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# *An Introduction to Procedure in the House of Commons*

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by Terry Moore

*Some knowledge of procedure is necessary to be an effective Member of Parliament or staffer. To assist new Members and staff to get up to speed on procedural issues, the Library of Parliament, in co-operation with the House of Commons, offered some orientation sessions prior to the opening of the 37<sup>th</sup> Parliament. This is a revised version of a presentation for new Members and staff held on January 24, 2001.*

Let me begin by outlining the three functions of the House of Commons. The primary function is to participate in the legislative process through the discussion and passage of both government and private Members' bills. Legislation is debated, changes may be proposed and in the end the House decides in favour of or against the measure.

A second function is to scrutinize or criticize government action. There are many ways this is done including the 45-minute daily question period, with oral questions and also by means of written questions. The former is usually more about politics whereas the latter is used to seek out detailed information from the government. A Member may submit a total of only four written questions at a time. He or she can ask that the government respond with a written answer within 45 days. Written questions may also be answered orally in the House. However, if the answer contains a great deal of information, the Minister or Parliamentary Secretary will usually request that the answer be provided in writing. Written answers are printed in the *Debates*.

If the written question is seeking a lot of detail about many departments, it might take longer than 45 days and often the delay leads to Members asking questions in the House about the delay. The Minister or Parliamentary Secretary may reply that it takes a lot of research to pro-

vide the information. As there are no penalties in the Standing Orders if the Government fails to meet the 45-day deadline, it is a matter of continuing to press the Minister or Parliamentary Secretary for an answer.

If a Member is not happy with the answer received in Question Period or with a delay in the reply to a written question, he or she may request the issue be taken up during the adjournment debate. This takes place on Mondays to Thursdays from 6:30 to 7:00. At that time there are five 6-minute exchanges between Members and Ministers or Parliamentary Secretaries. The Member can speak for four minutes and the Minister or Parliamentary Secretary replying gets two minutes.

Another way to scrutinize the government is to ask for documents. This is known as a notice of motion for the production of papers. The Member asks the government to supply a document that falls within their departmental mandate. The actual procedure for doing this is described in the Standing Orders and there are people in the Journals Branch who can help you with this procedure, which can be a bit daunting for new Members.

Members may also seek documents through the *Access to Information Act* but that is governed by a separate statute and is a process completely outside of parliamentary procedure. Parliamentarians use the same process as ordinary citizens. We are seeing more examples of Members using both avenues to request information and sometimes, believe it or not, the answer obtained to the same question from the two procedures can be different.

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Information can also be obtained by using a petition, which requests the government to take certain action and provide a response to any petition presented. The public petition process is laid out in the Standing Orders and, once again, the Journals Branch or the Private Members' Business Office can help new Members and staff to become familiar with this process.

Another major function of Parliament is to authorize the spending and raising of public monies. However, this article will not go into detail about financial procedures nor will it look in depth at the committee system which has a special role in scrutinizing government both by calling witnesses and in presenting reports which the government may be required to respond to within 150 days. I will focus on the principles of parliamentary procedure and look at some aspects of the legislative process in the Chamber.

### **Some Principles of Parliamentary Procedure**

The first principle of parliamentary procedure is that discussion and debate in the House are intended to lead to a decision. Debate on the motion for second reading of a bill or on a resolution will normally result in a decision being taken either to approve or reject the item.

The second principle is that the Speaker of the House of Commons, an impartial official, presides over the deliberations of the House. The Speaker makes sure that the rules are obeyed and that there is a flow to what goes on in the House.

***Procedure is meant to be the servant and not the master of the House. The House can, at any time, change its rules or procedures if it finds that something is not working.***

The third principle is that debate and discourse in the House is to be free and civil. It is free in the sense that Members can say what they want on the floor of the House or in committee in debate, and their speech is protected by parliamentary privilege from prosecution for libel. The notion that debate shall be civil gives rise to a number of peculiar customs. For example, a Member may not refer to another Member by name. You must always use a title such as Minister of Justice, Parliamentary Secretary or simply the Honourable Member for such and such a riding. The idea is to depersonalise debate and focus on the fact that Members are sent to Ottawa as representatives and they do not necessarily speak in their own name or for their own interests. In theory, one Member is supposed to present an argument that will con-

vince other Members of the correctness of that view. In practice, of course, party positions are often presented. Nevertheless, Members are expected to be civil, if not polite, to each other and it is up to the Speaker to ensure that civility is respected.

Another principle, perhaps the most controversial one, is that there be a balance between the government's right to get its legislation through the House and the opposition's right to discuss it. While everyone may agree on the objective, it is often difficult to find agreement on what constitutes sufficient debate on a particular item. As a result, there are mechanisms in the Standing Orders that allow the Government to truncate the length of debate in order to proceed to a decision. This usually upsets the opposition.

