LIMITATION OF DEBATE IN THE QUEBEC NATIONAL ASSEMBLY

Louis Massicotte

The standing orders of every legislative assembly contain a number of provisions to limit debate. Most of these, such as a time limit on speeches and prohibition of debate on certain motions are a normal part of routine parliamentary procedure. The same cannot be said of other exceptional procedures which are often lumped together under the term of closure, a very pejorative term in Canada. Exceptional procedures allow the government to speed up the pace of business in the legislature but they also raise the tempers of members of the opposition. This article looks at some of the exceptional measures included in the standing orders of the Quebec National Assembly and examines their use since the major reform of the rules in 1972.

Those familiar with parliamentary procedure will realize that it is in committee that the masters of obstruction are best able to use their arts and devices. The ordinary restrictions on debate in committee are notably less rigid than in the Assembly. For example, in committee a member can move as many amendments and sub-amendments as he wishes and may speak on the same question as often as he pleases, provided he takes no more than twenty minutes on a single clause, paragraph, motion or point of order. Thus in both committee of the whole house, and in standing committees the possibility of endless filibustering exists.

The debate on bill 63 in 1969 and on a 1971 bill to restructure educational services on the island of Montreal demonstrated how a powerful and determined minority could hold up legislation in committee. These experiences were fresh in the minds of those who drafted the new standing orders in 1972. While widening the scope of committee activities, the new rules tried to avoid the possibility of government measures being systematically buried in committee. To achieve this, they drafted section 156 of the standing orders.

CLOSURE

Part one of section 156 provides that when a committee has studied a bill for a period of time proportionate to its importance or length, the Government House Leader may, without notice, present a motion outlining terms of an agreement reached by the House Leaders of the recognized parties. Such meetings are convened by the Speaker, at the request of the Government House Leader. The vote on such non-controversial agreements is taken immediately.

If, however, no agreement is reached according to the procedure outlined above, the Government House Leader informs the House of the deadlock and, after giving notice, moves that the committee's report be presented to the House *by a specified deadline*. Section 156 thus makes it possible simply to end the committee's activity, regardless of the stage the committee has reached in its examination of the bill. There is nothing to prevent such a motion even if only five out of 200 clauses have been called in committee, except perhaps the fact that the motion cannot be introduced unless the committee has studied the bill "for a time proportionate to the importance or length of the bill." No attempt to use closure has ever been nipped in the bud by the Speaker on the basis of this rather vague provision.

The use of the word "committee" in section 156 means that closure can be used in connection with the activities of committees of the whole as well as for standing committees. Similarly, a committee studying a bill after first reading for the purpose of hearing witnesses could be subject to closure as could a committee studying the bill clause by clause after second reading. Both possibilities were confirmed by a Speaker's ruling of July 11, 1974. The wording of section 156 seems to prohibit the use of closure in the case of a committee not charged with the examination of a bill.

Louis Massicotte is a political scientist in the Political and Social Affairs Section of the Research Branch, Library of Parliament.

The closure motion, which cannot be amended, may be debated, and there is no limitation on the total duration of the debate. The length of speeches, however, is limited to ten minutes per member and thirty minutes for the Premier, leaders of the opposition parties and the Government House Leader. The latter also has a right of reply. Of course, a closure motion which requires the submission of a committee report at a specified time suspends, by that very fact, certain other stages of committee study provided for in the standing orders. In July 1974 the opposition argued that section 33 of the standing orders, which provides for the submission of reports of standing committees at specified times means that certain stages could not be cut short by a closure motion. A Speaker's ruling has confirmed the overriding character of the closure motion.

Closure was used for the first time on December 14, 1972, to approve a new electoral map. The bill, submitted to the Standing Committee on the National Assembly, was delayed by the comments of the *Union Nationale* and *Créditiste* members, who felt the new map, by reducing rural over-representation, threatened their positions. After seven days and sixty hours of debate, the committee had studied only fifty-seven of the one hundred and ten constituencies. The meeting of house leaders, convened December 11, remained deadlocked. Notice was given of the closure motion the following day, and it was carried by a vote of fifty-eight to seventeen.

