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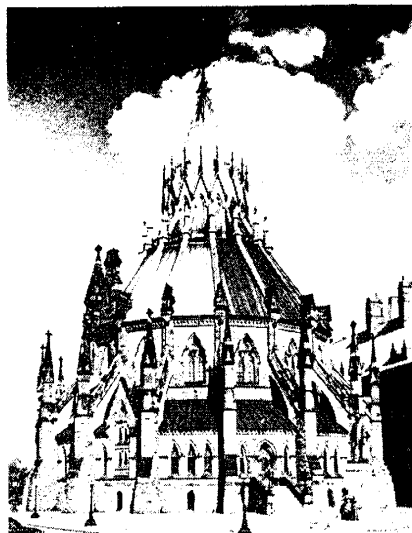
REFORM OF THE HOUSE OF COMMONS

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REFORM OF THE HOUSE OF COMMONS

ISSUE DEFINITION

Members of the House of Commons come to Ottawa from various professions and backgrounds. Many have little knowledge of the framework established by the Standing Orders or the customs and precedents which constitute the basis of parliamentary procedure. As a result parliamentary reform rarely attracts much interest. It may be dismissed as an esoteric pursuit unrelated to the policy questions which attracted parliamentarians to politics in the first place. The conscientious representative, however, should have a keen interest in thoroughly understanding how Parliament works.

The procedurally aware member will be in a better position to influence parliamentary business than one who has not mastered the vocabulary and techniques of procedure. Also, properly understood, parliamentary reform is not merely a matter of tinkering with the Standing Orders. It can be a way to improve the level of political discussion, to create a more sensitive and responsive government and to achieve better policies, laws and administration. Some will argue that this can only be done by going beyond the Standing Orders and considering electoral, administrative and political changes on a wide scale. However, Parliament is a highly adaptable institution and before making radical changes in our political institutions, it is important to look at possible reforms in the present institution.

## BACKGROUND AND ANALYSIS

In the past few years, several proposals for parliamentary reform have been suggested by parliamentary committees, royal commissions and other groups and individuals. Numerous books and articles have been written on the subject and a Study of Parliament Group was formed in 1951. The question of reform has been discussed at various conferences and seminars in all parts of the country. Proposals for reform invariably reflect certain fundamental political assumptions of their proponents. Different individuals take different approaches to reform depending upon their assumptions. For example there is no agreement even on something as basic as the primary purpose of Parliament.

### A. Three Assumptions about the Purpose of Parliament

Some Members believe Parliament is primarily a place for law-making or legislating. For them the need to reform stems from a loss of power by parliamentarians to the Cabinet and the bureaucracy. Among ideas sometimes advanced to take over this power are the use of free votes, fixed elections, committees with the right to initiate their own investigations, etc. Ideas such as these are usually associated with the American congressional system. In the United States sovereignty rests with the people. Their representatives in Congress are expected to participate equally in making laws and Congress frequently increases or reduces budget proposals presented by the President.

Under the British theory of responsible government sovereignty resides with the Crown although it is exercised on her behalf by ministerial advisers who are democratically elected by the people. A government remains in office only as long as it has the support of the House of Commons. The Member of Parliament is therefore in a fundamentally different position from the American Congressman. If the essential differences between congressional and parliamentary government are to be respected, no reforms cannot be transferred from one to another even if they appear to achieve certain desirable objectives. On the other hand, it is unnecessary

to reject all reforms out of fear that they are inspired from the American example. Certain practices might well be incorporated into the Canadian system. One such proposal would be to refer bills to committees before second reading. This would give Members much greater opportunity to participate in the policy formation process without taking actual decision-making power away from Cabinet. This type of reform would be favoured by those who attach great importance to the law-making function of MPs.

Other Members believe the House of Commons serves primarily as a public forum where the political battles of the day are fought and where a government has to justify its policies and account for its actions. Reforms suggested by individuals holding this view are intended to make Parliament a more effective forum by reducing the length of speeches, using smaller committees, giving more authority for the presiding officer, introducing more effective scrutiny procedures and a better method of allocating time. Most reforms examined in this paper are based on this view of Parliament's role. But before looking at them, it is interesting to note yet another assumption about the purpose of Parliament.

