
Can the Private Member Make a Difference?

by David McNeil

What are the consequences when private members are provided a greater opportunity to introduce legislation which reflects their constituents or their personal perspectives on particular issues and the probability of that legislation being passed is significantly increased? This article explores this question in light of Alberta's experience over the past eight years following changes to the Standing Orders in 1993 relating to private members' business.

Following the 1993 General Election in Alberta which saw a significant increase in the size of the Official Opposition, Premier Ralph Klein and the then Leader of the Official Opposition, Laurence Decore reached an agreement to explore possible changes to Standing Orders which would allow greater participation by private members in the business of the House. Subsequently, the House Leaders, Ken Kowalski (now Speaker of the Legislative Assembly) and Grant Mitchell (subsequently Leader of the Opposition) developed a series of proposals to give effect to this objective.

A number of changes were made to Alberta's Standing Orders in 1993 which impacted on the role of the Private Member. Prior to 1993 Private Members' Public Bills were each debated for one hour at second reading and then dropped to the bottom of the Order Paper, never to be considered again unless they were taken up as Government Bills. Time limits were established within which a Bill must be considered at various stages. Private Members' Public Bills now maintain their place on the Order Paper until debated for a specified length of time at each stage unless voted upon sooner. The times are Second Reading – 120 minutes; Committee Stage – 120 minutes and Third Reading – 60 minutes.

In addition to changes in Standing Orders, an agreement was reached between House Leaders respecting Private Members' Business which among other things – encouraged free votes by committing to the conduct of Private Members' Business free of whips. This agreement applied during the life of the 23rd Legislature.

Consequences

There have been a number of consequences, both intended and unintended, arising from these changes. For example, a significant percentage of bills debated are being passed in comparison to the experience prior to the changes in Standing Orders. Secondly, the potential of passage has created increased emphasis on the quality of legislative drafting. As a result, fewer bills are being drafted and introduced as drafting resources have not been increased. As shown in Table 1, since the Standing Order changes were implemented, only bills sponsored by private government members have been passed.

The trend towards cross-party voting established in the two years following the Standing Order changes continued.

Given the success rate for members of the Government Caucus in the passage of Private Members' Public Bills, the obvious question is whether these bills reflect the wishes and intentions of the individual member or do they reflect the wishes of the Executive?

Bills range from those that will have little impact (*Emblems of Alberta Amendment Act, 1995*) to those with the

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potential of significant impact (*Limitations Act*). In reviewing the history of each of these pieces of legislation, I am confident in stating that very few of them were reflective of policies that the government was particularly interested in promoting at the time they were introduced. In fact, in a number of cases, the Executive seemed unaware of their implications until the legislative process was somewhat advanced.

A case in point was the consideration of the *Protection of Persons in Care Act*. While the bill was introduced and approved in principle in May of 1994, it was not considered in Committee until the House resumed sitting in the fall of 1994. By that time, the Department involved had become aware of its implications and a series of amendments were introduced by the sponsoring Member as a result of his consultation with departmental staff. The Bill was agreed to unanimously in October of 1994 and received Royal Assent. However, the bill was not proclaimed until January of 1998. In the interim, the sponsor of the bill introduced another series of amendments to the Act in the form of a government bill in the first session of the 24th Legislature (1997). The Bill was finally proclaimed in January of 1998.

Alberta's Private Members' Bills Procedure

Introduction	Order of Introduction determined by random draw. Once draw order is established, members may trade positions up to a certain date prior to session. Parliamentary Counsel guarantee drafting of 20 bills for introduction at beginning of session
Second Reading	Considered in numerical order on private members' business days
Committee Stage	Bill must be called in Committee within 8 sitting days of second reading passage
Third Reading	Bill must be called for third reading within 4 sitting days of being reported in Committee

The experience with this bill points out one of the major barriers to the successful passage of private members' legislation. That is the general lack of time and resources for the member to undertake the appropriate consultation with groups impacted by the proposed legislation. While the government caucus has introduced mechanisms by which the concepts of private members' legislation being proposed by their member is vetted by caucus

and the appropriate government standing policy committee, there is evidence that the speed of the process once debate commences on a bill at second reading does not allow for sufficient consultation with interested parties, especially the government entities who would be responsible for implementing the legislation. As a result, there have been a significant number of bills delayed or hoisted despite a significant level of support among members on both sides of the House.

