# *Modernisation of Royal Assent in Canada*

**by Jessica J. Richardson**

*In June 2002 the Canadian Parliament passed a bill to allow for a new written declaration procedure to be used for royal assent. The Royal Assent Act was passed to facilitate the work of Parliament by enabling royal assent to be signified by written declaration while preserving the use of the traditional ceremony. The Act requires that the formal royal assent ceremony in the Senate Chamber be used at least twice each calendar year and in the case of the first appropriation bill of each session of Parliament. In all other instances, royal assent may now be signified by the Governor General or her Deputy by written consent. This Act modernizes the royal assent procedure in Canada, the last Commonwealth country to do so, while maintaining an important link to historical parliamentary practices through the continued use of the royal assent ceremony. This article looks at the history of royal assent, previous attempts to modernize the procedure and a detailed look at the new process.*

Royal assent is the final stage of the legislative process, the formal process by which a bill passed by both Houses of Parliament becomes law. It is only once royal assent has been given to a bill that it becomes an Act of Parliament and part of the law of Canada. In addition to being an important part of the legislative process, royal assent as a practice has strong symbolic significance in Canada. It is the moment during the legislative process when the three constituent elements of Parliament (the House of Commons, the Senate and the Crown) come together to complete the law-making process.

> "The time of Royal Assent is when the Queen-in-Parliament makes law. Then the representative of the Crown personifies the nation; the Senate embodies the federal principle; and the Commons represents the people through their representatives."[1]

As such, royal assent is an expression of the very essence of constitutional parliamentary democracy as it exists in Canada.

Traditionally, royal assent has been granted in Canada in the following manner: once a bill has been passed in the same form by both the Senate and the House of Commons, the Governor General as representative of the Crown attends Parliament in the Senate Chamber. The Members from the House of Commons are then summoned by the Usher of the Black Rod to the Senate. Once all parties are present, the bills that are to receive royal assent are presented to the Governor General or a Justice of the Supreme Court of Canada acting as Deputy of the Governor General. The formal request is made in the following manner: "May it please Your Excellency: The Senate and the House of Commons have passed the following Bill, to which they humbly request Your Excellency's Assent", the title of the bill is then read and the

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Governor General or her Deputy signifies assent by a nod of the head.

## History of Royal Assent Procedure

The practice of signifying royal assent to bills passed by Parliament began during the reign of Henry VI, (1422-71) when the practice of introducing bills in the form of petitions was replaced by bills in the form of complete statutes. The Sovereign would attend Parliament in the House of Lords and give his consent in person. This practice was continued until 1541, when the task of signifying royal assent was assigned to a Royal Commission in order to spare King Henry VIII the indignity of having to give royal assent to the Bill of Attainder, which provided for the execution of his wife Catherine Howard. From this occurrence, the practice of appointing Lords Commissioners responsible for giving royal assent developed. In the United Kingdom, the last instant of a monarch giving royal assent in person was in 1854 when Queen Victoria personally assented to several bills prior to proroguing Parliament. However, in Canada, King George VI gave royal assent in person to bills passed by the Canadian Parliament in 1939 during a visit to Canada. The use of a royal assent ceremony continued in the United Kingdom until 1967, when the British Parliament passed the *Royal Assent Act*. This Act allowed a simple report of royal assent by the Speakers of the two Houses to give a bill the force of law.[2]

**The traditional Royal Assent ceremony in the Senate, March 2002**

The royal assent ceremony in Canada was inherited from the United Kingdom tradition and was used prior to Confederation in both Lower and Upper Canada. It is said to closely resemble the original ceremony used in the United Kingdom. The rules for royal assent in Canada come directly from the rules that were in effect in the United Kingdom in 1867. Prior to adoption of this new procedure in 2002, Canada was the only remaining Commonwealth country to still use solely the traditional ceremony for royal assent.[3] In consideration of modernizing the Royal assent procedure, consideration was given to various procedures and practices used by other Commonwealth countries, as well as several Canadian provinces. In both Australia and New Zealand, a royal assent ceremony has not been used in several decades. Both countries have long adopted a written declaration procedure. Within Canada, the provinces of Ontario and Quebec both use procedures whereby the Lieutenant Governor gives royal assent in their offices by way of written declaration.[4]

