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# **Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs**

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**Chair**

**Mr. Gary Carr**

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## Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs

Wednesday, March 9, 2005

• (1815)

[English]

**The Chair (Mr. Gary Carr (Halton, Lib.)):** We'll call the meeting to order.

First of all, I'd like to thank everyone for coming out tonight. We actually have a list of quite a few people who have RSVP'd to come this evening, so they may wander in. I don't know if the vote changed anything. We may have some people coming forward as we go.

As many of you know, the private members' business was amended in the last Parliament. The most notable changes were the concept that each member of the House should have at least one opportunity to present an item of private members' business during the life of a Parliament, and that all items should be votable after two hours of debate unless they contravene certain criteria. This is still provisional.

Some of the members may not know this, but the Subcommittee on Private Members' Business must review the operational provisional Standing Orders 86 through 89 and report to the Standing Committee on Procedure and House Affairs by the end of May 2005. Unless the provisional standing orders are made permanent or are continued by the end of June, they will cease to operate.

I must thank all the members here, as well as others who aren't, for their reply to the survey. We now have gotten over a hundred replies back, which is actually very good. Certainly one-third of the members of the House of Commons, and almost 40% of the private members, have sent some information back to us regarding their ideas, thoughts, concerns, and suggestions. I think that response rate is pretty good.

What will happen now is that the subcommittee, from which Madame Picard and Monsieur Casey are here this evening, will take a look at it over the next period of time, and then we will put together our recommendations. What we wanted to do—and the subcommittee agreed that this was a good idea—was have a general discussion to exchange views. We have our researcher here to answer questions, obviously, as well as our clerk, to see what we'd like to see happen. As we all know, the private members' business has become extremely important particularly to this Parliament, as we just came from a vote on one not too long ago.

What we want to do is keep this fairly informal. We will be taking suggestions and concerns, and we have the people here to answer to them.

Very quickly, I'm not going to go through the survey that was sent out by the subcommittee, but most of you did receive it or have seen it. I'm sure some of the caucuses have gone to their caucus members in regard to it. What we want to do is get some of these ideas. If you want to have any discussions on the survey topics, though, they certainly can stimulate some of the discussion, or we would obviously entertain anything you have.

We will try to keep it informal. I will turn it over now. What you can do is just maybe signal to me if you would like to speak, and then we will hear from you.

With that, I will turn it over for any members to give us their ideas, thoughts, and concerns on this. The floor is open.

**Mr. Ken Epp (Edmonton—Sherwood Park, CPC):** Are you going to move methodically from the front of the questionnaire items, or just go on the...?

**The Chair:** If it's acceptable to everybody, what I thought we could do is go based on what your issues are, and then we can go through the questionnaire. If you would be interested in starting this off, Ken, we'd be pleased to hear from you.

**Mr. Ken Epp:** Thank you very much. I really appreciate the opportunity to participate here.

I actually think that private members' business is making a good transition. I like some of the things that have happened during the time since I was first elected in 1993. Even tonight, starting at the back row.... I remember when I was on that little subcommittee and that was one of our recommendations, and here it's now being done. So that's good stuff.

I have a couple of problems.

First, this committee involves parliamentarians. I'm not the one who wrote the thing on the questionnaire—at least I don't remember if I did—but I really think that if a bill is technically acceptable, then it should be votable unless the member himself or herself says, "I want this only for debate and I don't want it voted on". We've had only one instance in this Parliament, but it was a significant one, when a member brought forward an issue and this committee deemed that it was not votable. I think it was a breach of his privilege, because every other member got to vote on his bill. It wasn't me, obviously, because I've never been drawn.

That brings me to my second issue. I think it was a huge step forward—and I pushed for this—that nobody should have seconds until everyone has had firsts. Those of you who were around here will remember my story about how at camp, when we were kids, and also later on when my wife and I worked at camp as counsellors and other staff—in summer we used to do that quite regularly—there was a rule at the dinner table: nobody got to go back to the table to refill their plates until everybody had gone through once. I think that rule should apply.

