

# *New Rules for Private Members' Business*

*Nora S. Lever*

**T**he role of the Private Member had been of concern over the past several years. In fact, the opening paragraph of the final report of the McGrath Committee on Reform of the House of Commons went to the core of that concern by stating: "The purpose of reform of the House of Commons in 1985 is to restore to private members an effective legislative function, to give them a meaningful role in the formation of public policy and, in so doing, to restore the House of Commons to its rightful place in the Canadian political process." Chapter VII of that report was devoted to Private Members' Business which concerns debate dedicated to bills and motions proposed by individual Members of Parliament, as distinguished from the program of the government presented by Ministers of the Crown.

Recommendations regarding Private Members' Business were designed to "tighten the conditions of the ballot, widen the scope of Private Members' legislation, and ensure that some Private Members' bills and motions come to a vote". Provisional Standing Orders now give effect to these proposals and will continue for an experimental period until the end of December, 1986. During that time the success of the experiment will depend on the willingness of Members to grapple with the details of the process until they have a workable system as a finished product. House leaders and their staff, members of the new Standing Committee on Private Members' Business and officials of the House are making an effort to devise guidelines or adjustments to the Standing Orders so that the new procedures may meet the high expectations expressed in the McGrath Committee report.

## **The New System**

Members of Parliament intending to introduce legislation must send it to the Journals Branch. Notice is printed in the *Notice Paper* and, after twenty-four hours, is moved forward to "Routine Proceedings" in the *Order Paper* where the motions for introduction and first reading are entertained by the Speaker whenever the MP indicates an intention to proceed. (In the case of a motion, a Member of Parliament has only to send it to the Journals Branch which publishes it in the *Notice Paper* and, subsequently, in the *Order Paper*.)

From time to time, the Clerk of the House convenes Members for a random draw to establish an order of precedence for twenty bills or motions to be debated in the House. The Deputy Speaker presides over the draw, selecting items from a beautifully carved ballot box which was recently built for the new process of electing the Speaker. All items not chosen in the draw remain on the *Order Paper* in a list outside the order of precedence. They will be eligible for any subsequent draws throughout a session.

Each of the twenty items in the order of precedence will have at least one hour of debate. As many as six, however, could have up to five hours of debate. This is determined by the new Standing Committee on Private Members' Business.

## **The Standing Committee on Private Members' Business**

The McGrath Committee on Reform recommended that there be a small Committee which would decide the criteria to be applied to measures selected to come to a vote and would have complete discretion in arriving at these decisions.

The first chairman is Bill Kempling, an experienced Member of Parliament, who determined to ensure that choices be made by consensus in a non-partisan manner if possible. André Plourde is Vice-Chairman and the other members include André Ouellet and Bill Blaikie, both of whom were members of the McGrath Committee, and Arnold Malone, John Reimer and Gerry St. Germain. The Committee is charged with selecting up to six items upon which a vote must be taken at the end of debate. A major criticism of the old system was that private members' bills could be discussed but rarely come to a vote.

In making its first selection from the twenty bills and motions in the order of precedence, the Committee agreed to hear the sponsors of each for about fifteen minutes. Then its members met *in camera* to devise a set of criteria by which they could make their choice in as equitable a manner as possible. Acutely aware they were breaking new ground, the Committee decided to publish the criteria used in the first selection in the hopes that Members would be guided by them when introducing motions and bills and would, perhaps, contribute to the development of a just method of selection by expressing views to the Committee or its members.

In a report to the House on May 23, 1986, they set out the criteria as follows:

1. Private Members' bills or motions may be of national, regional or local significance, highly contentious or non-controversial; but to be selected as "votable items", motions or bills must not be trivial or insignificant.
2. Bills or motions which appear to discriminate in favour of or against a certain area or region in the country should not be selected as "votable items".
3. Bills regarding electoral boundaries or constituency names should not be selected. The Committee feels that other avenues are available to Members without using up to five hours of Private Members' time allotted to "votable items".
4. The bill or motion should not require obvious amendment because it is substantially redundant with the law, is fundamentally ineffective to implement its own intent, is unclear in its meaning or is otherwise defective in its drafting. It was recognized that the *Order Paper* contains many

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motions and bills which were introduced early in this Parliament and have subsequently become outdated in whole or in part. With a new session, however, the Committee expects that all Members will exercise care in introducing their new items of business.