## Efforts to Modernize Royal Assent Procedure

The continued use of solely a formal royal assent ceremony became to be seen as time-consuming and disruptive to the work of Parliament. As such, various Senators and Members began to ask for the modernization of the royal assent procedure so as to eliminate the frequent interruptions to the work of the two Houses. Consideration of modernization of the royal assent procedures in Canada began in the both Houses of Parliament in the early 1980s. In April 1983, a notice of inquiry was tabled in the Senate by then Deputy Leader of the Government, Senator Royce Frith concerning the advisability of establishing alternate procedures for royal assent. This lead to debate in the Senate about possible alternatives to the formal royal assent ceremony, but did not result in any recommendations by the Senate for change. This was followed two years later by the Second Report of the Special Committee on Reform of the House of Commons (commonly known as the Magrath Committee), which recommended that a formula be adopted for royal assent to be given in writing while preserving use of the formal ceremony at the pleasure of the Governor General on the advice of Her Ministers. This recommendation was subsequently supported by both the government of the

day, which indicated in its response to the report the desire to modernize the procedure for signifying royal assent, and the Board of Internal Economy which also expressed its support of the Magrath's Committee recommendation.

In the same year, 1985, the Senate Standing Committee on Standing Rules and Orders also presented its Fourth Report which recommended that a simplified procedure be adopted while retaining use of the formal ceremony at certain times. These recommendations were debated in the Senate in November 1985 and January 1986. This eventually led to the introduction of a government bill, Bill S-19, in 1988, which included several of the Committee's recommendations. However, this bill only made it to second reading where it was debated just prior to the dissolution of the Thirty-Third Parliament.

In the early 1990s, attempts to modernize the Royal assent procedure were revived. First, in 1993, the Standing Committee on House Management tabled its Eight-First Report, which included recommendations for the modernization of royal assent procedure. The recommendations made were almost identical to those in the earlier Magrath Report. As with previous recommendations however, these did not result in the adoption of new procedures.

Five years later, on April 2, 1998, the Leader of the Opposition in the Senate, Senator Lynch-Staunton, introduced a bill, Bill S-15, which provided for the use of a written declaration procedure for signifying royal assent. This bill was very similar to the government bill from ten years before. Unlike its predecessor a decade before, this bill would make it past second reading when it was referred to the Senate Standing Committee on Legal and Constitutional Affairs on June 9, 1998. The Committee reported the bill back with amendments 9 days later. After further debate, the bill was withdrawn. In the following year, Senator Lynch-Staunton introduced another bill, S-26, which mirrored the previous bill as amended by the Committee. Regrettably, this bill did not make it past first reading.

Finally, in October 2001, Bill S-34 was introduced as a government bill in the Senate. This bill was in substance the same as the previous Bill S-26 except for minor technical and editing changes. During consideration of Bill S-34, as with consideration of Bill S-26, concerns were raised as to the trend towards sparsely attended ceremonies and the lack of understanding by Canadians of the work of Parliament in general and the importance of royal assent in particular. These concerns were addressed in the Report of the Senate Standing Committee on Rules, Procedures and the Rights of Parliament on Bill S-34, which included several observations based on the Committee's belief in the need to preserve the importance of royal assent and improve public awareness and understanding of Parliament's law-making functions. The Committee urged that measures be taken to enhance the public visibility, as well as the constitutional and symbolic significance of royal assent. The Committee recommended that when a traditional ceremony is used that both the Governor General and the Prime Minister be in attendance so as to demonstrate to the Canadian public the fundamental significance of Parliament's law-making function and the involvement of all three constituent members of Parliament in the process. Other recommendations of the Committee included that royal assent ceremonies be televised, that the time chosen for ceremonies be more convenient for most Parliamentarians so as to increase attendance, that the educational value of royal assent ceremonies be enhanced through collaborative efforts with schools and that where appropriate given the nature of a bill and the impact on the regions of Canada, consideration be given to holding written declaration ceremonies outside of Ottawa.