I don't know why I am so unlucky, but in 11-plus years as a member of Parliament, I have never been drawn. I have had bills in there, but I haven't been drawn. So I haven't been able to bring any one of my issues forward. I don't know how to do that. I know that we start with a clean slate at every Parliament, but this Parliament is most likely to end in less than four years, and I think I'm 283, or some silly number like that. So I won't see the light of day again in this Parliament, and I'm now starting to feel pressure from my family to pack it in and start spending some time with them. So I will have been a member of Parliament for 12 years and not once been drawn.

I wonder if there could be some additional provision put in that says that if a member has tried to get a bill in and has not been drawn, take all the people who are in that category and scramble them, and if they're re-elected, they get on the top part of the list in the next Parliament. It would be one way of solving that. I think I'm probably speaking as much for the benefit of others as for myself now, since my life here will probably end sometime in the next 10 years. I don't know whether I will be so lucky as to get my bill passed or not.

Anyway, I've also been thinking of standing up one Friday, after sending everybody a nice letter telling them I'm going to do this, and saying, look, I have this perfectly innocuous but very necessary bill that needs to be passed, and next Friday I'm going to ask for unanimous consent that it be passed at all stages and sent to committee, and I respectfully plead for your help in this.

Give me one, at least, in all these years. I would take the one on the numeric dates. It's one of the bills I have in. I don't know whether you have this thing, but what does 04/03/05 mean? Is it April 3, 2005? Is it the 4th of March, 2005? It is so bloody confusing. That's one of the bills.

I want to change the Canada Evidence Act, so that where there's an ambiguity in a hearing or a court.... Now, that should pass; it should at least go to committee. It simply makes formal in our Evidence Act what Canada signed onto some 30 years ago, when I was an instructor in math.

• (1820)

So I would like something like that. I would like to see members actually come up for the rotation in some sort of a guaranteed fashion. I don't know exactly how that would work. Some people may only be here for one term, be down on the list, not get drawn, and then they're out. Well, that's the luck of the draw, but I got re-elected three times after my first election—this is my fourth term here. All I'm saying is that it's unfair.

I think that's all I want to say at this time. There may be something later on. I'll give somebody else a chance.

**The Chair:** I have just a quick point. I'm going to try not to speak too much, because it is your night. I have just one possible suggestion, being an old sports buff and a hockey player. What they do for the draft is have a weighted draw. If you finish lower down, you get more of a chance to win. So if you've been here two terms, you might get more of a chance to win a lottery. You must be the most unlucky guy, Ken, having been here 12 years and never been drawn. Surely the law of averages would show that the next time you would.

**Mr. Ken Epp:** There are a whole bunch of my colleagues who have been up four or five times. If it was once or twice, okay, but oh, man....

**The Chair:** I'm going to turn it over to the researchers on your other point, because I think there was a misconception about what this committee does, about the criteria we look at, and then Tom will be next on deck. There are some fixed criteria. This committee doesn't have a whole lot of discretion in what they turn down, and because there is some concern about the criteria, particularly in the case of the one bill that was turned down, I will turn it over to our researcher to explain to everybody the criteria we look at for the bills.

• (1825)

**Mr. James Robertson (Committee Researcher):** When the provisional standing orders were brought in, it was done through a report of the modernization committee. They directed the procedure and House affairs committee to come up with a list of criteria. The procedure and House affairs committee did so. The objective was to have the criteria as simple and clear as possible and to be as objective as possible.

There are four criteria that were adopted in 2002 by the procedure and House affairs committee. The first one is that it be a matter within federal jurisdiction; the second that it not be clearly unconstitutional; the third that it not be a matter that has already been voted on in that session of Parliament; and the fourth that it not be on the Order Paper or Notice Paper, basically that it not be a bill that is already before the House. The most difficult one for the subcommittee to apply has been the one about unconstitutionality. It is said that it should be clearly unconstitutional, and that has been a source of some disagreement, or at least discussion, among members.

**The Chair:** Very quickly, and then we'll go to Tom, that is where you get lawyers, and you will sometimes get two debates. That's the one they had last time. That may be one area you want to look at. The other ones are, I think, pretty clear cut. We obviously wouldn't pass a bill that isn't part of federal jurisdiction. I hope that clarifies the matter a little. We should take a look at that and make some determination as to whether that should stay in or not. So thanks for your point, Ken.

