The Evolution of the National Assembly

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In December, 1982, Quebec adopted important legislation the need for which had been felt for many years. Until then, the Quebec legislature had been governed by the *Legislature Act*, an antiquated statute dating back to 1886. That Act had been amended sporadically but had never been seriously revised, and had ceased to correspond to the requirements of a parliament in today's society.

The passage of the new legislation, the *National Assembly Act*, must be situated in the context of parliamentary renewal in Quebec. For a decade, a number of members of the National Assembly have shown a lively interest in updating the rules relating to both the institutional framework and parliamentary procedure. Their contribution has been a valuable one, creating a receptive climate for the modernization of the rules that govern Quebec's parliamentary institutions. The new *National Assembly Act* will probably be only a first, though major, step in the current trend to parliamentary reform.

The Act is a very important piece of legislation. It makes the Quebec legislature subject to new organizational and operational rules. Unlike the Standing Orders of the Assembly, which deal with the procedures to be followed during the Assembly's deliberations, the new Act has instituted so fundamental a framework that to a great extent it might be called an internal constitution for Quebec.

Given the crucial importance of such legislation, it was natural that its proposed provisions would be discussed at length by parliamentarians. A draft bill was tabled by the Speaker on June 17, 1980. A subcommittee met twice to consider it and to make recommendations. The draft bill was revised and reformulated. On June 22, 1982, the Government House Leader tabled for first reading Bill 90, *An Act regarding the National Assembly of Quebec*. Before second reading the bill was sent to committee for consideration. It was even reprinted when the recognized parties agreed to divide it into two separate pieces of legislation.

Before reviewing the main aspects of the reform, I think it would be interesting to look at its overall orientation, which can be seen most clearly by comparing the old *Legislature Act* with the new *National Assembly Act*. If we do this we note that greater autonomy has been given to the legislature with respect to the institution itself. In support of this assertion I will touch briefly on three measures, of varying importance.

First, from now on the Assembly will appoint its own Secretary General and his assistants, following a recommendation by the Premier. Previously this appointment was a government prerogative. Second, the new Act creates a National Assembly Office, which will consist of representatives of both the government and the opposition. The Office will replace, with increased powers, the Assembly's Internal Economy Committee, which was made up exclusively of members of cabinet. Third, the Office will prepare the Assembly budget estimates and will be completely free to allocate resources for a large number of the items comprising 75 per cent of the Assembly's 1981-82 budget (or 88 per cent of that budget if estimates appearing in it, but allocated to the activities of the Ombudsman or the Auditor General, are excluded). Plainly these measures are aimed at increasing the Assembly's administrative independence and putting a halt to the erosion of some of its organizational powers.

Because Canada is a constitutional monarchy, Section 128 of the Constitution requires all members of parliaments, whether federal or provincial, to swear allegiance to the Head of State before taking office. Canada's Head of State is the Queen of Canada and also the monarch of the United Kingdom. For years the oath of allegiance has been a disputed topic in Quebec, but there was some doubt as to the right of a provincial legislature to amend Section 128 for its own members.

The alternative formula provided in the *National Assembly Act* is the addition of an oath complementary to the one in the Canadian Constitution. This additional oath reads as follows: "I [name of the member], swear [or solemnly state] that I will be loyal to the people of Quebec and that I will exercise my functions as a member of this Assembly honestly and justly, respecting the Constitution of Quebec."

For some twenty years, the greater part of the Assembly's work has been carried on in committee. The parliamentarians are now considering amending the Assembly's standing orders to increase the role and the mandate of the committees. After comparisons with foreign parliaments, a smaller quorum has also been proposed: a quorum will now consist of one-sixth of the members,

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including the Speaker, and of one-tenth of the members when a parliamentary committee is sitting at the same time as the Assembly.

Committees and subcommittees will now be allowed to sit anywhere in Quebec as long as they observe the rules of the Assembly. Previously, standing committees had to exercise their mandate at the Assembly itself; only special committees could sit elsewhere.

The Act sheds new light on situations that might prevent a member from sitting. These sections of the Act specify the situations that could constitute a conflict of interest or be incompatible with parliamentary duties. A clarification was needed, since the old Act failed to distinguish between the idea of ineligibility and incompatible duties and that of conflict of interest. To make it easier for parliamentarians to interpret these rules, the Act creates the office of legal advisor, whose role it will be to give an opinion to any member who may request one on his situation with regard to the Act's conflict of interest provisions.

Interpreting such provisions in regard to personal and professional situations and the context for each case has become extremely difficult in today's society. The role of the legal advisor will, it is hoped, meet a genuine need felt by parliamentarians faced with difficult situations and determined to respect the rules of probity and integrity set down in the Act. The opinion given would be confidential unless the member in question gave permission for it to be divulged. A member may not be accused of any irregularity if he has been told by the legal advisor that he is not infringing the provisions on conflict of interests or compatibility of responsibilities, as long as the member gave the advisor a full and exact statement of the facts of the situation.

As was mentioned, the new Act enshrines the independence of the National Assembly by creating an Assembly Office responsible for the Assembly's general administration and empowered to rule on a wide range of areas. The opposition will henceforth be involved in the Assembly's internal management decisions, since the seven members who form the Office will include three from the opposition. The Assembly Office has been given powers that can only be described as exceptional and uncommon. The Act provides that the Assembly Office may override the application of any administrative act or regulation when the goals and the exercise of the Assembly's authority could be more effectively attained by using specially formulated rules. The Office will have to be very careful in its use of this extraordinary power, because the Act identifies it as an exceptional power: the management of the Assembly is to be performed within the framework and the primacy of general laws and regulations.

Although the establishment of the Office is an innovation, it is not a "first" for Canada. It is part of a Canadian trend that has been observable for several years in the structures of provincial parliaments. It should also be pointed out that unlike corresponding European bodies, the Assembly Office will have purely administrative responsibilities. The members of the Office will not have a voice in planning the Assembly's work. This area will remain a government prerogative, entrusted to and exercised by the Government House Leader.

One notable departure in the new Act is that the Assembly has chosen to divest itself of some power to judge anyone who infringes its rights and privileges. A member accused of having infringed a provision of the Act will still come before his peers to answer for his conduct and, if there are grounds, the Assembly will decide to impose one of the penalties provided under the new Act. If the rights of the Assembly were infringed by a third party, however, the Act gives the courts exclusive jurisdiction to decide on a penalty. The Act divides jurisdiction on penalties between the Assembly and the courts, depending on whether or not the accused has parliamentary status.

This measure breaks with a time-honoured parliamentary tradition that only the Assembly was able to assess penalties for any infringement of its rights. Probably the reluctance of parliamentarians to set in motion the mechanisms to bring before them a citizen accused of such an infringement and the doubts of many commentators as to the impartiality of such a procedure have convinced members to renounce this jurisdiction. Practice will be the test of these new rules, which, it need hardly be said, will not be invoked very often.

For the reform to be complete, new standing orders will have to be adopted. A parliamentary subcommittee has been empowered to prepare the new orders, which will be the cornerstone of the current parliamentary reform in Quebec.

(*Translated from French*)