

The Curtailment of Debate in the House of Commons

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Time is certainly one of Parliament's most precious resources. Since a happy medium must be found between the right to debate as long as is desirable and the right of Parliament to make a decision, House of Commons procedure has evolved to enable the government, when it sees fit, to limit the time available for debate. This article presents a historical analysis of the creation and use of the time management tools provided in the Standing Orders. These tools are closure, time allocation, the previous question, the motion to suspend certain Standing Orders for matters of an urgent nature and the routine motion by a Minister. Although debate in the 41st Parliament (2011–) has been curtailed more often than in previous parliaments, the use of time management tools has been on the rise since the mid-1970s. Various factors such as the larger number of tools available to the government, the adoption of a fixed schedule and calendar and the systematic increase in opposition obstructionism likely explain this trend.

The Parliament of Canada, like all modern parliaments, has three major functions: it represents, it monitors government actions and it legislates. The legislative function—the introduction and examination of laws in a three-reading process—necessitates debate between the government and the opposition. The former explains its proposals to the public, and the latter, when it opposes a bill, attempts to change it or impede its passage while rallying public support.

A government intent on seeing its legislative agenda pass must ensure it has at least some cooperation from opposition parliamentarians. [...] Parliamentary procedure provides opposition MPs with various ways to be heard, including when they wish to prevent a government bill from being passed quickly. Proposing countless motions and amendments and using all the speaking time available in the House and in committee are so many ways to slow down a bill's passage. When these tools are used in an orchestrated and systematic way, the word "filibuster" is applicable. This parliamentary

strategy is based on using dilatory measures and can postpone the House's decision. However, the government majority possesses certain tools to speed up the proceedings.¹

The tools at the government's disposal appear to have evolved over time, and it seems clear that their use has also changed significantly. Given that debate in the House of Commons was curtailed substantially more often during the first year of Stephen Harper's majority government, it is appropriate to take a look at the creation and use of the various time management tools.

This article will discuss the "rules and practices of the House of Commons that..., on the one hand, facilitate the daily management of its time and, on the other, limit debate and expedite the normal course of events in cases deemed of an important or urgent nature."² More specifically, the article will focus on the five measures identified in Chapter 14 of the parliamentary procedure reference work by O'Brien and Bosc (2009). These measures are closure, time allocation, the previous question, the motion to suspend certain Standing Orders for matters of an urgent nature and the routine motion by a Minister. After briefly describing how these tools came to be and how they work, the article will provide a historical analysis of their use. Note that the data analyzed for

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the current Parliament covers only the period between the start of the session and the summer adjournment in 2012 (June 2, 2011, to June 21, 2012).

But first, it is certainly worth noting that the vast majority of bills are debated and passed without the governing party having to curtail debate. Indeed, only 2.8% of the 5,278 government bills introduced in the House since the start of the 12th Parliament (in 1911) have been targets of “hostile” time management methods.³ Moreover, many bills are passed rapidly, sometimes in a single day, with the unanimous consent of the House, which allows it to set aside its own rules.

The previous question

The first time management tool is also the oldest: the previous question (Standing Order 61) existed in the first Parliament of Canada in 1867. Any MP (even an opposition MP) who has the floor during debate on a motion can move “that this question now be put.” Some might hesitate to call this a time management tool, and in fact, the previous question does nothing to impede debate. “Because of the many restrictions that regulate its use, as well as its sometimes unexpected outcome, the previous question has been described as the ‘most ineffective’ method of limiting debate.”⁴ Yet the curtailment of debate becomes more apparent if one considers that the previous question has the effect of preventing the introduction of amendments to the main motion. In addition to blocking any amendment or potential obstruction tactics, adopting the previous question puts the main motion to a vote on the spot, without further debate. Rejecting it has the effect of striking the main motion from the Order Paper.

Analysis of the previous question’s history shows that, overall, it was used modestly until the mid-1980s. The previous question was not used in 16 of the first 32 Parliaments. Moreover, the average number of previous questions moved per 100 sittings never exceeded two until the 33rd Parliament (1984–1988). This has changed substantially since 1984, as MPs have used the rule much more frequently. Based on the partial data from the 41st and current Parliament, use of the previous question is at an all-time high, averaging eight previous questions per 100 sitting days. In all, the previous question has been moved 135 times since 1867, and nearly 80% of these have come in the past three decades. While most of these recent cases involved the tactic being applied to debate on government bills, they also include instances where government motions, motions made during routine proceedings and private member’s bills were targeted. In addition, some previous questions were moved by opposition MPs.