In 1979, the Task Force on Canadian Unity set forth the proposition that Parliament is intended to be an instrument of national unity; a forum for working out federal-provincial differences and French-English problems. It recommended introduction of a system of partial proportional representation to ensure better representation of the various regions and language groups in the House of Commons. It also proposed to abolish the Senate and replace it by a Council of the Federation composed of delegations representing provincial governments and acting on their instructions.

Thus a basic lack of agreement exists about the priority to be given each of these functions of Parliament. No single view is necessarily correct or incorrect. Each is tenable given its assumptions and the limitations imposed by our system of responsible government. The important point is that parliamentary reform cannot be divorced from politics. Proposed reforms are based on certain preferences which reflect political assumptions about the purpose of Parliament and the role of Members.

## PARLIAMENTARY ACTION

For nearly one hundred years after Confederation the House of Commons retained essentially the same procedures adopted in 1867. During the period 1963-69, however, a number of important reforms were adopted including changes in financial procedure, allocation of time and committee structure. These are still the main areas of concern to those interested in parliamentary reform.

### A. Allocation of Time

In 1867 and for many years thereafter the House of Commons placed no limitations on the length of speeches or on the time allocated for bills, estimates or any other parliamentary business. The House sat only a few months a year and the business transacted by the federal government took little enough time without control. Determined obstruction was met by compromise or by an appeal to the people. In 1913, however, a closure procedure was adopted to end systematic Liberal obstruction of a Naval Bill introduced by the Conservatives. The procedure remains virtually unchanged to this day. It can be applied after a motion has been before the House for at least two days. Then a Minister gives notice and introduces a motion which cuts off debate at a time fixed by the government. Debate on the motion to introduce closure is strictly limited by the Standing Orders. The use of closure in Canada has always been marked by strong feelings and vigorous objections most notably during the pipeline debate of 1956 and the flag debate of 1964.

In 1965 a provisional allocation of time rule was introduced but it was subsequently replaced by the present Standing Orders 75A, 75B and 75C. The 1965 rule provided for a Business Committee composed of House leaders to plan the timetable of the House. If the Committee agreed unanimously on a timetable for a bill, that agreement was put before the House. But if such an agreement could not be attained, the government could propose to the House its own timetable provided it allowed at least two days for second reading, two days for the committee stage and one day for third reading. The procedure was used infrequently although in April 1967 the

Committee reported it was unable to reach agreement over the Armed Forces Unification Bill and the government moved adoption of its own timetable. The provisional rule lapsed with the dissolution of Parliament in 1968 and the Opposition refused to allow it to be revived.

The present allocation of time rule is not fundamentally different. It was adopted in July 1969 when the government imposed closure to end weeks of debate. The Standing Orders now set forth three situations in which the government House Leader can apply to the House for a time-allotment order. This may be the result of all party agreement (75A), agreement between the government party and at least half of the opposition parties (75B) or by the government alone in the absence of agreement with other parties (75C). These orders apply only to debate on public bills and cannot be used to limit debate on motions such as concurrence in a committee report.

In 1976 a subcommittee of the Procedure and Organization Committee examined the problem of allocating time in the House of Commons. It proposed to eliminate 75B which had never been used and to extend 75C to cover other government business. More important, however, the subcommittee called for a significant reform in the closure rule. This would allow any member (rather than a Minister) to move closure but the motion would only be in order if the Speaker considered the subject under debate had been considered long enough so that closure did not infringe on the rights of the minority. The changes suggested by the subcommittee were never approved but in the long term a new closure rule giving increased discretion to the Speaker (as done in Britain) probably has the best chance of meeting the extremely difficult problem of allowing the government the opportunity to govern without unduly restricting the Opposition's right to criticize.

Of course debate can be limited in other ways. Perhaps the simplest method is to incorporate limits to certain debates in the Standing Orders. For example the debate on the Address in Reply to the Speech from the Throne is limited to a maximum of eight sitting days and the Budget debate to a maximum of six. Speeches could also be shortened and the 1976 subcommittee recommended a maximum of 20 minutes for most speeches. If time could be allocated on a more rational basis the House of Commons might be

able to establish a regular parliamentary timetable. This has been proposed frequently but never attempted. The most recent suggestion was made by the 1976 subcommittee which outlined a plan whereby the House would sit for approximately 150 sitting days compared to the average of 180 over the past few years. There would also be six regular adjournments of one week each throughout the year during which members could devote their time to committee and constituency work.