Unlike its predecessors, Bill S-34 would make it through all stages of the parliamentary process and receive royal assent on June 4, 2002. Eight months later, on February 13, 2003, the written declaration procedure for royal assent was used for the first time in Canada when Supreme Court Justice John Major, acting as Deputy to the Governor General, signified royal assent to Bill C-4, an Act to amend the Nuclear Safety and Control Act, by written declaration.

**Procedure for Royal Assent by Written Declaration**

While the new written declaration procedure is much simpler than the more formal royal assent ceremony, there remain various procedures that must be followed. The first step for either royal assent procedure is the determination of the date when royal assent is to be given. For either method, it is within the discretion of the Executive to choose a particular date for royal assent to be given once a bill has passed both Houses of Parliament. When choosing a date for royal assent to be given, the Executive need not take into consideration the availability of the Governor General as a Supreme Court Justice may serve as Deputy of the Governor General for the purposes of giving royal assent. Whether the Executive will arrange for royal assent to be given immediately after a bill has been passed by both Houses or wait until other bills have also been passed for reasons of efficiency is dependent on the time-sensitivity of the legislation. While the date is determined by the Executive, the time for royal assent is determined in concert with the various participants.

Once a date has been determined, the next step is to determine whether the Governor General will be available to give royal assent. If the Governor General is unavailable, the Office of the Chief Justice of the Supreme Court is contacted to determine which Justice will be available to act as Deputy of the Governor General. The location at which the written declaration will take place is typically determined by whom will be signifying royal assent. Generally, when the Governor General is available, the written declaration will occur at Rideau Hall. If the Governor General is unavailable, a Judge of the Supreme Court, acting as Deputy of the Governor General, will signify royal assent. When a Justice of the Supreme Court signifies royal assent, it normally takes places at the Supreme Court of Canada. However, in exceptional circumstances, such as when the procedure must take place after business hours, it may and has already taken place at an alternate location of the Justice's choosing. Under the Act, no location is specified for the signifying of royal assent by written declaration; consequently, royal assent using the written procedure may be given outside of Ottawa. Thus, when a particular bill is of special interest to particular region of the country, if circumstances warrant, a public written procedure for royal assent may be held in the area with interested parliamentarians, members of the public and media invited to attend.

After a date, time and location have been determined for royal assent, the parchments of the bills that are to be given royal assent must receive their final preparations. In preparation for a royal assent by either method, the parchments of all bills except supply bills are prepared by the Office of the Deputy Clerk of the Senate. These parchments are tied with a red ribbon. The parchments of all supply bills that are to receive royal assent are prepared by the Office of Legislative Services of the House of Commons. These parchments are tied with a green ribbon.

When royal assent is to be given by written declaration, relatively few people are obligated to take part in the procedure. The required participants are the Governor General or a Deputy of the Governor General, the Clerk of the Parliaments or the Clerk's Deputy. At the Government's request, a representative of the Privy Council Office is always present when a written declaration of royal assent takes place. When a Supply Bill is to be given royal assent, the list of participants expands to include the Speaker of the House and a House Table Officer. In addition to these required participants, the Act allows for the attendance of various interested parties, in particular members of either House of Parliament. Section 3(3) states that: "[T]he signification of royal assent by written declaration may be witnessed by more than one member from each House of Parliament." For example, on March 19, 2003, when the Governor General personally used the written procedure for the first time to give royal assent to Bill C-12, an Act to promote physical activity and sport, in attendance were Senator Mahovlich, the sponsor of the Bill and Senator Lynch-Staunton, the Leader of the Opposition who had sponsored various private members bills on the subject.