The reasons the previous question was little used in the first Parliaments are intriguing. O’Brien and Bosc suggest the following:

For the first 45 years following Confederation, the only tool at the government’s disposal was the previous question.... Not only was there no other way of putting an end to a specific debate within a reasonable time, but there were no formal time limits of any kind on debates. The length of speeches was unlimited. The conduct and duration of proceedings in the House were based largely upon a spirit of mutual fair play where informal arrangements, or “closure by consent,” governed the debate.⁵

In short, the early Parliament of Canada was likely characterized by a greater spirit of cooperation among the parties.

Suspension of the Standing Orders for matters of an urgent nature

Another time management tool has been available since 1968 under Standing Order 53. This rule was created subsequent to an imbroglio involving a motion moved by Prime Minister Pearson to send Canadian peacekeepers to Cyprus in 1964. Standing Order 53 provides a mechanism to suspend certain rules, particularly those requiring advance notice and setting the timetable of sittings, to deal with a matter of an urgent nature. The suspension of the Standing Orders for matters of an urgent nature has been rarely used since its adoption, and only three of seven government attempts to use it have succeeded.

This method was only once used to modify debate in a way that could be considered time allocation. When it invoked Standing Order 53 on September 16, 1991, the government stated that a maximum of one day of debate would be allocated to each of second reading, Committee of the Whole and third reading for back-to-work legislation for the public sector.⁶ However, as has most often been the case, 10 MPs rose to oppose the motion, automatically defeating it. This constraint makes Standing Order 53 of very little use and likely explains why the government does not use it more often. In short, using this Standing Order is more about enabling the government to waive notice requirements for the introduction of its bills than to curtail the time available for debating them.

Closure

Closure, or Standing Order 57, is a procedural rule that enables ending a debate even if all MPs who wish to participate have not had the chance. Created in 1913 in response to the opposition’s obstruction of a naval aid bill, closure “provides the government with

a procedure to prevent the further adjournment of debate on any matter and to require that the question be put at the end of the sitting in which a motion of closure is adopted.”⁷ Without a doubt, closure is the first genuine, effective mechanism for curtailing debate.

The larger context of changes in the work of the House of Commons shows in part the reason the closure rule was established. During the early 1900s, the state’s role in the economy grew, and as a result, Government Orders took up more of the House of Commons agenda. Time became a precious resource, and the opposition began to obstruct passage of government bills. The government in turn developed the tools necessary to properly manage debate.

Since its introduction, closure has been invoked 56 times. It has been applied 23 times to various motions and used 33 times to limit debate on 24 different bills.⁸ A close analysis of closure as applied to bills shows that it was used differently beginning in 1999. Closure motions until then were always applied to the stage of debate underway and only to that stage. For example, the government could decide to shorten debate on a bill at second reading by forcing a vote at the appointed time. In 1956, four different closure motions were adopted to limit four stages of debate (resolution, second reading, Committee of the Whole, third reading) on the controversial Northern Ontario pipeline bill. Incidentally, this episode led to the creation of time allocation as a more flexible and less draconian time management tool a few years later. On March 22, 1999, the Government House Leader used the nuances of the Standing Orders to limit debate in an entirely new fashion. A government motion was presented to the House setting out the terms and conditions of debate for all stages of a piece of back-to-work legislation:

- That, notwithstanding any Standing Order or usual practice of this House, a bill in the name of the President of the Treasury Board, entitled an act to provide for the resumption and continuation of government services, shall be disposed of as follows:
- Commencing when the said bill is read a first time and concluding when the said bill is read a third time, the House shall not adjourn except pursuant to a motion proposed by a Minister of the Crown, and no Private Members’ Business shall be taken up;
- The said bill may be read twice or thrice in one sitting;
- After being read a second time, the said bill shall be referred to a Committee of the Whole; and
- During consideration of the said bill, no division shall be deferred.⁹

A notice of closure for this motion was given later in the day, and then, the next day, it was adopted. This forced debate and votes on all stages of the bill in the House, which sat from 11 p.m. to 8:32 a.m. the next day. Since this precedent, the strategy of using closure on a motion setting the terms and conditions of all stages of debate on a bill has been used seven times. Four of these involved back-to-work legislation.