#### B. Financial Procedures

Procedures for raising and spending money go to the very heart of Parliament's role. The annual authorization to spend money is contained in the appropriation bills but before they are introduced certain preliminaries have to be completed. This procedure is referred to as supply or the study of the estimates. The business of supply relates to the general conduct of the government and it provides an opportunity for Members to examine publicly the performance of individual ministers or government policy in general.

Ideally the business of supply should conform to certain simple standards. It should enable the Opposition to test from time to time whether or not the government retains the confidence of the House. The procedure should enable Members to obtain an overview of public expenditure, both statutory and budgetary, as it increases from year to year. Finally, the business of supply should be done in an orderly way so that the government can have a sound basis for the conduct of its business and the House does not remain in session too long. Unfortunately past and present financial procedures have not always met these objectives.

Under the rules in effect prior to December 1968 every request for supply (main estimates, interim supply or supplementary estimates) was considered by a committee of the Whole House known as the Committee of Supply. The estimates were taken up Department by Department and in each case the minister, assisted by his officials, defended his Department before the Committee of Supply. This took a great deal of Parliament's time and as the pressure of other business mounted a completely new procedure was introduced.

Under the system adopted permanently in 1969, estimates of each Department are referred to appropriate Standing Committees as soon as they are tabled in the House on or before 1 March of the then expiring fiscal year. The Committees are supposed to study them and report back not later than 31 May. If no report is received the estimates are deemed to have been approved and reported back. The Standing Committees may ask the minister and senior departmental officials to appear but there is no fixed number of days devoted to studying the estimates and the number of meetings will vary from Committee to Committee and from year to year. The justification for this reform, aside from easing pressure on the House of Commons, was to allow members of the Standing Committees to gain experience and expertise in dealing with estimates of a particular Department.

Under the new system the Opposition gave up a considerable weapon, the ability to delay supply to the point when a government could no longer meet its commitments and would be obliged to call an election. In return for renouncing this power, which was mainly useful as a threat, the Opposition was provided with 25 "allotted days" each year during which it could choose the subject of debate and in some cases present motions of non-confidence in the government.

The new system has relieved pressure on the House but it has been criticized for a number of reasons. A high turnover rate on Committees mitigates against individual Members becoming familiar with the estimates of particular Departments. Committees sometimes examine estimates and bills at the same time and if a Committee has two or three bills before it the estimates will often receive only superficial attention. Furthermore as many as ten Committee meetings on estimates may be going on at the same time during the months of March, April and May. The press is unable to cover all of them and this acts as a disincentive to Members who realize that publicity is vital to the scrutiny process. By sending estimates to Standing Committees it became impossible for anyone to take an overall view of government spending. Finally, the form in which the estimates are presented makes it difficult for Members to understand them and to make comparisons.



To meet some of these criticisms the House of Commons adopted, in March 1975, a report of the Standing Committee on Procedure and Organization which called for a partial return to the former practice of dealing with the estimates. The allotted days would remain and the estimates would continue to be referred to Standing Committees but certain items selected by the Opposition could be debated in Committee of Supply where they would be open to amendment and eventual decision by vote. The change was adopted on a provisional basis but never made permanent. In 1976 a subcommittee of the Procedure Committee went even further in recommending that within the framework of the Committee of the Whole there should be a Committee of Supply to provide a vehicle whereby the Opposition would be free to use up ten of its allotted days to examine estimates and, if so desired, to vote upon them. The subcommittee also argued that estimates and legislation should not go to the same Committee. The latter would be sent to a Select Committee which would exist for the sole purpose of examining a bill after which it would disappear.

The problem of long term examination of government expenditures was outlined in a memorandum to Members of the Standing Committee on Procedure and Organization by Mr. Walter Baker, then House Leader of the Official Opposition, on 30 September 1976. He proposed creation of a Standing Committee on Policy Expenditures and Programs (PEP) which could consider such estimates as the Committee wishes to examine on a long term and intensive basis. The Lambert Royal Commission on Financial Management and Accountability has also considered this problem and recommended the establishment of a body to be known as the Standing Committee on Government Finance and the Economy. It called for an annual fiscal plan to be presented to Parliament and automatically referred to this Committee. The Committee would report to the House on its study and the government would respond formally to the Committee's report during a subsequent debate.