The Bourassa government's Bill 22 on the official language was introduced on May 21, 1974. It led to the use of closure on two occasions after the *Parti Québecois* opposition decided to fight it to the bitter end. The bill was referred directly to committee for the examination of witnesses, and soon came under a crossfire from French-speaking nationalists and the Quebec English-speaking community. After a month of public hearings, often marked by emotional outbursts, the committee had heard seventy-six of a total of one hundred and fifty-five organizations who had submitted briefs and asked to appear.

On July 11, 1974, the motion to close the hearing was carried by a vote of seventy-four to eight. After second reading on July 15, the bill was again blocked in committee. When more than a week of hearings had passed, the committee had not yet finished examination of clause one, which stated simply and succinctly that French was the official language of Quebec. Some clever calculations showed that at this rate the opposition could make the debate last until 1977! Once more a motion for closure of the debate was carried on July 26, 1974 by a vote of seventy-three to eight.

The language debate reopened with the introduction of the Charter of the French Language in May 1977, and the 1974 scenario in many respects was repeated. By introducing a new bill (No 101) on July 12, which was an amended version of the previous bill, the government did manage to avoid using closure to end the examination of briefs in committee. After passing second reading and being sent to committee for detailed study, Bill 101 was the victim of the same tactics as Bill 22, which it was to replace. After fifteen sittings and ninety-six hours of debate, only twenty-eight clauses, in a document containing more than 200, had been called. On August 23, 1977 closure was moved by the *Parti Québécois* government for the first time and carried by a vote of forty-eight to thirty.

One of the eight formal promises made by the *Parti Québécois* during the 1976 elections concerned automobile insurance. Bill 67 gave concrete form to this promise by creating a state automobile insurance plan which applies to personal injury. After passing second reading on November 16, 1977, the bill was subjected to very effective obstruction in committee by the Liberal Party. The new plan was to come into force on March 1, 1978, but after ten sittings totalling thirty-five hours, only nine clauses out of 192 had been called. Closure was once more introduced and passed on December 14, 1977 by a vote of sixty-five to thirty.

The most recent use of closure took place in the spring of 1978, and involved Bill 70, nationalizing the Asbestos Corporation and establishing the *Société nationale de l'amiante*. The government perservered with this measure, which was vigorously denounced by the opposition. After thirty sittings totalling more than seventy-two hours, clause four had still not been called. A closure motion was carried on May 4, 1978 by a vote of thirty-six to seventeen.

THE AUTOMATIC GUILLOTINE

Closure, as provided for in section 156, has the drawback of imposing on the government the unpleasant, even disagreeable, responsibility of appearing to cut off debate. Moreover, closure must be debated, prolonging the process even more, and the real or artificial emotion it arouses is harmful to the government's public image. Opposition parties can argue that the ending of debate is abrupt and unexpected. These are some of the problems that the "automatic guillotine" is designed to solve. Essentially, this procedure consists of establishing *in advance*, in the standing orders or in an act, the length of certain specific debates.

Some examples of an "automatic guillotine" are found in the standing orders. For example, debate on the inaugural message and on the budget speech is limited to twenty-five hours. Debate on a motion under s. 84(2) relating to urgent matters is limited to two hours.

In 1978, the *Referendum Act* limited debate on the text of a question which is to be put to a referendum to thirty-five hours. More recently, the length of debate on the draft electoral map proposed by the Representation Commission in its preliminary report was limited to five hours. This debate, unlike the first, did not result in a vote.