Tom, you're next.

**Mr. Tom Wappel (Scarborough Southwest, Lib.):** Thank you, Mr. Chairman, and members of the committee.

I'll give a little bit of background about my experience with private members' business during my time here. I've been, what I would say, reasonably successful. I've had one bill pass the House of Commons in two separate House of Commons, the 36th and the 37th Parliaments, only to have it killed in the Senate. It was a rather interesting experience.

I also had a bill on enshrining the traditional definition of marriage in the Marriage Act. This is at a time when we were a majority government and the private members' business subcommittee was controlled by the government. It was clearly the view of the Minister of Justice that the bill was not required and it was deemed to be non-votable. As I recall, there was no appeal procedure. I didn't think that was very fair, but enough said about that for the time being.

I also had some success on another health labelling bill, which was passed by the House at second reading and was being studied in depth by the health committee when the election was called.

I'm here because I wanted to say that I too, Mr. Chairman, thought the response rate was excellent. I think that has to be said. Quite often when this committee will make a decision, in some instances those who didn't take the time to respond will criticize it. It seems to me that it's like an election. If you didn't vote, don't come to me and complain. Of course, I should say on the record that I don't know how people vote in the privacy of the voting booth.

From my examination of the statistics, it seems overwhelming to me that the current system is not only acceptable in much of its flavour, but also desirable. I think one of the last questions showed that 49% want it instituted permanently, and I believe that another 27% want it instituted provisionally. That's at least two-thirds, by my math. I would hope that your subcommittee would see that and see it clearly, because I would like to see the provisional rules made permanent, with some tweaking.

One of the things I'd like to go on record as advocating for is precisely what Ken said. Every single private member's bill should be votable without question, unless it is technically unsound. In my opinion, it would be up to the Speaker of the House to rule to the entire Parliament of Canada on TV as to why a particular bill is technically unsound. I think it is totally improper to thrust a parliamentary committee into the position of trying to decide whether something is or is not unconstitutional. That's what we have courts for, not subcommittees. It's why the Supreme Court of Canada struggles with the constitutionality of issues, and in many instances, although not all, they're not unanimous.

To the extent that you can do anything about it, I would urge that all private members' business be votable without exception, unless there is some technical problem or, as Ken says, the member requests that it not be votable and merely debated. That's why I really came.

Thank you.

• (1830)

**The Chair:** It's a very good point. Thank you, Tom.

Some members may be clear, but very quickly, I'll ask the researcher this. There is somewhat of an appeal process. Maybe you could explain what happens with this subcommittee and where it goes if there is a problem with an appeal.

**Mr. James Robertson:** I'll just take it back a step.

As Mr. Wappel said, under the old system, items were drawn. There were up to 30 items at any one time, but only 10 of them could be made votable. The decision was made by the subcommittee and ratified by the Standing Committee on Procedure and House Affairs. But there was certainly no formal appeal mechanism and, in practice, there was no appeal mechanism.

Under the current system, the subcommittee has before it all of the items that are put on the order of precedence. If it says that they meet the criteria, that is the end of the matter; nothing further can be done to revoke its votability.

It is only in those cases where the subcommittee believes that an item on the order of precedence violates one of the four criteria that it reports that to the Standing Committee on Procedure and House Affairs. The member involved has the opportunity to come before that committee to make his or her case, and the standing committee decides whether or not that item should go forward, that is, whether or not to support the subcommittee having ruled it out of order. If it overturns the subcommittee's decision, that again is a final decision.

It is only where the standing committee agrees that the item violates one of the criteria that it reports that to the House. There is then an appeal mechanism, which has never actually been invoked, whereby a member can appeal to the full House if they get signatures from five members representing a majority of the recognized parties. There would then be a secret ballot election, using the ballot boxes that are used for the election of the Speaker, which would be done over the course of two sitting days.