### **The Sources of Parliamentary Procedure**

There are basically four sources for parliamentary procedure. The first is the Constitution and statutes. Among other things, the Constitution provides that the quorum for the House is twenty Members. Thus it is beyond the power of the Members or the Speaker to say that the quorum shall be different. To change this would require a constitutional amendment. Among other things, the Constitution also provides that decisions in the House are taken by simple majority, not two thirds or any other majority, and that the first item of business at the opening of a Parliament be the election of a Speaker. (It does not describe the manner by which one is elected.)

The second source is the Standing Orders. These are the written rules of the House. They stay in effect from Parliament to Parliament and session to session until the House decides to change them. Here we find such things as how long a Member may speak in debate, the number of opposition days, the procedure for private Members business, the parliamentary calendar and pretty much everything about how the House runs. The House may also go outside the Standing Orders and adopt Special Orders, usually by unanimous consent.

The third source is practice. These are ways of doing things are not found in the Standing Orders. Question Period is a good example. The rules provide only that there shall be a question period, how long it will last and when it will take place. Practices, such as allowing the Leader of the Opposition the first question and two supplementaries are not found anywhere in the Standing Orders. These are practices that are followed by the Speaker usually following agreement of the House Leaders of all parties. In the last Parliament, by agreement, there was a strict time limit – 35 seconds – for questions and the same amount of time for answers in order to allow as much participation as possible in Question Period.

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The final source of parliamentary procedure is found in the rulings of Speakers. These decisions allow everyone to determine how to interpret the procedures. Not only do we have several volumes of Speakers' Rulings, but if you look at the footnotes (some 6000 of them) in the recent book *House of Commons Procedure and Practice*, many relate to Speakers rulings because these deal with the day to day task of interpreting the rules.

### **The Legislative Process**

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The first thing to remember about the legislative process is that you must give notice. The House does not want to be caught by surprise when it has to make major decisions. If you want to bring a bill forward you have to give 48 hours written notice. Your notice is sent to the Journals Branch, where it is printed in the *Notice Paper and Order Paper*, the official agenda of the House. This applies to both government and Private Members' bills. For certain motions there is a requirement for a 24-hour notice. Sometimes oral notice is required as in the case of time allocation that the government may want to bring in for a stage of a bill. Notice can be waived by unanimous consent and this is done frequently to speed up business. However, a single Member can withhold consent, necessitating a return to the notice provision provided in the Standing Orders.

For all the complex legislation that the House deals with, we still transact business in a very simple way – by way of a motion, which, when put to the House in the form of a question, solicits an affirmative or negative answer. In other words you are always being asked to vote for or against a particular motion. For example, shall this bill be read a second time and referred to committee. No matter how complex or simple the underlying issue, the Speaker always asks a simple question – Is it the pleasure of the House to adopt this motion? And the House responds yea or nay. A bill can be huge and the ideas very complex but technically what the House is voting on is always a motion. If you do not like the terms of a motion you usually have the possibility of introducing an amendment to that motion. Generally, the rules allow the moving of one amendment and one sub-amendment at a time. The House decides on changes in reverse, dealing with the sub-amendment, then the amendment and then the main motion. Not all decisions require a formal vote. Frequently the Speaker will ask for yeas and nays and based on the response will declare a motion carried or defeated. On routine matters you may hear nothing before the Speaker declares the fate of a motion. However, if when the Speaker puts the question to the House, five members rise in their places to demand a recorded vote, then a recorded vote will take place.

As I mentioned previously, time is one of the real dilemmas faced by parliamentary reformers. The government wants the House to decide on its legislative items quickly, the opposition wants more debate. To address the problem of time we have fixed daily, weekly and yearly schedules. So the total time available to the House is limited. This means the government is always trying to find ways to speed things up. To try and accommodate all the demands of the government, the opposition parties and 301 Members, the Standing Orders lay out all kinds of time limits on speeches. Generally, Members can speak for 20 minutes in debate. This is followed by a 10-minute question and comment period. There are exceptions. The Prime Minister, the Leader of the Opposition, a Minister moving a government order and the first Member speaking after the Minister have more time. For some debates, there is a ten-minute limit for all speakers.

There are several ways that debate may be curtailed. The first and most frequently used is called time allocation. This only applies to the stages of bills (S.O. 78). This should not be confused with closure (S.O. 57), which can be used for any motion before the House, not just bills. Closure is used much less frequently.

Another way to stop debate is to move the previous questions: "That the question be now put". When that is moved it means you cannot have any further amendment to the motion being debated.