Implications of Non-Successful Bills

While passage of a Private Members' Public Bill would seem to be an obvious measure of the success of the process, some of the consequences of the introduction and debate of legislation which does not pass may be as far-reaching. The following examples support this view.

In 1996, a Liberal member, Alice Hanson introduced Bill 214, *Victims of Domestic Violence Act*, which was directed at providing greater protection to victims of violence by establishing a mechanism for victims to obtain immediate protection orders from the courts. After receiving 120 minutes of debate at second reading with both opposition and government members strongly supporting the bill, it was approved unanimously. There was considerable positive press coverage at the time lauding the government's willingness to support the private member's bill on this issue. The Justice Minister was quoted as being a supporter. Shortly thereafter, the House adjourned the spring sitting of the Assembly.

When the House reconvened in August, the bill came up immediately for committee consideration. During the summer recess, the sponsor had consulted extensively with concerned parties and had drafted a number of amendments in cooperation with the Family and Social Services department which were purported to deal with concerns about the bill. However, after 61 minutes of consideration in committee, a government member moved that the Chairman do now leave the chair, effectively killing the bill in committee. The mover of that motion was quoted as saying that there had been insufficient time for consultation on the bill and that "With a Private Members' Bill, you are limited to a two-hour debate and that is just not enough, because everyone in Alberta is affected by this legislation." Subsequently there was extensive press coverage strongly critical of the government for dealing with the bill in this manner.

That was not the end of the story however. In 1998, a government bill, entitled *Protection Against Family Violence Act* was introduced and passed. This bill replaced essentially the same principle as the bill defeated two years earlier.

Table 1

Legislature/Session	# of Bills Introduced	# of Bills Debated	Govt Members' Bills Debated	Govt Members' Bills Passed	Opposition Bills Debated	Opposition Bills Passed
22nd 1st Session	56	10	1	1*	9	0
22nd 2nd Session	80	19	3	0	16	0
22nd 3rd Session	60	12	3	0	9	0
22nd 4th Session	114	19	6	0	14	0
23rd 1st Session	58	10	3	1	7	0
23rd 2nd Session	34	18	7	2	11	0
23rd 3rd Session	27	14	6	3	8	0
23rd 4th Session	25	17	7	3	10	0
24th 1st Session	19	9	7	3	2	0
24th 2nd Session	30	14	6	3	8	0
24th 3rd Session	29	12	9	3	2	0
24th 4th Session	19	8	6	3	2	0

* Introduced as a Private Members' Public Bill but moved immediately under Government Bills

The next year, a member of the government caucus introduced the *School Amendment Act, 1997*, which proposed amending the funding formula for accredited private schools increasing per pupil funding from 50% to 75% of that provided to public schools. The bill created extensive public controversy and highlighted obvious divisions within the government caucus on the issue. Given the firestorm that was created, the Minister of Education quickly announced a task force to consider the issue. Upon the announcement of the task force, the government whip moved a hoist amendment on the Bill, effectively killing it.

Table 2

Legislature/Session	Cross Party Divisions	Total Divisions
23rd 1st	2	6
23rd 2nd	7	16
23rd 3rd	3	7
23rd 4th	5	5
24th 1st	5	5
24th 2nd	3	11
24th 3rd	4	8
24th 4th	4	7

The task force, chaired by a government MLA with representatives from various interest groups held public hearings and received briefs from the public over a six

month period. In March 1998, the task force came forward with a proposal for increasing the level of private school funding from 50% to 60% of the standard per pupil grant. The government immediately adopted the proposal. It was interesting to note that the Conservative Party convention in the fall of 1997 had voted to cut off all funding to private schools.