Time allocation

As noted earlier, the time allocation rule (Standing Order 78) was created in large part because of the opposition’s negative reaction to the government’s use of closure. After a trial period between 1965 and 1968, time allocation in its current form was added to the Standing Orders in 1969. It is a more flexible mechanism than closure and encourages negotiation among the parties.

The time allocation rule allows for specific lengths of time to be set aside for the consideration of one or more stages of a public bill. The term “time allocation” suggests primarily the idea of time management, but the government may use a motion to allocate time as a guillotine. In fact, although the rule permits the government to negotiate with opposition parties on the adoption of a timetable for the consideration of a bill at one or more stages (including the consideration of Senate amendments), it also allows the government to impose strict limits on the time for debate.¹⁰

The time allocation rule provides three different options depending on the level of agreement among party representatives. “Section (1) of Standing Order 78 envisages a circumstance where there is agreement by representatives of all parties on an allocation of time for the proceedings at any or all stages of a public bill.”¹¹ The end result, then, is not much different from unanimous consent, except that one or several stubborn independent MPs can easily be outflanked under Standing Order 78(1). Since it requires the formal agreement of the opposition parties, this first form of time allocation cannot be considered a hostile time management tool. The second option, Standing Order 78(2), “envisages a circumstance where a majority of the representatives of the parties have agreed on an allocation of time for the proceeding at any one stage of a public bill.”¹² Here again, this is not an example of the government forcing the curtailment of debate. Finally, “section (3) of Standing Order 78 envisages a circumstance where agreement could not be reached under either Standing Order 78(1) or 78(2) on time allocation for the particular stage of a public bill currently being considered.”¹³ Note that it is possible to use a single motion to allocate time for

the report and third reading stages. Moreover, the government must give notice of its intent to use time allocation under Standing Order 78(3) in a sitting prior to adoption of the measure. Standing Order 78(3) is by far the most commonly used form of time allocation and, like closure, can certainly be called a hostile time management method.¹⁴ Consequently, this analysis will look only at this last form of time allocation.

A review of the use of Standing Order 78(3) shows that as of June 23, 2012—that is, after the summer 2012 adjournment—time allocation has been imposed 168 times on 118 different bills and 241 stages of debate. An analysis of the historical evolution of the use of time allocation will follow. But first, there is one final mechanism in the Standing Orders that provides for curtailing debate.

Routine motion by a Minister

This is a more recent rule, adopted in 1991, that has been used several times to curtail debate. The routine motion by a Minister is set out in Standing Order 56.1. It provides that, if

at any time during a sitting, unanimous consent is denied for the presentation of a routine motion for which written notice had not been given, a Minister may request under the heading “Motions” during Routine Proceedings that the Speaker put the motion forthwith, without debate or amendment. If 25 Members or more oppose the motion, it is deemed withdrawn, otherwise it is adopted.¹⁵

Table 1 shows that the government has used this Standing Order 24 times. Two trends in particular are apparent. First, the government used this measure frequently in the first 10 years after it was created and at a more moderate rate thereafter. Second, its purpose has changed over time. Since December 1, 1997, government attempts to use Standing Order 56.1 to restrict debate on certain bills have both succeeded and failed. On 10 occasions, the government wanted to allocate the amount of time for debate at various legislative stages. While four such attempts were rejected by at least 25 MPs, Standing Order 56.1 was used six times to restrict debate on eight different bills in the same way as Standing Orders 57 and 78. However, in response to a point of order in 2001, the Speaker of the House of Commons rules that Standing Order 56.1 was never intended to be so used:

The government is provided with a range of options under Standing Orders 57 and 78 for the purpose of limiting debate. Standing Order 56.1 should be used for motions of a routine nature, such as arranging the business of the House. It was not intended to be used for the disposition of a bill at various stages, certainly not for bills

that fall outside the range of those already contemplated in the Standing Order when “urgent or extraordinary occasions” arise.¹⁶

Nevertheless, the use of Standing Order 56.1 on June 12, 2001, remained valid because too much time had elapsed between adoption of the measure and the point of order. Likewise, a number of bills have since been affected by Standing Order 56.1. Several factors seem to explain this fact: the absence of points of order, the interpretation that adjourning the sitting and not the debate was the intent, and the parliamentary procedure committee’s failure to specify how this measure is to work, as requested by the Speaker. In the end, using Standing Order 56.1 to curtail debate in the House of Commons seems to remain possible.