SUSPENSION OF THE RULES

Any closure motion is in essence a motion for the suspension of rules. The opposite is also true for in many cases the suspension of rules which are favourable to the opposition may be a disguised form of closure. It may temporarily deprive the opposition of weapons which could delay the passage of certain government measures. The suspension of rules, provided for in section 219 of the old standing orders, is now covered in section 84. This provision is usually not considered an example of an exceptional measure. Such an omission is somewhat surprising for a study of parliamentary practice in Quebec shows, that of all the exceptional measures at the government's disposal, section 84 has been used most often over the past nine years.

Suspension of the rules requires a motion that may be proposed only by the Government House Leader or a minister. The motion must list the rules of order that are suspended and indicate the reasons. Only the rules of order specified in paragraphs 2, 3 and 4 of section 3 of the standing orders, that is the standing orders, sessional orders and special orders, may be suspended.

However, the two motions provided for in section 84, ordinary suspension and suspension for emergency reasons — must be clearly differentiated. "Ordinary" suspension (s. 84.1) has mainly been used to prolong sittings of the Assembly, despite section 30, which establishes a set schedule in this regard. The so-called "end of session" motions have regularly been made shortly before the summer recess or before prorogation. They usually obliged the Assembly to sit every day except Sunday from 10 am to midnight, suspending certain periods reserved for the opposition such as debate on "Wednesday motions" and mini-debates, and limiting the length of debate on motions of non-confidence and motions relating to urgent matters. This list of restrictions has grown over the years. Such motions were passed on July 3 and December 1, 1972; June 19 and December 11, 1973; June 25 and December 6, 1974; June 11, 1976; August 22 and December 12, 1977. The 1974, 1976 and December 1977 motions gave the following reason: "to use the time available in this session before the summer recess more effectively" (or "before prorogation", as the case may be). The August 22, 1977 motion stated more specifically, "to ensure that Bill 101, 'the Charter of the French Language', is passed before the beginning of the next school year".

Between 1972 and 1977, the end of session motion was used nine times. Almost every other session ended with this motion. This procedure dissatisfied everyone. The opposition had to keep up a pace they found rather strenuous, especially during the summer (in a building which was not air conditioned at the time) and when they were relatively few in number, as was the case from 1973 to 1976. The task of the members was all the more difficult since very controversial bills were often introduced a few weeks after adjournment. The government, for its part, had the disagreeable obligation of imposing this procedure every six months, with all the ensuing complaints and recriminations.

In 1978, the usual end of session motion was provisionally incorporated into the standing orders by means of a sessional order, and this arrangement has been renewed since that time. Excluding emergency situations, the Assembly cannot sit from June 24 to September 4 or from December 22 to January 21. Longer sittings are allowed during the three weeks prior to each adjournment. From June 1 to 23 and December 1 to 21, the Assembly may sit every day of the week, except for Saturday and Sunday, from 10 am until whatever hour it decides to adjourn, with two-hour breaks for meals. During each of these sittings, priority is given to government proposals. Mini-debates and oral questions with debate are suspended during this period, and debate on various motions likely to be used by the opposition must end three hours after the hour scheduled for the beginning of the sitting. On the other hand, the mechanism prohibits the third reading of a bill, the first reading of which took place during the three weeks prior to adjournment.

Only in the case of passage of an emergency motion, under section 84.2, can the government oblige the House to sit outside of the authorized hours, and ask for third reading of a bill introduced during the three weeks prior to adjournment. This motion, which must not be confused with the preceding one, or with the "motion relating to urgent matters" provided for in section 78, is probably the most severe measure at the government's disposal. It is introduced by the Government House Leader or by a minister who must indicate the reasons why the provisions of the standing orders are being suspended. However, given its character, no notice is required but the reasons why this is a matter of urgency and justifying the suspension of the rules must be given. When this motion is made with a view to passing a bill, the bill must be distributed when the motion is introduced. Finally, so that it may be passed quickly, it may not be amended or divided, and the length of debate is limited to two hours.