**The Chair:** Just very quickly before I move on, there is a much better process. It isn't what you said, but there is some type of process there. I think that in one case we got to the full committee, and it wasn't then required that we proceed on. So there is a second court, if you will, and a third court, up to the Supreme Court and the House.

Actually, it would have been interesting if there had been a vote in the House on that, but it didn't proceed. To be fair, I think the reason it didn't—which you may want to look at—was the recognized parties aspect of it. Do we want to take the party out of it? The feeling is that private members' business should be the one area where we make our decisions. I agree with Tom, because we have party positions, but on this one I agree with Bill that we aren't as partisan.

So that may be something we want to take a look at, because it's the members doing it, and I think they would take that responsibility. So I just throw that open as something that we would look at. And if we do have some concerns or recommendations on how to do that....

It's a very valid point, Tom, in terms of the appeal process. Even if it's working well now, let's still really take a hard look at it.

Mr. Grewal.

**Mr. Gurmant Grewal (Newton—North Delta, CPC):** I would just like to comment. I agree with what Mr. Wappel has said.

I do have some experience dealing with private members' business in the past. I had a bill that actually was enshrined into law; in fact, it was the only bill from the official opposition. My understanding is that since June 1997, when I was first elected, until June 2004, 1,644 private members' bills were introduced. Out of the 1,644 bills or motions, only 17 became law. That was a very low turnout—less than 1 out of 100.

Do you have any comparisons of where we stand with private members' bills, particularly with the mother of parliaments, Westminster, or with Australia or some other comparative countries?

Second, I think that the citizen's initiative, or private members' bills through the citizen's initiative, should be given much higher priority. That's why we are here—to help pass bills. We are the lawmakers.

There have been more stumbling blocks in the past, and presently I also see that the cabinet always votes with the government, and those kinds of things. I think we should attempt to make private members' bills or motions completely free; even the cabinet members should be allowed to have a free vote. For example, my private member's bill just passed in the House today, and the parliamentary secretary was lobbying against my bill. On private members' bills at least, cabinet or government members should not be lobbying against a bill; let every member clearly make up their own mind whether to support or oppose a bill, rather than the government going so far in opposing a bill. Even the immigration minister went out in the communities to lobby against this bill.

I don't think that should be appropriate for private members' bills. The government can have a position, or the minister can have a position, but they should not go outside Parliament into the communities and build momentum or pressure to push members to vote against a particular bill.

● (1835)

**The Chair:** I'll turn it over to the researcher very quickly. I was going to say that one of the interesting things, of course, in a minority parliament, is it's much more likely to pass, and that's just a function of what happens with a parliament.

I will say, though, as some of you know, I spent 13 years in the Ontario parliament, and I was always arguing...and I saw this on both sides because I was there during two governments. They have it different; they have two hours each Thursday morning for a lottery for private members. And everybody agreed when they were in opposition that private members' bills should be non-partisan, until they got into government. It actually got to the point, at the end, where some members on some sides were using what you clearly knew were party positions. Quite frankly, all sides did it, and there were three parties there. You could actually tell they were using private members' bills as an agenda, and I think everybody admitted it was wrong.... They admitted it was wrong when they were in opposition; when they were in government, they did it.

So I don't know how you take the politics out of it, other than by trying to get something that is clearly not a very partisan issue and trying to build support.

With that, I'll turn it back to you, and then we'll turn to the researcher after that.

**Mr. Gurmant Grewal:** Another quick point I would like to make is this. Let's say there is a government bill. Private members are prohibited from debating that bill in the House because there is a government bill. I'll give you an example on the whistle-blower bill.

There are people who are experts. They agree that the government bill has some faults; there could be attempts to make some improvements or amendments to the bill. But on the other hand, if a private member's bill has better merits, then that bill should not be prohibited from debate in the House. Let members decide, based on the merit, on what that bill has to offer. If that member is deprived of the opportunity to put his or her point on the floor of the House, how will the members know the merits in the bill?

So I have a private member's bill on whistle-blower protection, and all the whistle-blowers in the country have lobbied to support that bill. It has been discussed in the different committees in the House, but I won't have an opportunity to debate that bill in the House simply because there is a government bill, which is much inferior to that bill. The government bill doesn't provide the protection to the whistle-blowers, whereas my private member's bill does. How will the members weigh the merits of my bill when I don't have the opportunity to debate that bill in the House?