Analysis of the use of time management tools

Now that the five time management tools have been briefly described, it is worth looking more closely at how the government has used them in the various Parliaments. First, note that this analysis is limited to the final three tools—closure, time allocation using Standing Order 78(3) and the routine motion by a Minister. After describing the changing use of these tools as regards debate at the various legislative stages, the paper will seek to explain why they seem to be in increasing use since the mid-1970s.

One early conclusion is that time allocation is unquestionably the most popular form of time management. Standing Order 78(3) was used in about 80% of the cases where debate on the passage of a bill was curtailed. In total, the government has ended debate on 150 bills at the expense of opposition parties. Time allocation has cut short debate on 118 of these 150 bills while closure has affected 24 and routine motions by a Minister, the remaining 8. The 150 bills involved make up only a very small fraction of the 5,278 government bills introduced in the House of Commons since 1912.

Analyzing each Parliament—the period between the summoning of Parliament after a general election and the dissolution of that Parliament—reveals a shift in the proportion of bills affected by time allocation. For many years, the use of closure, which was the only tool available between 1913 and 1969, to curtail debate was rare. Only six bills were targeted (by 12 closure motions) during this period. As shown in Table 2, the introduction of the time allocation rule to House of Commons procedure began to have an impact in the 30th Parliament (1974–1979), when eight bills were affected by 11 different time allocation motions. From then on, the proportion of government bills affected by time management tools has only increased overall.

Table 1 – Use of Standing Order 56.1 (Routine motions by a Minister)

| Parliament | Date | Purpose | Result |
|--------------------------------------|-----------------------|--|---------------------------------|
| 34 th or 35 th | between 1991 and 1995 | Committee travel | Adopted |
| 34 th or 35 th | between 1991 and 1995 | Committee travel | Adopted |
| 34 th or 35 th | between 1991 and 1995 | Committee travel | Adopted |
| 34 th or 35 th | between 1991 and 1995 | Committee travel | Adopted |
| 34 th or 35 th | between 1991 and 1995 | Committee travel | Adopted |
| 34 th or 35 th | between 1991 and 1995 | Committee travel | Adopted |
| 35 th / 1994-1997 | March 1995 | Suspend sitting for Royal Assent | Adopted |
| 35 th / 1994-1997 | March 1995 | Allow weekend sitting for Bill C-77 | Adopted |
| 35 th / 1994-1997 | June 1995 | Extend sitting | Adopted |
| 35 th / 1994-1997 | April 1997 | Suspend sitting for Royal Assent | Adopted |
| 36 th / 1997-2000 | December 1, 1997 | Adoption of Bill C-24 at all stages | Adopted |
| 36 th / 1997-2000 | February 1998 | Take-note debate on Gulf crisis | Adopted |
| 36 th / 1997-2000 | June 1998 | Reverse decision on Standing Orders 57 and 78 | Withdrawn |
| 36 th / 1997-2000 | March 1999 | Adoption of Bill C-76 at all stages (1) | Withdrawn |
| 36 th / 1997-2000 | March 1999 | Adoption of Bill C-76 at all stages (2) | Withdrawn |
| 36 th / 1997-2000 | April 1999 | Take-note debate on Kosovo | Adopted |
| 37 th / 2001-2004 | June 4, 2001 | Adoption of Bill C-28 at all stages | Adopted |
| 37 th / 2001-2004 | June 12, 2001 | Third reading of bills C-11 and C-24 / Estimates votes / Summer adjournment | Adopted |
| 37 th / 2001-2004 | October 22, 2002 | Concurrence in committee report | Withdrawn |
| 38 th / 2004-2005 | May 13, 2005 | Second reading of bills C-43 and C-48 | Withdrawn |
| 39 th / 2006-2008 | October 3, 2006 | Second reading of Bill C-24 (amendment and adjournment) | Adopted |
| 39 th / 2006-2008 | May 31, 2007 | Committee stage of Bill C-44 (adjournment and report to the House within two days) | Adopted then ruled out of order |
| 39 th / 2006-2008 | December 13, 2007 | Third reading of bills C-18 and S-2 / Length of sitting / Winter adjournment | Adopted |
| 39 th / 2006-2008 | January 31, 2008 | Second reading of Bill C-3 (adjournment) | Adopted |