When all required and interested parties are gathered at the designated time and place for royal assent, the following procedure is utilized. The Governor General or the Deputy of the Governor General is presented with the bills, in parchment form, under cover of a signed letter from the Clerk of the Parliaments. The letter indicates that the bill(s) listed in the Appendix to the letter have been passed by both Houses and that both Houses request that royal assent be granted to the bill(s). When presenting the bill(s), the Clerk, who is gowned in the same manner as for traditional ceremonies, states the following: "May it please Your Excellency: The Senate and the House of Commons have passed the following Bill, to which they humbly request Your Excellency's Assent". The title of the bill is then read. The Governor General then signs a Declaration of Royal Assent, which is witnessed by the Clerk of the Parliaments as to the date, time and place. When the Governor General is presented with bills to receive royal assent, she may ask questions concerning the bills to receive royal assent for her own benefit if she so desires.

When the written declaration of royal assent is complete, the Secretary to the Governor General executes a letter to the Speakers of the House and the Senate formally advising them that royal assent has been signified to bills listed in the Schedule to the letter. These letters are then entrusted to the Deputy Clerk of the Senate, who delivers them to the two Speakers without delay. Each Speaker then reads the letter in their respective Chamber so as to notify their House of the written declaration of royal assent as required under section 4 of the *Royal Assent Act*.

After the Declaration has been signed and witnessed, the Clerk of Parliaments forwards the parchments of the bill(s), the Clerk's letter and the Declaration of Royal Assent to the Office of the Law Clerk and Parliamentary Council, who subsequently endorses the back of the bill. The parchment copy of the bill(s) is then sent to the Governor General to have the endorsement signed. While a Deputy of the Governor General may signify royal assent to a bill, only the Governor General can sign the back of a parchment copy of a bill attesting to the fact that royal assent has been given to the bill. Once the parchment copy

of a bill has received this final signature, it is returned to the Law Clerk's Office who arranges for it to be archived in the Senate vaults.

It should be noted that when the new written procedure for signifying royal assent is used, pursuant to section 5 of the *Royal Assent Act*, royal assent is not deemed to be granted to a bill until both Houses of Parliament have been notified of a written declaration of royal assent. In the Senate, such notification may only be given in the Chamber; however, in the House of Commons, pursuant to Standing Order 28(5), when the House of Commons is adjourned the Speaker of the House may inform the House by having the message received concerning the written declaration of royal assent and the prior messages from the Senate concerning every bill in the declaration, published in the *Journals*. While normally the date of the written declaration of royal assent and the date on which the two Houses of Parliament are notified would be the same, this is not always the case. An example of this is Bills C-2 and C-10A during the 2nd Session of the 37th Parliament. While the written declaration of royal assent for the two bills was signified in the late afternoon on May 8th, the Senate was not notified until May 13th, its next sitting date. Thus the date of royal assent as listed on copies of the Acts is May 13th, 2003.

Once the message concerning the written declaration of royal assent for a bill has been read in both Houses, the Office of the Deputy Clerk assigns a chapter number to the bill. Bills are assigned chapter numbers by calendar year and in the order that they receive third reading in both Houses. After a chapter number has been assigned, a notification of the enactment of a bill is submitted to the *Canada Gazette*. In addition, the Office of the Deputy Clerk forwards a memo to the *Journals* and *Debates* of both Houses and the Press Gallery informing them that the bills listed have received royal assent.

During the first twenty-two months since the passage of the *Royal Assent Act,* the new written procedure for royal assent has already been used ten times, while the traditional ceremony has only been used four times during the same time period. Thus, the adoption of the new procedure has already saved a significant amount of time not only for both Houses, but also the Governor General and the Supreme Court Justices who act as her Deputy. By maintaining the use of the royal assent ceremony at least twice per calendar year while adopting a simpler and time-saving alternative, the *Royal Assent Act* balances the need for a modern approach to the work of Parliament and the need to maintain key links to parliamentary history and traditions. It will be interesting to witness how this new procedure may be used in the future not only to streamline the work of Parliament, but perhaps, also to bring to work of Parliament closer to the lives of ordinary Canadians.

**Notes**

1. Senate Committee on Rules, Procedures and the Rights of Parliament, *Transcript of Proceedings*, Issue No. 11, November 7, 2001, p. 14. Testimony of Professor David Smith.
2. Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, (Ottawa: House of Commons, 2000) pp. 679-81.
3. *Ibid*. p. 680.
4. Senate *Debates*, October 4, 2001, pp. 1379-80.