I think that's another hypothetical cap on the members, inhibiting their rights. If I can go to the extreme, I would say that there's censorship of the members who are not allowed to put forward their views on the floor of the House.

● (1840)

**The Chair:** Very good. I'll turn it over to the researcher for the first question, and then also, if there is any particular reason that we do not allow government bills; and I'll throw it open for questions.

**Mr. James Robertson:** On the question of other jurisdictions, certainly compared to United Kingdom and to some extent Australia—I remember looking at this some time ago—I don't think Canada's track record is very bad. Private members' business in most western parliamentary systems used to be very important in the 19th century. The trend in all countries throughout the 20th century was to reduce the amount of time and the amount of importance given to private members' legislation, partly because there was much more need for government orders, much more government legislation. And the number of types of bills that could be dealt with in private members' business—because you can't deal with things that involve funding and financial matters—tended to be smaller and smaller.

My recollection is that in Australia there was a lengthy period of about 70 years when only one private member's bill was actually passed into law. In the United Kingdom they have a slightly different system. I think it's one day a week, and you are drawn for it. And I think in Ontario sometimes you will get second reading for a private member's bill, but then it gets lost in a committee and it never gets reported out. Even though on paper they seem to adopt more private members' bills, they don't actually become law. I think the Canadian statistics are abysmal, but they are no worse than those of other countries.

I think, under the new system—and I haven't seen statistics—there have certainly been more votes on items of private members' business since the new rules came into force. I'm not sure that we've had enough time to know whether more of them become law—partly because of the Senate, partly because of the need. It takes a long time to get through the House of Commons, and then it has to get to the Senate, and you can't have an election in between.

**The Chair:** I'm just going to point out that that's a difficult thing. It's nice to have a minority parliament, because it goes to committee, can be passed, and comes out of committee. But a minority usually doesn't last four years, and it will be interesting to see time-wise.... We know where some of them are, because we obviously know where your bill is. Is it better to have a minority parliament? First, will we have enough time to get through it? Obviously that will depend. So you're in a catch-22 by virtue of having a minority situation. The researcher is absolutely correct that in Ontario they don't come out because the government needs House time and doesn't want to give up House time.

We can do that with our committee structure in a minority situation, but minorities don't historically go the full four years. So it will be interesting to see how long the process is on these bills. We're starting to see that now, because we obviously know when it came through the first time and when it's coming back. Those are some of the questions people are asking.

For instance, when did your bill come through the first time, and when is it going to be coming back? It will be interesting to track it down and see what we can do. I guess that's just the function that makes it a catch-22 for us.

**Mr. Gurmant Grewal:** My bill, which passed today in the House, will be before the committee on March 24, which is a very short time, actually. I was pleasantly surprised. I didn't get a response to my other comment on competing with the government—

**The Chair:** That's more of a political question.

**Mr. James Robertson:** Historically that has always been a criterion. I think the feeling is that the government bill is more likely to go forward because the government controls the House agenda. It would be more appropriate to encourage members to move amendments to the government bill rather than spend valuable House time debating the same matter.

A suggestion was made that we avoid all criteria. If that were to be adopted, it would remove that criterion. The idea is that unless there is a technical problem with the bill, everything should go forward as votable unless the sponsor says otherwise. In that case, if you had the choice and chose to go with the whistle-blowing bill and there was a government bill, the two of them would go in tandem in the House. It would be your choice, not a criterion, or a subcommittee's case. It would be a policy decision on the part of the committee.

**The Chair:** That's interesting. We'll come back. Is there anyone else with questions?

Tom is next, then Gurmant, and then we'll come back.

**Mr. Tom Wappel:** I have just an irrelevant comment to Mr. Grewal.

No doubt you got your early hearing because the chairman of the committee was the seconder of your bill.