Although theoretically an exceptional measure, this procedure was used no less than twelve times between 1972 and 1980. However in all but three cases, section 84.2 was used to put an end to a labour conflict. The exceptions were: for Bill 81 in 1975 creating an agency charged with completing the Olympic facilities; Bill 82 in 1979 respecting a judgement of the Supreme Court of Canada on the language of the legislature and the courts in Quebec; and on November 6, 1980 on a motion by the Premier denouncing the unilateral patriation of the Canadian Constitution by the federal government. These motions imposed longer sittings and suspended a number of provisions in the standing orders which could be used by the opposition for dilatory purposes. Apart from one motion in May 1975 they limited the length of study in committee to two, three or five hours, even providing, from July 1976 onwards, for clauses of the bill and amendments not yet discussed by the committee to be put to a vote ten or fifteen minutes before the end of the time limit. In November 1979, the debate on third reading was restricted to one intervention varying in length (twenty minutes or one hour) for each recognized party, and amendments upon third reading of the bill were prohibited. Moreover, the list of suspended provisions has shown a tendency to grow longer. The house has thus created a measure similar to the "guillotine" existing in the British Parliament, which specifies a set length for certain stages of legislative procedure, before discussion of the measure has even begun.

Nothing prevents the simultaneous use of several exceptional measures in the case of particularly controversial bills. Thus the new electoral map, Bill 22, Bill 101 and the automobile insurance bill were provided with a tighter schedule by means of the end of session motion (84.1), and closure was invoked under section 156, the latter being used twice for Bill 22. Given its severity, the emergency motion, made in accordance with section 84.2, precludes the use of the other procedures.

THE PREVIOUS QUESTION

One final way of limiting debate is by means of the previous question. This procedure is familar to those who know the Morin Code which is the manual of procedure most widely used by deliberative bodies in Quebec. The Code describes the previous question as an infringement on freedom of speech but it has been included in the standing order of the Quebec Assembly since Confederation. In the current orders it is found in sections 82 and 83. In both the Morin Code and the standing orders the aim of the previous question is to force a direct vote on a motion being debated. This is the only similarity, however, and the two procedures differ widely in three main areas:

- In the National Assembly, the previous question can be moved only on a main motion, and cannot be moved on an amendment before the Assembly (or one of its committees). The Morin Code does not contain this important restriction.
- The Speaker of the Assembly may rule the motion on the previous question out of order if he feels that debate on a motion has not been unduly prolonged, or if he

believes that the motion on the previous question would infringe on the rights of the minority if it were carried. This protection of the rights of the minority is all the more significant since the Speaker's decisions are in principle not subject to appeal (s 43.2). It is one of the key provisions that supports the official theory holding that the Speaker is the arbiter of parliamentary debate. This is based on the situation that prevails in the British Parliament where the Speaker may refuse to allow a closure motion to be introduced if he feels that it will infringe on the rights of the minority, or is an abuse of the house rules.

- The Morin Code requires a two-thirds majority for the previous question to be carried. The National Assembly does not require a specified majority or even a quorum for the vote.

Unlike other exceptional measures, the previous question is not a privilege reserved for the governing party, and may be moved by any member having the right to speak. No amendment can be proposed to the previous question, but a minister may move the adjournment of debate on it. This motion is also not subject to amendment and must be voted on immediately. Moreover, as long as the previous question has not been resolved, or the motion for adjournment of debate on it carried, the Speaker may not move that the Assembly be adjourned or adjourn it, notwithstanding paragraph 1 of section 31 (which provides for automatic adjournment of the house at certain hours) and section 38. In other words, the Assembly must sit without interruption until the previous question has been resolved, unless a minister moves that debate on the previous question be adjourned. The debate may deal with both the previous question and the main motion whose passage it was intended to speed up. Finally, when the previous question is resolved in the affirmative, the main motion is to be put immediately without any amendment or debate, and as long as the main motion is not resolved, there can be no motion for the adjournment of the house, and the House cannot be adjourned.