### **How a Bill Becomes Law**

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Before a government bill is ever introduced in Parliament it has gone through many steps in the originating department, scrutiny by the Cabinet and by the Privy Council Office. Government bills are drafted by the Department of Justice. Drafting in Canada is very interesting in that bills are not drafted in one language and then translated. They are drafted simultaneously by both French and English speaking lawyers and both versions of the law are equally valid. A private Member of Parliament who wants to introduce a bill is well advised to go to the Law Clerk and Parliamentary Counsel of the House whose staff will prepare the bill. If a bill is going to spend money it will require something called a Royal Recommendation which can only be obtained by a Minister. This is obviously very easy for the government to obtain but usually very difficult for a private Member whether he is on the government side or the opposition side. It is possible for a spending bill to be introduced and debated without a Royal Recommendation provided the Recommendation is obtained before third reading. Bills that propose to raise taxes require a Ways and Means motion, which again can only be obtained by a Minister.

Once the bill is ready and notice has been given, it can be introduced by the Member any day during routine proceedings. Introduction and first reading are pro forma. There is no vote and no debate. The sole purpose of first reading is to get the bill printed and distributed. Government Bills are numbered C-1 to C-200. Private Members' Bills are numbered C-201 to C-1000. Senate Bills are numbered as they are introduced starting with S-1.

Second reading is a major step as it constitutes debate on the principle and object of the bill and referral to committee. The motion for second reading is amendable although only certain types of amendments may be moved. One of these is the hoist which moves that the bill not be read now but 3 months or 6 month hence. If adopted it means that the bill is dead. A second type of amendment is known as the reasoned amendment which moves that the bill not be read because it is a bad idea and you explain why it is a bad idea. Once again this kills the bill. A third type of amendment is a motion to discharge the bill, which means that the bill is finished but the subject matter may be referred to a committee.

If the bill is adopted at second reading it goes off to a committee where witnesses may be heard and the details of the bill are examined clause by clause. Here the text of the bill can be amended. Once the bill is adopted by the Committee, with or without amendments, it is reported back to the House for report stage. This is an opportunity for all Members of the House to amend the text of the bill. In the last Parliament, the report stage of a few controversial bills led to several all night sittings as the House voted on hundreds of amendments proposed by Members.

Once report stage has been concluded, the bill goes to third reading, which is the last chance to debate the bill. Amendments are limited to reasoned amendments, a hoist or a motion to recommit which means the House is asking that the bill be sent back to committee for further study. If the bill is adopted at third reading it then goes to the Senate where it follows a similar, although not identical process. (For example there may be no report stage if a committee has not amended the bill. However, Senators can amend the text of a bill at third reading)

The Senate rules provide for a procedure called pre-study which allows a committee to study the subject matter of a bill before the actual bill is sent to the Senate by the House of Commons. Thus when a bill arrives, even if it is very complicated, the Senate may deal with it quickly since the committee is already familiar with the content, has heard the relevant witnesses, and considered the issues.

Assuming the Senate adopts the bill in exactly the same form as did the House of Commons, then the bill

goes on to Royal Assent. If the Senate amends the text of the bill it must be sent back to the House. In that event the Minister, (or the private Member if it is a Private Member's bill) gives written notice of a motion describing how he or she intends to respond to the Senate changes. When called for debate, this motion is amendable and votable. If the changes are acceptable, then they are adopted by the House and the bill goes for Royal Assent. The changes can also be rejected, or some changes can be accepted or amended and others rejected. In this case the bill is then sent back to the Senate and this process continues until an identical text is adopted by both Houses or the bill is left on the *Order Paper* with no further action.

There is provision in the Standing Orders for a conference of Members of the two Houses to work to resolve impasses over the wording of a bill, but this is rarely used – the last time being in 1947. Of course the Senate can also defeat any bill, as can the House.

Let me conclude with a few words about Royal Assent. We are one of the few Parliaments left where the Royal Assent ceremony takes place in Parliament. Even the British have gone to a much simpler procedure. In Canada the Crown and the two Houses of Parliament meet in the Senate Chamber for Royal Assent. The Governor General or her Deputy, a Supreme Court Justice, gives a nod of the head when the title of the Bill is read and that constitutes Royal Assent. The simple nod turns a bill into an Act of Parliament and a Statute of Canada. However, that does not mean the Act is now in force.

If there is no clause relating to proclamation, the Act comes into force on midnight of the day Royal Assent is given. However, many bills contain a clause setting a date when the bill will come into force, which may be a month or a year or even longer in the future. It may even be retroactive as is often the case for tax legislation. A final way for a bill to be proclaimed is by Order in Council. Such Orders are published in the *Canada Gazette*. Some bills with multiple parts may come into force in all three ways, immediately, on a specific date and by Order in Council.

Of course it is not possible to cover all aspects of parliamentary procedure in a short article. The committee system, Private Members' Business, parliamentary privilege and many other topics would require much more elaboration. Insofar as procedure in the Chamber is concerned, the Table Officers are available to assist Members to understand the rules. Publications in both written and electronic format are available. Both the House and the Library of Parliament have staff members who can help new or returning Members learn more about parliamentary procedure.