moved out of committee, a committee-sponsored bill will be treated procedurally as a private Member’s bill, with one exception. Such a bill is guaranteed to receive Second reading debate time from the Government House Leader. Normally, a private Member’s bill only receives Second reading debate during the limited time reserved for that purpose on Thursday mornings. Guaranteed Second reading time during Orders of the Day rewards the committee members and the bill’s original author(s) for building a multi-party base of support, whether or not the sponsors of the bill are in government or opposition. To further “reward” the willingness to build bridges across partisan lines, any member of the committee who supports a committee-sponsored bill can choose to act as a “co-author” of the bill and attach their name to it as a sponsor.

Multiple Members being able to identify a bill as their own is a particularly important innovation for the success of this project. A strong majority government with strong party discipline is the rule rather than the exception in Ontario, and most House time is reserved for priority government bills. Private Members’ bills, authored by a single Member, traditionally have little chance of success. Part of this can be attributed to limited House time. Part is a by-product of ministerial responsibility; members of the Executive will always be cautious about implementing measures not of their own Ministry’s design. For private Members’ bills to be successful, they usually need to have cross party support and be encouraged by numerous members. These new committee bills build this kind of support into their drafting process and the subsequent debate, thereby enhancing their ultimate chance at successfully completing Third reading.

***The new standing order 124 is designed to bring backbench and opposition MPPs at least one avenue to use that creativity as constructively as possible.***

While the new Standing Order is an important reform, it must still work within the context of Ontario’s overall parliamentary system. Ministerial responsibility must be preserved and therefore committee bills continue to be more like private Members’ bills than government bills. This assurance is necessary to balance attempts to empower independent members with maintaining the necessary level of control for the members of the Cabinet who are ultimately accountable for the management of the Province and its laws.

Committee bills, like private Members’ bills, are limited by the provision that they cannot impose a tax or specifically direct the allocation of public funds. The members of the Executive are held responsible and accountable for any expenditure authorized by the Legislature, and so they will still hold the exclusive right to introduce money bills. In addition, because the Executive is ultimately responsible for any resulting new statute, Cabinet, through the Government House Leader, retains control over the call for Third reading.

These amendments to Ontario’s parliamentary procedures are an attempt to empower individual members within a system where parties dominate, while preserving the tenets on which our system is based. Like all experiments and attempts to inspire change within an entrenched institution, it is an uphill battle and there is as much chance for failure as success. But ours is an ever

changing and evolving society and we should allow our institutions to evolve as well. I am optimistic that the balance created within these new committee procedures can benefit Members and ultimately provide another inno-

vative means by which to develop legislation for the taxpayers of Ontario.

### **Standing Order 124 (actual text after amendment, 1999)**

#### *Members designate matters for consideration in Committee*

124 (a) Once in each session, for consideration in that session, each permanent member of a Committee set out in Standing Order 106(a) or (b) may propose that the Committee study and report on a matter or matters relating to the mandate, management, organization or operation of the ministries and offices which are assigned to the Committee, as well as the agencies, boards and commissions reporting to such ministries and offices.

#### *Notice of motion*

##### *Consideration of motion*

(b) Notice of a motion by a member under this Standing Order shall be filed with the Clerk of the Committee not less than 24 hours before the member intends to move it in a meeting of the committee. The Clerk of the Committee shall distribute a copy of the motion to the members of the Committee as soon as it is received. Whenever a motion under this Standing Order is being considered in a committee, discussion of the motion shall not exceed 30 minutes, at the expiry of which the Chair shall put every question necessary to dispose of the motion and any amendments thereto.

#### *Adoption of motion*

##### *Limitation on consideration*

The proposal of a member for study and report must be adopted by at least two-thirds of the members of the Committee, excluding the Chair. Such study in the Committee shall not take precedence over consideration of a government public bill.

#### *Report to House*

##### *Report may contain text of bill*

(d) Following its consideration of such a matter, the Committee may present a substantive report to the House and may adopt the text of a draft bill on the subject matter. Where the text of a draft bill is adopted by the committee, it shall be an instruction to the Chair to introduce such bill in his or her name, as the primary sponsor. The other committee members who support the bill may have their names printed on the face of the bill as the secondary sponsors.

##### *Time for debate*

(e) There shall be not less than one Sessional day, or 3 hours, of debate in the House on such a bill, to take place at a time or times allotted by agreement of the House Leaders of the recognized Parties.