In view of the restrictions on the use of the previous question, it is not surprising that it is rarely moved in the House. There appear to have been only two examples since 1972. On December 14, 1973, a bill to increase the salary of judges was given second reading in the Assembly. The official opposition (the *Parti Québécois*) had undertaken to obstruct this measure. A *Parti Québécois* member, Mr Claude Charron, moved the previous question. It was obviously a diversion tactic: a motion to cut off debate was being made by a member who was clearly aiming at the contrary! Speaker Jean-Noel Lavoie, first commented that such a motion had not been presented in the Assembly in at least twenty years. He declared the motion out of order, stating it was being used to reopen a debate that had already been held. More specifically, he ruled that even when there remains only one member of the opposition having the right to speak on the main motion, a motion for the previous question is out of order since its aim is to force a direct vote on the main motion, and because debate can deal with both the main motion and the previous question, acceptance of a motion for the previous question would be tantamount to allowing the same debate to be held twice.

The only other occasion when the previous question was moved was in committee on December 23, 1974. The Standing Committee on the National Assembly was considering a bill to increase members' salaries and provide for indexation to the cost of living. The *Parti Québécois* had once again decided to attempt to slow down its passage. The *Union Nationale* member for Johnson, Mr Maurice Bellemare, who was to be given the status of party leader by the bill, with the appropriate remuneration, moved the previous question on clause one of the bill. On behalf of the *Parti Québécois* opposition, Mr Marcel Léger commented: "No one has ever, to my knowledge, moved the previous question since 1970 — never. This is a provision of the regulations... which must be used with great care." Mr Michel Gratton, the Chairman of the committee, stressing that a new rule was involved, declared Mr Bellemare's motion in order given the limited scope of the clause. The previous question was carried by a vote of nine to three. This precedent confirms, in accordance with paragraph 1 of section 83, that the previous question can be moved in committee as well as in the National Assembly.

REFLECTIONS ON EXCEPTIONAL MEASURES

When an exceptional measure is used a vote is usually taken with a recorded division. This was particularly the case for the six motions under s. 156. Five of the twelve emergency motions (s 84.2) were carried without division, since these motions were made to speed up passage of bills that were accepted by the major parties. The nine end of session motions (s 84.1) between 1972 and 1977 were carried on division, with the exception of the December 1, 1972 motion. The 1978 sessional order making this procedure automatic received general approval.

No party has a monopoly on the use of exceptional measures. From 1972 to 1976, the Liberals introduced seven end of session motions, seven emergency motions under section 84.2 and three motions for closure of

examination in committee, for a total of seventeen. At first glance the *Parti Québécois* would seem to have a better record between 1976 and 1981, with only ten motions under the same provisions. The comparison is not fair, however, since the Lévesque government made some of these mechanisms automatic to make their use less dramatic. Notably, the 1978 sessional orders suspended the need for an end of session vote every six months. The automatic "guillotine" for debate on the referendum question and the electoral map saved the government from having to use a special motion in these two cases. The use of exceptional measures thus seems to be motivated by a need for government action and by the behaviour of the opposition, regardless of the party in power, rather than by an authoritarian attitude that might be thought to arise from a particular political program.

One may regret that the closure of committee examination has the effect of postponing the adoption of government amendments, which are often important, to the report stage, where conditions do not allow for an in-depth discussion of their scope and implications. One may fear that the dread of obstruction will encourage governments, in an effort to avoid closure, to propose sketchy omnibus bills, putting off decisions on controversial matters to the regulatory stage, or will prompt them to delay certain reforms or even quite simply transfer the power to rule on certain controversial matters to administrative bodies.

Finally it should be noted, perhaps with a bit of nostalgia, that since 1972 the use of exceptional measures has increased significantly. This is a general trend which may be observed in other legislative assemblies but in Quebec it also reflects the emergence of a new political order which is characterized by a basic disagreement over fundamental issues between the two major political parties in the province. The increased use of exceptional measures in the National Assembly is, in part, a reaction to this political battle.

(translated from French)

SUGGESTED READINGS

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