



CONFIDENTIAL

OTTAWA, Ontario

August 8, 1980.

Memorandum to Mr. Reeves Haggan:

Re: Parliamentary Procedures Relating to Patriation
of the Constitution.

A. Westminster.

Normally all of the bills required during a session (except Appropriation and Finance) are brought in during the first ten days of the session, i.e. late October or early November. The sessional timetable is generally blocked out by the year and scheduled in detail weeks ahead. The Government possesses and regularly uses all of the rules necessary to make timetables stick: extension of sittings, time allocation orders, closure and strictly enforced requirements for relevance and brevity. There is no rule prohibiting the introduction of a bill later in the session, but it would be helpful if the U.K. Government could be forewarned before it prepares for the next session.

Usually the U.K. Parliament breaks for a month at both Christmas and Easter. Its summer adjournment generally is from early August to late October.

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Debate at second reading would last more than one day only if special conditions applied. Usually it is a good deal less than a day. Bills are referred to one of the Standing Committees, which do not hear witnesses but which function much like our Committee of the Whole. Amendments may be proposed both in Committee and back in the House at Report Stage. Both of these stages are, if need be, subject to time allocation orders. There is no debate at Third Reading unless application is made by six members.

The procedure in the Lords is similar, except debate is more brief and the bill is likely to go to Committee of the Whole.

Royal Assent is generally given by Letters Patent.

The substance of the bill and the degree of agreement by the provinces will have bearing upon the degree of intervention by the radical Labour, Scottish and Welsh Nationalist and Northern Irish members. The U.K. Government is unlikely to permit extensive debate. The real issue is their willingness to schedule the bill.

B. Ottawa.

The ultimate instrument is resolution of both Houses Addressing the Queen. This may be a joint resolution or separate resolutions. The latter course raises the spectre of two different resolutions being adopted by the two Houses.

Except for the Prime Minister and the Leader of the Opposition, who have unlimited time, speeches are limited to forty minutes. Each member may speak once on the main motion, once on any amendment and once on any sub-amendment. Debate may be terminated by closure (Standing Order 33). Time allocation (Standing Orders 75A,B,C) cannot apply to a resolution.

If the Government chooses to bring forward the resolution without concurrence of the provinces, it will be open to criticism if it does not provide a method by which a number of amendments may be readily proposed. Normal procedure would limit consideration to one amendment or sub-amendment until debate thereon concluded. This would raise the possibility that the point of closure would be reached without adequate consideration having been given to alternatives.

There are two possible remedies. As in the case of the flag debate, the matter could be sent to a committee - with a time limit. This could even be done after protracted debate in order to make the opposition think it had won something. Closure might still be required on the motion to concur in the ultimate committee report (that an Address in specified words be adopted). Concurrence in this report would be in effect the adoption of the Address by the House.

A neater, but considerably less attractive or salable politically, route would be to introduce a motion to adapt the report stage rules and define time limits for consideration of the resolution. This would provide for written notices of amendments, grouping amendments for debate and providing a specified time for debate. This motion might require closure.

Debate in the Senate likely would be longer than usual. Use of the unlimited question period and other devices might be employed to filibuster. There is no closure in the Senate.

C. Referendum legislation.

Such a bill would go through the normal legislative procedure: Commons - first reading, second reading, standing committee, report stage, third reading; Senate - first reading, second reading, standing committee, third reading; Royal Assent. In the Commons, time allocation rules may be applied.

On the question of a general vs. a one-issue bill, the latter has the appeal of (a) requiring no further debate on the question and (b) making it possible to impose via the bill a time limit on the eventual debate on the Address, as does the Ministries of State legislation limit debate on a motion to create a Ministry.

D. Timing.

1. Early Recall of the Canadian Parliament.

The House of Commons could be recalled within forty-eight hours unless a week-end intervened, in which case the time would have to be doubled. In other words, a recall on a Friday, Saturday or Sunday would mean meeting, respectively, no earlier than Tuesday, Wednesday or Thursday. Absolute co-operation of CN-CP Telecommunications, DND and MOT would be required to meet so short a timetable.

2. Notice Periods in the Canadian Parliament.

(i) House of Commons.

Forty-eight hours notice is required for any bill or resolution. Standing Order 42(2) provides that when Parliament is recalled under urgent conditions a Special Order Paper may be published (at least forty-eight hours before the date of meeting) in order to meet the notice provisions.

A resolution may be proceeded with as soon as the notice provisions have been met. A bill is merely read a first time and cannot proceed further before the next sitting.

After a bill is reported from standing committee, forty-eight hours must intervene before the commencement of the report stage.

Twenty-four hours notice is required for any amendment to be proposed at report stage.

If no amendments are proposed at report stage, third reading may be proceeded with immediately, but if amendments are proposed, third reading cannot be proceeded with until the sitting following the completion of report stage.

All of the above provisions may be waived by unanimous consent.

The minimum number of days for the passage of a bill using time allocation (75C) at all stages, in the unlikely event of there being no other disruption in the House is seventeen sittings or three and one half weeks.

(ii) Senate.

The Senate requires forty-eight hours notice of a resolution. A bill is read a first time at the sitting at which it is received from the Commons or P.C.O., as the case may be, but may not be proceeded with at second reading for forty-eight hours.

The Senate may refer a bill to a Committee of the Whole or skip committee stage, but usually sends bills to a standing committee.

A standing committee's report on a bill is debatable and amendable.

Third reading cannot take place on the same day as second reading or as the day on which a committee report on the bill is adopted.

The Senate may, by leave, waive any of the above provisions.

3. Timing in the British Parliament.

The formal delays are virtually the same as in Canada. Once a bill is ready for consideration at a specific stage, "Usual Channels" (who is a senior official) consults the parties and recommends a date and length for the debate and whether any closure or other procedure would be needed. Barring an unforeseen event, the Leader of the House announces this schedule and having a better conception of his place than his Canadian counterparts, moves any procedural motions advised by "Usual Channels".

The Government tries to plan a session at several levels, but the bottom line planning period comes from a Thursday announcement of the business for the next seven sittings, i.e. to the second Monday following. This means that the planning period for each Thursday announcement begins on the preceeding Monday and, reasonably, would involve items already introduced. There is no reason why a comparatively minor bill could not have all its stages' timetables agreed to at once, but at least a ten day delay between first and second reading should be anticipated. Probably the minimum time between the introduction and passage of a bill is a month. This is optimistic.

The House of Lords could probably deal with a bill in a few days, but it may be prudent to allow two weeks or thereabouts.

4. Referendum.

The Chief Electoral Officer should be able to administer a referendum in about the same time as a general election provided that the ballots were pre-printed.

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J.D. YANOVER

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