The final instance relates to *Workers' Compensation Amendment Act, 1998* which proposed: 1) lifting the bar against legal actions involving transportation accidents caused by negligent third parties who are also covered by workers' compensation legislation and 2) introducing the concept of a medical panel where conflicts in medical opinions exist.

The introduction of this bill brought immediate and negative public response from the Workers' Compensation Board and some employers, especially in relation to the first objective of the bill. Given members extensive involvement in workers' compensation issues, the bill generated extensive debate in the House and received strong support at second reading after 120 minutes of debate. With approval in principle, debate on the issue outside the House appeared to escalate. The WCB issued a newsletter critical of the bill. The sponsor responded in the House by suggesting that the WCB was strongly planting fears among employers as to the implications of the bill.

In committee, the sponsor requested and received permission to delay further consideration until a certain date in order to consult more extensively with the Board, employers and clients. Upon resumption of debate in

committee, the bill was reported from committee after 104 minutes of debate and scheduled for third reading consideration as per the requirements of Standing Orders. With the stakes raised with the bill essentially unchanged out of committee, there was increasing lobbying and press coverage on the issue. It seems there was great pressure on the sponsor to have the bill hoisted while the member was insisting that it be passed and that further consultation take place before proclamation.

During third reading debate, a letter was tabled in which the Workers' Compensation Board indicated that they would be implementing the less contentious of the bill's two principles. After 22 minutes of debate at third reading, a six month hoist was approved by the House, effectively killing the bill.

The three cases cited above indicate clearly that the number of bills passed should not be the only criteria used in assessing the impact of this change in procedure.

Procedural Issues

In dealing with the new rules for the handling of private members' legislation, the Table has been faced with some interesting procedural issues. One of the first issues was that of determining the appropriate procedures to handle the Committee of the Whole's desire to defeat a bill in committee. This issue caught us somewhat unaware the first time around.

Another issue that continues to come forward relates to the speed with which the bills are dealt with once they come up for second reading. We have had to give advice with respect to both slowing down or delaying the process as well as speeding it up. We have had to help members distinguish between a hoist amendment and its consequences and dilatory motion which requests a specific time delay in considering a bill.

The third issue which has arisen on at least two occasions is that of having both a government bill and a private member's bill on the Order Paper which contain essentially the same provisions. In both instances the government bill received second reading prior to consideration of the private member's public bill resulting in Speaker's rulings removing the latter from the Order Paper. In the most recent case, it appeared that there might be a race to the wire as to which bill would first come to a vote at second reading. Had the private member's public

bill done so and been defeated, there would have been a fierce battle as to whether the government bill which implemented a tuition cap for post-secondary institutions would have had to been removed from the Order Paper.

Conclusion

The following are some comments received from a survey of Alberta members the majority of whom were elected prior to 1993 and are in the best position to comment on the impact of the Standing Order changes.

- Prior to 1993, private members' public bills were used to put forward ideas. Details in bills were loosely written. After 1993, the process is much more serious. It allows the private member to deal with certain issues that government departments seem reluctant to. Gives the private member some power to influence Ministers on certain issues. Members are now more covetous of their draw positions. It is a significant improvement but there are risks of moving ahead too quickly without appropriate consultation.
- Has worked well. The rush of the clock is a problem. Gives the private member a serious opportunity to bring forward concerns that have to be dealt with. Brings good ideas forward. There is a danger that the government could use the private members' public bill process as a form of closure. Private members have forced ministers and departments to take notice.
- Has allowed private members to get into detail on legislative changes. Adds to the democratic process.
- Believe it is extremely valuable. Ministers not involved early enough in the process. Gives every member the opportunity to put forward gut issues and realize results. Otherwise, the private member can be frustrated. It is a valuable and important process.

It would appear that changes in how private members' legislation is dealt within the Alberta Legislative Assembly has led to the empowerment of private members. Not only do they have a forum in which to put forward their ideas and debate, but the possibility of their ideas being translated into law is significantly enhanced. Even if members are not successful in having their legislation passed, there is strong evidence that the process enables them to obtain concessions on issues relating to their legislative proposals.