● (1845)

**Mr. Gurmant Grewal:** I don't want to release all my secrets. In the past, two of my bills were stolen by the government. I use the word "stolen" because first they opposed Bill C-32 when it was passed. It was based on my private member's bill, which was rejected by the government party many years ago. Thereafter, I had another bill about recognition of foreign academic credentials. I was the first MP to bring that on the floor of the House. It was rejected by the government, and then it was included in the throne speech. Then they stole it part by part, and now it's their agenda.

I don't mind the government stealing my bills. I can produce more, and they can steal more. The problem occurs when you don't have an opportunity to debate—for example, the whistle-blowers bill. I understand that the resources should not be tied, but if a bill doesn't meet its primary objective of protecting the whistle-blowers, what good is that bill for protecting the whistle-blowers?

So now I do not have a single opportunity. I cannot go to the committee and volunteer to divulge the contents of my bill. I cannot stand up in the House to do anything except participate in the debate, if I am lucky enough to be picked to speak on that bill. If I'm not, the contents of my bill—all the good things—will remain buried.

So that was the idea of trying to share that. At least there should be some venue where I can vent the good things I have in my bill so that members can be aware of those issues before they finally pass that bill or reject that bill, which happens to be the government's bill.

**The Chair:** Do any other members have any suggestions to add?

Seeing none, I would like to thank you. As you all know, you have members of the subcommittee in each of your caucuses, and obviously all of us are available to discuss it.

I will turn it over one more time to our researcher to talk a little bit about the timelines and where we're going here, so everybody knows what the process will be.

**Mr. James Robertson:** I think all of you received a copy of the summary of the survey. We've received another five or six survey results, so we will be updating the summary in the next week or so. The plan would be for the subcommittee to get together, probably early in April just after the Easter break, to decide where they want to go from here in terms of what recommendations they will be making. We will be putting together a summary of tonight's discussion, so these ideas are before them as well.

In addition, the table officers and procedural staff of the House have been doing a technical analysis of the provisional standing orders to clean up a few little things and make them clearer. All of that material will be available for the subcommittee, and we will hopefully get some instructions from the subcommittee in April and we can then start drafting a report. We would like to have that report ready by the end of April so it can go to the Standing Committee on Procedure and House Affairs. That committee will have to sign off on it and table it in the House. The plan would be to try to get it in sooner than later, so that a decision can be made by the House before the House breaks for the summer recess. We have to have a vote in the House before that, or else the provisional standing orders cease to operate.

**The Chair:** Yes, Ken.

**Mr. Ken Epp:** You noticed Garry Breitkreuz came in here and then left. He has Forum for Young Canadians tonight, and so he couldn't stay, but he asked me to say something on his behalf, and I almost forgot.

So here it is. He is adamant that votability should not be determined by a parliamentary committee because of the fact that you cannot keep partisanship out of it. He said that if there is a committee that's going to determine eligibility to have a bill votable vis-à-vis constitutionality, etc., it should be done either by the clerks or the Speaker's staff or somebody who is avouched to be independent and non-partisan.

**The Chair:** Okay, we will take that from Garry, and he may have put that in as well.

One last thing too, speaking of politics, is that we all know how things do get pushed through here, so I would encourage you all to take this back to the various caucuses and push it forward, because I think it's a very important issue. We all know that things get moved around—and I say this in a non-partisan way because all caucuses are like this—so if we were to go back and push the direction with our caucus colleagues, that may be helpful. We appreciate the input from all of you.

I also want to thank both our clerk and our researcher for the great job they did in sending these out and tabulating them. It was very, very helpful, and they did an excellent job as always. I want to thank both of these two fine gentlemen for that.

In April with the subcommittee, of which Bill is part, we will be looking at all of these recommendations, and hopefully we'll come up with some things that will make it better for everybody. We really appreciate the input, because there have been some very valid points on all sides here tonight.

With that, I will close up the meeting and wish everyone well. I appreciate the amount of time you took on it. Good luck, because it really is a great opportunity to do some things. We all get to vote on other people's bills, but this is one where we really get to push forward what we believe in, in our hearts, and I know, speaking for all members, having watched it, everybody believes these private members' bills are very important.

Thank you for taking the time, ladies and gentlemen.

This meeting is adjourned.

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