5. The subject of the motion or bill should be different from specific matters already declared by the Government to be on its legislative agenda.

6. Depending on the context of political issues and events, the number of times a topic has appeared in the House may be of significance.

7. All other factors being equal, lower priority should be given to motions which deal with matters which the House could address in some other way or through another procedure.

8. Motions couched in partisan terms should not be selected. The Committee believes that such language could have the effect of violating the spirit of reform of Private Members' Business if a division were required on a motion of this kind.

9. Bills will be set aside in this selection process if they are clearly unconstitutional in that they infringe upon provincial legislative authority, the *Canadian Charter of Rights and Freedoms* or other entrenched constitutional rules; or if they impede or are contrary to normal federal-provincial or international relations.

The Committee chose three votable items during the first selection. Jim Fulton, Member for Skeena, argued that it would be useful to upcoming government negotiations with the United States to have in place his Act respecting the International Land Boundary between Canada and the State of Alaska. Bill Attewell's motion asks the government to consider the advisability of introducing legislation to require an annual budget in which total annual outlays do not exceed total annual receipts and such total receipts will exclude those derived from borrowing and total outlays will exclude those for interest costs on the national debt and for repayment of the debt principal. Jim Manly's motion urging the government to establish a level of 0.7 percent of the Gross National Product for official development aid brings this issue of

ongoing importance before the House for an expression of opinion.

Late in June, following a second draw for ten items to bring the order of precedence up to twenty again, the Committee met to consider the selection of additional "votable items". Their choice of three motions brought to the maximum number of six in the order of precedence to be designated "votable". John Parry's motion recommends the abolition of the Senate, while Gus Mitges proposes that section 7 of the *Charter of Rights and Freedoms* include a human foetus or unborn human being. Finally, Jean-Claude Malépart's motion urges that single, separated or divorced persons in need between the ages of 60 and 64 be covered by the spouse allowance program.

## Allocation of Time in the House

The hour for discussing Private Members' Business takes place four times per week. Items which have not been designated as votable by the Private Members' Business Committee are debated for one hour, then dropped from the *Order Paper*. Selected "votable items" receive up to five hours of debate in the House in the initial stage. After one hour of debate, the motion or bill moves to the bottom of the order of precedence, works its way up to the top, receives a second hour of debate, drops to the bottom of the order of precedence and so on. It has been calculated that it may take about four months for an item to reach the fifth hour of debate and be voted upon. Of course, if debate collapses earlier, the question is put immediately whether or not the full five hours have been used.

In the case of a motion, after the House makes its decision the item of business is disposed of. A bill, if agreed to, is referred to a legislative committee where the usual practices of hearing witnesses and clause by clause study take place. There is no time limit for the committee stage. Upon report back to the House, the bill is placed at the bottom of the order of precedence. It will have two separate Private Members' hours for debate at report stage and third reading, with a drop to the bottom of the order of precedence again at the end of the first hour. During the first hour of report stage and third reading, a Member may propose a motion to extend the debate on the second day by a period not exceeding five hours. Such a motion must have the support of at least twenty Members.

Members of the Committee have felt that an attempt should be made to resolve any problems encountered during the



Principal Clerk, Nora Lever, and Deputy Speaker Marcel Danis during the draw for Private Members' Business. (Martine Bresson)

experimental period. In their Third Report to the House they noted that, although the structure provided by the order of precedence has met with general approval and Members look forward to being able to identify well in advance certain dates for debates in which they wish to take part, there are certain difficulties. Since debate had begun under the new rules on April 24, 1986, there had been, theoretically, thirty-two hours for Private Members' Business; but only fifteen had been used. Ten were suspended because of allotted days and seven were lost because Members in whose name the motions stood were unable to attend the House. The suspension of Private Members' Business by allotted days caused too many postponements of debates previously scheduled. Also, it appeared to be unrealistic to have the schedule of debate established by a random draw without regard to Members' previous commitments, and there is no provision for substitution when a Member knows in advance that he or she is unable to conform to that schedule. Moreover, the Standing Orders provide no guidance as to the disposition of bills and motions not taken up as scheduled.