In the 36th Parliament (1997–2000), a record was set in absolute terms when 20 bills were subject to 30 time allocation motions. In all, the various time management tools affected 17% of bills in that Parliament. Table 2 also shows that, unsurprisingly, debate is curtailed less often in a minority government situation (38th, 39th and 40th Parliaments). However, it seems obvious that a minority government context does not necessarily prevent the adoption of measures to curtail debate. Support from at least one opposition party enabled the government to curtail debate on 10 different bills during the past two minority governments. Finally, while circumstances in the current Parliament will continue to change, it seems that time management measures are affecting an abnormally high proportion of bills in this Parliament. As of the summer 2012 adjournment, 14 different bills have been targeted. This represents 33% of the total of 42 government bills introduced in the House.

One fairly simple comparison technique is to calculate how many closure, time allocation and routine motions have been adopted in each Parliament per 100 government bills introduced in the Commons or per 100 sittings completed. The resulting statistics show that time allocation has been by far the most common of the three methods of ending debate. Relative to the number of bills or the number of sittings, the conclusion is essentially the same. Also apparent is the general trend of increasing use of time allocation since the mid-1970s. While measures to curtail debate were used less often during the 37th Parliament (2001–2004) and the series of minority governments between 2004 and 2011, the current government is introducing more than 14 time allocation motions per 100 sittings, an unprecedented rate.

Given that the use of time allocation under Standing Order 78(3) has been on the rise for some time, it is

Table 2 – History of the Use of Closure, Time Allocation and Routine Motions by a Minister

| Parliament | Closure for Bills (Standing Order 57) | | | Time Allocation (Standing Order 78 (3)) | | | Routine Motion (Standing Order 56.1) | | | % of Bills Affected |
|------------|--|--------------------------------|-----------------------------|--|--------------------------------|-----------------------------|---|--------------------------------|-----------------------------|------------------------|
| | Number* | Average per 100 Sittings | Average per 100 Bills | Number* | Average per 100 Sittings | Average per 100 Bills | Number* | Average per 100 Sittings | Average per 100 Bills | |
| 12 | 6 (3) | 1.1 | 2.0 | - | - | - | - | - | - | 1.0 |
| 13 | 1 (1) | 0.3 | 0.3 | - | - | - | - | - | - | 0.3 |
| 14 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 15 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 16 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 17 | 1 (1) | 0.2 | 0.3 | - | - | - | - | - | - | 0.3 |
| 18 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 19 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 20 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 21 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 22 | 4 (1) | 0.8 | 2.2 | - | - | - | - | - | - | 0.5 |
| 23 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 24 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 25 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 26 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 27 | 0 | 0 | 0 | - | - | - | - | - | - | 0 |
| 28 | 0 | 0 | 0 | 2 (1) | 0.3 | 1.0 | - | - | - | 0.5 |
| 29 | 0 | 0 | 0 | 0 | 0 | 0 | - | - | - | 0 |
| 30 | 0 | 0 | 0 | 11 (8) | 1.4 | 4.0 | - | - | - | 2.9 |
| 31 | 0 | 0 | 0 | 1(1) | 2.0 | 3.6 | - | - | - | 3.6 |
| 32 | 0 | 0 | 0 | 21 (16) | 3.0 | 9.2 | - | - | - | 7.0 |
| 33 | 0 | 0 | 0 | 17 (14) | 2.4 | 6.0 | - | - | - | 4.9 |
| 34 | 12 (9) | 2.0 | 5.1 | 29 (20) | 4.9 | 12.4 | 0 | 0 | 0 | 12.4 |
| 35 | 1 (1) | 0.2 | 0.5 | 20 (14) | 4.5 | 9.3 | 0 | 0 | 0 | 6.9 |
| 36 | 2 (2) | 0.5 | 1.5 | 30 (20) | 8.0 | 22.7 | 1 (1) | 0.3 | 0.8 | 17.4 |
| 37 | 0 | 0 | 0 | 12 (10) | 2.9 | 7.7 | 2 (3) | 0.7 | 1.9 | 8.3 |
| 38 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 39 | 1 (1) | 0.3 | 0.8 | 1 (1) | 0.3 | 0.8 | 3 (4) | 1.4 | 3.2 | 4.8 |
| 40 | 2 (2) | 0.7 | 1.6 | 3 (2) | 1.0 | 2.3 | 0 | 0 | 0 | 3.1 |
| 41** | 3 (3) | 2.1 | 7.1 | 21 (11) | 14.5 | 50 | 0 | 0 | 0 | 33.3 |