\* In the television debate during the 1979 election campaign Mr. Joe Clark said that a Conservative government would give back to the Whole House the capacity to consider some estimates without any time limitation. He said he would limit it to two Departments and would let the Leader of the

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Opposition designate those Departments after the estimates have been submitted.

The approval of estimates is done by way of an appropriation bill but since this bill is based entirely on estimates already approved it is customary for the House to pass the bill without debate or amendments. Usually all three readings are passed in a matter of minutes. The approval of billions of dollars in this way is unsatisfactory to many Members, particularly when they know certain estimates may never have been considered but merely deemed reported.

The 1976 Subcommittee on Committee Procedure argued that the appropriation bill be used for a kind of mini-budget debate or at least offer an opportunity to discuss the overall pattern of government spending. It recommended that the main estimates' appropriation bill be debated for a full regular parliamentary day and a further day during which the automatic adjournment procedure would be suspended. Thus if they wished Members could spend all night debating the bill. Such a reform is unlikely to appeal to those who think of Parliament mainly in terms of law-making and wresting power from the executive. However, others who think parliamentary effectiveness is related to its ability to act as a forum for public debate and education would be more likely to approve of it.

### C. Committee Structure

Committees are perhaps the most frequent subject of reform proposals. After Confederation Committees had no status in the Standing Orders nor was their size fixed. Usually they were very large with some having a hundred or more members. With the growth of government programs and responsibilities, particularly after the Second World War, more and more Members became convinced that a strong system of Standing Committees was the key to reforming and revitalizing the House of Commons. Some changes were made during the Diefenbaker administration, such as strengthening the Public Accounts Committee by naming an Opposition member as Chairman, but the real impetus for change came after the 1963 general election.

A Special Committee on Procedure and Organization was established and its fifteenth report, presented to the House of Commons on 14 December 1964, proposed a radical new role for Standing Committees. It called for the creation of genuine specialist Standing Committees, which would be relatively small and have as permanent a membership as possible over the term of an entire Parliament. The list of Committees would be expanded to cover the full spectrum of governmental activities and committees would not be dependent for their powers on the managers of the business of the House but rather would have standing powers to carry out investigations. Despite support from members of all parties on the Special Committee their proposals met opposition in the House. Some Members thought the new plan started from the wrong premise and leaned too far in the direction of congressionalism.

In 1965 the government took the initiative by placing its own plan for procedural change before the House and while it was based largely on the work of the Special Committee it drew back slightly from its position in certain particulars, most importantly with regard to Standing Committees. The changes were adopted on a provisional basis in June 1965 and made permanent after the 1968 election. As a result Standing Committees became far more prominent and active although to a large extent this was a result of the attitude of members and of the decision of the government to have more reports, white papers and subject matters as well as more bills referred to them.

Among the criticisms of the new committee system is the ease by which substitution can be made. Also, relatively few members regularly attend committee meetings. In 1975 a subcommittee of the Standing Committee on Procedure and Organization undertook a thorough examination of the new committee system. It said the number of Standing Committees should be reduced from 24 to 18 or so by grouping them into more functional areas of related interests. It also said the size of most Standing Committees should be reduced from 20 members to about 14. The Lambert Commission agreed with both of these suggestions. The Subcommittee also argued that the chairmen of Standing Committees should be named from a panel of Members drawn from both

sides of the House under the chairmanship of the Speaker. This would assure a greater consistency in practice and interpretation of rules in committee. Another suggestion was for a Standing Committee on General Expenditures which would have the power to initiate studies without waiting for a reference from the House. All these ideas were discussed by the full Standing Committee on Procedure and Organization in September 1976 but no report was presented to the House and no changes were made in the committee system.

In March 1979 the Lambert Commission called for a new system of membership which would make the substitution more difficult. It said the chairmen of Standing Committees should serve for the life of a Parliament and receive remuneration for their duties equal to that received by Parliamentary Secretaries. Each Standing Committee would be allotted a budget to which all expenses associated with its operation would be charged. The budget would include an allocation for hiring staff who would be at the service of the whole committee but under the direction of the chairman. The Commission called for annual reports of Departments and agencies to be automatically and permanently referred to the appropriate Standing Committee. It proposed a change in the Standing Orders to permit Standing Committees to recommend the partial reduction of an item of expenditure in the estimates.