The Committee proposed that Private Members' Business not be suspended on opposition days. Further, they would prefer increased flexibility in scheduling debates, without changing dates fixed for the "votable" motions and bills. Finally, they suggested that the items of Private Members' business standing in the name of Members unable to be present either drop to the bottom of the order of precedence or be removed from the *Order Paper* entirely, depending upon whether or not the Members give sufficient notice.

The first vote on an item of Private Members' business took place on Monday, May 26, 1986. As it happened, it was not a motion or bill which had been selected by the Standing Committee on Private Members' Business. Rather, it was a case of there being no further debate and the question being put by the Chair on an amendment to the motion of Mr. Stackhouse regarding high interest rates associated with charge cards. The bells rang to call the Members.

This raised two issues. First, there was a question in the minds of some Members present as to the role of the Whips. On the one hand, there was the view that Whips should possibly continue the practice of ensuring that Members attend the House or the recorded division. According to this view, the practice of having the Chief Government Whip and the Opposition Whip march into the Chamber to indicate that the House was ready for a vote would continue. Others expressed the opinion that Members should not be "whipped" for Private Members' Business and that, therefore, the traditional role of the two Whips should be set aside. With the new rules, it was argued, the bells were limited to thirty minutes and the Chair could put the question without the device of the Whips.

The second issue arose during the calling of the division. The practice has been to call names by party and, in fact, the division sheets used by the Clerk at the Table are printed to accommodate that practice. However some Members expressed disappointment. Bill Blaikie, Member for Winnipeg-Birds Hill, said after the vote: "I thought it was a shame that this historical occasion was marred by the fact that we took the vote according to party instead of according to rows . . . I think next time around

that should not happen at all". Warren Allmand agreed, saying: "We are not voting on a government measure but on a Private Members' measure" and adding that he hoped the Chair would consider that in the future.

Officials have produced newly-designed division sheets. It remains, however, for the House to determine the practice to be followed.

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## The Private Members' Business Office

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With the adoption of the new Standing Orders the Clerk of the House has established a small Office which dedicates itself solely to the concerns of Private Members. The new Office has three full-time staff: Principal Clerk, Committee Clerk and Secretary. Additional clerical support is secured from other offices as needed.

The procedural work includes careful study and interpretation of the new Standing Orders and assisting the Chair occupants to determine procedures or practices to follow where the new Standing Orders appear to be silent. Further procedural expertise is applied to the daily examination of the *Order Paper and Notices* which is essential in order to be able to provide advice to Members of Parliament and their staff. Procedural and administrative responsibilities are brought to bear jointly in the responsibility for private bills.

The administrative support provided by the PMBO has a number of aspects: scheduling of the Adjournment Proceedings; ensuring that Members and staff are aware of the order of precedence and dates for debates; arrangements for the Draw and support for the Standing Committee on Private Members' Business including arrangements for meetings, preparation of reports and budgets, etc. As time and resources permit, the Office hopes to develop information sessions and materials for Members and staff to increase their awareness of the possibilities open to them.

The Private Members' Business Office has been established on a provisional basis only until December, 1986. If the PMBO becomes permanent at that time, it will no doubt be staffed from time to time though the rotation process provided by the Career Structure in the Clerk's Sector. Staff who have an interest in a variety of experiences including procedure relating to both House and Committee may see this small Office as an excellent opportunity for career development.

Changes in the procedures relating to Private Members' Business are part of a whole new system modeled, as the McGrath Report has said, neither on the traditional model of Westminster nor on the congressional system. But changes in the rules alone will not bring about a new role for Private Members. The Reform Committee exhorted Members to action, pointing out that much depends on Members themselves and on the political parties to which they belong. "Without a significant change in attitudes on the part of all those who concern themselves with Canadian politics, implementing these changes will accomplish little."

Concerned members of the public, as well as Members and officials who have an abiding interest in parliamentary procedure, will be watching. ■