* Number of motions (Number of bills affected)
** As of June 23, 2012
Minority Governments = shaded area

of particular interest to explore another aspect of this measure—the shifts in when it is applied during debate and how much time is allotted to finish debate. Table 3 shows that in the first Parliaments following the creation of Standing Order 78(3) the House tended to let debate go on for several days before bringing it to an end. In the 28th Parliament, the government allowed an average of over 15 days of debate at a given legislative stage before imposing time allocation.

Moreover, more than three additional days were then allocated to conclude these debates. It appears that over the years the patience of the House has gradually evaporated. By the 34th Parliament, the government generally intervened to end debate prematurely after one or two days. Minority governments were seemingly only slightly more patient in the 39th and 40th Parliaments. Finally, a certain change in the use of time allocation seems to be underway in the current

Table 3 – Use of Time Allocation (Standing Order 78(3))

| Parliament | Years | Number of Standing Order 78(3) Motions Adopted | Number of Bills Affected | Number of Debate Stages Affected | Average Number of Days of Debate Completed or Underway at the Time | | Average Number of Days of Debate Allocated |
|-------------------|-----------|--|--------------------------|----------------------------------|--|------------|--|
| | | | | | Notice | Vote 78(3) | |
| 28 th | 1968-1972 | 2 | 1 | 2 | 14.5 | 15.5 | 3.5 |
| 29 th | 1973-1974 | 0 | 0 | 0 | - | - | - |
| 30 th | 1974-1979 | 11 | 8 | 12 | 5.5 | 6.2 | 2.1 |
| 31 th | 1979 | 1 | 1 | 1 | 9.0 | 10.0 | 1.0 |
| 32 th | 1980-1984 | 21 | 16 | 31 | 4.1 | 4.7 | 1.6 |
| 33 th | 1984-1988 | 17 | 14 | 22 | 3.8 | 4.1 | 1.5 |
| 34 th | 1988-1993 | 29 | 20 | 46 | 1.3 | 1.4 | 1.7 |
| 35 th | 1994-1997 | 20 | 14 | 29 | 2.1 | 2.2 | 1.5 |
| 36 th | 1997-2000 | 30 | 20 | 46 | 1.4 | 1.4 | 1.6 |
| 37 th | 2001-2004 | 12 | 10 | 17 | 2.5 | 2.5 | 1.5 |
| 38 th | 2004-2005 | 0 | 0 | 0 | - | - | - |
| 39 th | 2006-2008 | 1 | 1 | 1 | 3.0 | 3.0 | 1.0 |
| 40 th | 2008-2011 | 3 | 2 | 5 | 2.0 | 2.7 | 1.7 |
| 41 ^{th*} | 2011- | 21 | 11 | 29 | 1.6 | 1.6 | 2.4 |
| Total | | 168 | 118 | 241 | 2.6 | 2.9 | 1.7 |

Minority Government = shaded area
 * As of June 23, 2012

Parliament. Although the decision to curtail debate remains rapid, there has been a small increase in the time allotted. On average, 2.4 days of supplementary debate are granted, a level not seen since the end of the 28th Parliament. During certain second reading debates—for example, on the budget implementation bill, C-38, and the immigration reform bill, C-31—the government allowed the opposition to continue debate for particularly long periods: six and five days, respectively. One could argue that using time allocation in this fashion is more consistent with the concept of a time management tool than an abusive way of gagging the opposition.

