Private Bills vs Public Bills:

A Provincial Perspective

Donald L. Revell

Bill C-19, *An Act respecting the reorganization of Bell Canada*, was given second reading on April 2, 1985. During the debate, the member for Humboldt-Lake Centre, Mr. Althouse, asked for a Speaker's ruling on whether the bill was properly before the House as a public bill or if it should be classed as a private bill.[1]

Speaker Bosley decided that the bill could proceed as a public bill and in my opinion this was the correct decision. However, the reasoning in the decision raises an interesting question as to whether certain matters may only be dealt with as private bills.

The decision appears to proceed on the assumption that the Speaker was under an onus to rule that unless the bill affected the public interest the bill was a private bill and that therefore it was not proceeding properly through the House as a public bill. In reaching a decision as to whether the bill was properly before the House, the Speaker, because of the assumption, had to decide that certain clauses in it affected the public interest. His conclusive argument is that because clause 3 provided that, "in the event of any inconsistency between the provisions of this Act and any other Act of Parliament or anything issued, made or established under that other Act, the provisions of this Act prevail", the bill is a public bill "since a private Act, being an exception to the general law, could not prevail over any other Act of Parliament". It is submitted that a private Act, as a special Act of Parliament, may prevail over a public Act on the same subject.[2] If this is the case, then the conclusive argument fails and, if each of the other arguments fails in turn, then, following the reasoning of the decision, the bill would not have been properly before the House.

The decision raises the possibility that under the Standing Orders in Ottawa there may be a hiatus in the powers of Parliament to legislate. The government's power to introduce legislation of wide or general application is unaffected by the decision as is the ability of an applicant for private legislation to obtain legislation applicable only to the applicant. But what if the executive or a private member of Parliament wishes, for whatever reasons, to affect the powers or duties of a particular person and the person does not wish to apply for private legislation? In Ottawa, it would appear that unless a bill has some public policy content, the bill may be ruled out of order.

It is submitted that if such a hiatus exists, it is unique to Ottawa. At Westminster there can be no hiatus because the hybrid bills procedure allows bills that would otherwise be private bills to be brought forward without regard to the normal private bill rules. Likewise, the provinces seem to have taken a position that eliminates the possibility of a hiatus. For example, the Ontario Legislature has frequently passed, as public legislation, legislation that could also have been dealt with by way of a private legislation[3] and in Newfoundland, despite the existence of a private bills procedure in the Standing Orders, it would appear that no private bills have been introduced for many years. Instead, bills in the nature of private bills are routinely introduced by members of the executive.

In my opinion, the correct statement of the rule related to the introduction of bills in Canada is that any member of the legislature may introduce, as a public bill, a bill on any subject so long as it is not a money bill. A money bill, of course, may be introduced only by a minister of the Crown. This right to introduce a bill includes the right to introduce, as a public bill, a bill that could be brought forward as a private bill. This statement of the rule reflects the fact that, unlike England, no Canadian jurisdiction has a hybrid bills procedure and because of this, unless a public bill may address any subject, there would be no mechanism whereby a matter that requires legislation in the nature of a private act could be dealt with except on the application of an interested party.

It is submitted that this statement of the rule is both historically and logically correct. It allows the executive and private members the freedom to act when they feel action is required without inserting in their bills provisions that artificially establish that the public interest is affected. The minister or private member in introducing such legislation must accept the responsibility for his or her actions and this is consistent with our theories of responsible government. Furthermore, the rule eliminates a potentially embarrassing situation whereby the Speaker must decide whether a matter of policy as seen by the executive or a private member is in fact public policy in situations that, absent an application for private legislation, would prevent the enactment of legislation. Finally, it recognizes the supremacy of Parliament to pass laws on any matter at any time without being fettered by its own rules.■

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Notes

[1]See *Debates*, April 2, 1985, pp. 3632-3644; April 15, 1985, pp. 3699-3700.

[2]See *Craies on Statue Law*, 7th ed., pp. 366-368.

[3]Public Acts amending private Acts include the *Statute Law Amendment Act, 1910*, c.26, s.23, *Statute Law Amendment Act, 1907*, c.23, s.46 and the *Statute Law Amendment Act, 1902*, c.12, s.30. Public Acts repealing private Acts include the *Private Acts Repeal Act, 1984*, c.73; and the *Health Protection and Promotion Act, 1983*, c.10, s.111(3). Public Acts that could have proceeded as private Acts include the *Rideau Centre Mortgage Financing Act, 1982*, c.35. In addition, many of the unconsolidated and unrepealed public Acts listed in Schedule C to the *Revised Statutes of Ontario, 1980*, could have proceeded as private bills.