Now, it is natural to ask why the government is increasingly using debate curtailment measures. What factors might explain the growing number of bills targeted for time allocation, closure and other such procedures? Instinctively, one might think that a growing legislative workload during this period could put pressure on the government, causing it to use time management tools more often. However, this hypothesis does not seem correct given the history of Parliament’s workload. Standardizing the length of the various Parliaments reveals that the number of bills introduced in the House per year (or per 100 sittings)

has been relatively unchanged since the end of World War II. There has even been a slight decrease in the number of Royal Assents granted annually. These facts invalidate the idea that the House of Commons workload has increased over time.

On the other hand, an institutional factor offers one plausible explanation. In his 1977 book on the House of Commons, John B. Stewart argued that, by adding predefined sitting adjournment times to the Standing Orders, the minor procedural reform of 1927 helped make the House an ideal place for filibusters, even more so than the American Senate.¹⁷ Because they now knew in advance when proceedings would conclude for the day, opposition MPs hoping to defer Parliament’s decision had a tangible goal: push debate beyond the preset sitting adjournment time. While it is impossible to confirm whether the opposition changed its behaviour, one must admit that the government did not seem to use closure—the only time management method available at the time—more often. A similar reform establishing a fixed legislative calendar for the House in 1982 made adjournments in parliamentary sessions more predictable. In this case, the overall trend of increased use of debate curtailment measures began around that time.

To confirm this hypothesis, one would have to study the behaviour of opposition MPs during debates and, more specifically, their use of delaying tactics like motions to adjourn, the reasoned amendment or the hoist amendment. Unfortunately, this research is very demanding given the lack of already compiled data and could not be completed for this article. However, it would certainly be one way of shedding more light on the issue. In view of certain events in the current Parliament, the opposition's use of dilatory measures can be shown to lead the government to use time allocation, or at least provide justification for doing so. As of the summer 2012 adjournment, the opposition had introduced reasoned amendments at second reading for seven bills.¹⁸ This type of amendment proposes "that the House decline to give second reading to this bill" for the reasons specified. Of the seven bills affected, the government responded by applying the time allocation rule to end debate on six. The case of Bill C-18 (Canadian Wheat Board reorganization) is of particular interest. After the first 40 minutes of debate, the NDP introduced a reasoned amendment, and 35 minutes later, the Liberal Party sought to adjourn debate. This seemed to give the government a legitimate reason to immediately make use of time allocation.

In closing, there are some specific explanations for the frequent use of measures to curtail debate in the 41st Parliament. First, Tom Lukiwski, Parliamentary Secretary to the Leader of the Government in the House of Commons, seemed to confirm that reacting to the opposition's behaviour was a factor. In an interview with *The Hill Times*, he stated:

We have brought forward time allocation on certain pieces of legislation because we felt it was necessary to do so primarily because of the opposition, including obviously the NDP, have demonstrated without question that on certain bills, they just want to debate the bill, they want to defeat the bill and not allow the bill to come to a vote.¹⁹

Other arguments put forward by the government relate to the importance of acting quickly or by a certain time and the fact that the bills introduced had already been sufficiently debated in previous Parliaments.

The first argument is perhaps linked to the election promise to achieve certain goals—such as the criminal law reforms—in the first 100 days. It was also necessary to proceed rapidly with Bill C-20, which concerned the addition and redistribution of seats in the House of Commons, so the reforms could be in place by the next general election. As for the second argument, it deviates somewhat from the parliamentary principle that gives

all MPs of all Parliaments the right to be heard on all matters under consideration. Given that more than 35% of MPs (108) in the 41st Parliament are newcomers to the House, it seems essential that debate begin anew. In any case, one can easily allow that the series of minority governments preceding the 41st Parliament put pressure on the government and intensified its desire to finally pass its most controversial proposals and the ones which had no opposition support. If that is true, one could reasonably expect a decrease in the use of time management tools by the next general election in 2015.

Conclusion

This article has described how the Standing Orders of the House of Commons have changed over time to give the governing party all the tools it needs to effectively manage debate. These tools, which work in different ways and with varying degrees of effectiveness, were often created in response to deliberate opposition obstructionism. This was the case for the closure rule, for example. In the late 1960s, under pressure and accused of governing undemocratically, the government instituted the time allocation rule. The goal was to provide a way of managing debate more acceptable to the opposition. Yet three trends in the government's use of time management tools have again today given the opposition good reason to criticize. First, since the mid-1970s, the number of time allocation motions adopted and the proportion of bills affected by the curtailment of debate have exploded. Second, the government's patience has rapidly diminished; it now decides to impose time allocation on its bills with little delay. Third, the 1999 revolution in the use of the closure rule (through a motion dictating how a bill will pass through every stage) has made its use even more debatable.

Of course, the government is not solely to blame. A study of the opposition's behaviour, more specifically its use of dilatory motions, could show that the government is to a certain extent only reacting to efforts to hold up debate. David Docherty is quite right to point out that debate curtailment measures are after all very legitimate tools that can prevent legislative impasses.²⁰ However, Docherty also argues that suspicion of the government is healthy. It cannot be allowed to simply duck the opposition's questions.

In some jurisdictions the use of time allocation or closure has less to do with the strength of the opposition and more to do with the government's desire to avoid the legislature. [...] The importance of debate in the legislative process may be threatened by an increased reliance on time allocation.²¹

Seen this way, further reform of the Standing Orders seems to become an option, perhaps even a desirable one. One could imagine granting discretionary authority to the Speaker of the House to refuse the adoption of time allocation and force the government to justify its request for closure, as the NDP has proposed. A minimum number of days of debate during which the government would not be allowed to use time allocation or closure could be guaranteed. To encourage serious debate on the substance of the issues under consideration, the House could even forbid the government to use time management tools unless the opposition has proposed dilatory measures first. In short, while the Standing Orders regarding time management in the House have indeed changed, they might yet change again. The issue is striking a certain balance, finding the happy medium between the right to debate as long as is desirable and the right of Parliament to make a decision.

Notes

- 1 Réjean Pelletier and Manon Tremblay (Eds.), *Le parlementarisme canadien*, Third Edition, St-Nicolas, Les Presses de l'Université Laval, 2005, pp. 304–5.
- 2 Audrey O'Brien and Marc Bosc (Eds.), *House of Commons Procedure and Practice*, Second Edition, Cowansville, Éditions Yvon Blais, 2009, p. 649.
- 3 There are two reasons for choosing the 12th Parliament: no statistics on the number of bills introduced in the House exist before then, and it was during the 12th Parliament that the first genuine rule for curtailing debate—closure—was made. The “hostile” tools are closure, time allocation using Standing Order 78(3) and the routine motion.
- 4 Audrey O'Brien and Marc Bosc (Eds.), *op. cit.*, pp. 537; 652.
- 5 *Ibid.*, p. 648.
- 6 *Annotated Standing Orders of the House of Commons*, Second Edition, Ottawa, 2005, p. 200.
- 7 Audrey O'Brien and Marc Bosc (Eds.), *op. cit.*, p. 653.
- 8 Adoption of the Canadian flag in 1964, changes to the Standing Orders in 1969, reinstating bills from a previous session, etc.
- 9 *Debates*, Sitting of March 22, 1999.
- 10 Audrey O'Brien and Marc Bosc (Eds.), *op. cit.*, p. 660.
- 11 *Annotated Standing Orders of the House of Commons*, Second Edition, Ottawa, 2005, p. 281.
- 12 *Loc. cit.*
- 13 *Ibid.*, p. 283.
- 14 189 uses of Standing Order 78: 78(1) adopted 8 times (4.2%), 78(2) adopted 13 times (6.9%), 78(3) adopted 168 times (88.9%).
- 15 Audrey O'Brien and Marc Bosc (Eds.), *op. cit.*, p. 670.
- 16 House of Commons, *Debates*, September 18, 2001.
- 17 John B. Stewart, *The Canadian House of Commons: Procedure and Reform*, Montreal and London, McGill-Queen's University Press, 1977, p. 245.
- 18 Namely bills C-4, C-10, C-11, C-18, C-20, C-31 and C-38.
- 19 Bea Vongdouangchanh, “House can change Standing Orders to make it more democratic, now,” *The Hill Times*, February 6, 2012, p. 4.
- 20 David C. Docherty, *Legislatures*, Vancouver, UBC Press, 2005, p. 157.
- 21 *Ibid.*, p. 156.