Following the victory of the Progressive Conservative Party in May 1979 a caucus committee on parliamentary reform was established. Their ideas were submitted to the President of the Privy Council who introduced a position paper on parliamentary reform in November 1979. The major theme of this paper was the need to end the government's virtually absolute control over questions that appear before the House and its committees. The position paper contained some 44 proposals dealing with the rules of debate, the role of committees, the use of Private Members' time and other matters. No progress was made in any of these areas before the defeat of the Clark Government in December 1979.

The question of parliamentary reform did not play a prominent role in the 1980 election campaign won by the Liberals. The Throne Speech, delivered on 14 April 1980, said the Government would "propose a program to make Parliament both efficient and more responsive." One of the first

procedural changes was the establishment of six parliamentary Task Forces to investigate regulatory reform, North-South relations, the disabled and handicapped, alternative energy, manpower and a national trading corporation. Although similar to special parliamentary committees in their powers the Task Forces will consist of only seven members and the usual rules pertaining to substitution on committees will not necessarily apply.

The Task Force on Regulatory Reform made a number of recommendations related to parliamentary reform. It called for changes in the committee system so that standing committees could monitor the regulatory activities of departments and review the merits of specific legislation. As a preliminary step to a wholesale change in the standing committee system it called for creation of a Special Committee on Government Regulation. Its purpose would be to monitor regulatory reform and to generally oversee regulatory activities and processes of government departments. The committee would have a mandate to review the merits of subordinate legislation. The committee would be composed of no more than ten members with no substitution except on motion of the committee. It could be expanded by not more than three ex officio members when examining the policy or merits of particular regulations. The committee would be authorized to hire staff. Its mandate would terminate two years after its creation or sooner if the required reforms to the committee system are made.

CHRONOLOGY 1964 - 1981

- 14 December 1964 - Report of Special Committee on Procedure and Organization recommended a wholesale reorganization of the committee system. Also proposed regular adjournments of the House so Committees could meet and Members could visit constituencies.
- 11 June 1965 - House of Commons approved allocation of time procedure on an experimental basis.
- 6 December 1968 - Report of Special Committee on Procedure and Organization recommended changes in the business of supply, allocation of time, and procedures for dealing with ways and means.
- 20 December 1968 - Reforms relating to the use of Standing Committees, report stage and other matters proposed by the Special Committee on Procedure and Organization were adopted by the House. The question of time allocation was referred back to the Procedure Committee.
- 24 July 1969 - A new allocation of time proposal suggested by the Standing Committee on Procedure and Organization was approved but only after closure had been introduced to end weeks of opposition.
- 1975 - Supplementary Report of the Auditor General called for a comprehensive study of the form of the estimates and of the information submitted by each department and agency in support of appropriation requests to determine changes needed to achieve better disclosure, as well as better control by Parliament and by the Government of departmental spending in relation to the appropriations granted.
- 14 March 1975 - Standing Committee on Procedure and Organization recommended provisional changes in the Standing Orders to extend question period by placing the bulk of routine proceedings (except motions of urgency under S.O. 43) after question period. Also recommended changes regarding ministerial statements and supply procedure.
- 22 November 1975 - Report of the Auditor General warned that financial management and control of departments and agencies was below acceptable standards. He made 34 recommendations which were approved by the Public Accounts Committee in June 1976.

- 9 December 1975 - The Standing Committee on Procedure and Organization appointed three subcommittees to study the management of time, committee procedure and private members' time.
- 12 December 1975 - Provisional change of 14 March 1975 regarding the order of proceedings and ministerial statements was made permanent.
- 20-30 September 1976 - The Standing Committee on Procedure and Organization considered the reports of its subcommittee created on 9 December 1975.
- 30 September 1976 - Memorandum from Walter Baker to the Standing Committee on Procedure and Organization regarding creation of a Standing Committee on Policy, Expenditures and Programs (PEP).
- 25 April 1977 - The government announced its intention to create a position of Comptroller General responsible to Treasury Board for the quality and integrity of the financial control systems and administrative policies and practices in use throughout the Federal Public Service.
- 28 June 1977 - Standing Orders were amended to provide automatic reference of the Auditor General's report to the Public Accounts Committee as soon as it is tabled in the House.
- 1978 - Report of the Auditor General called for improving financial information Parliament receives.
- 1978 - The Progressive Conservative Party published Discussion Paper No. 2 on "Reform of Government." Among other things it called for a Special Standing Committee on Crown Corporations and a Central Committee on Public Expenditure to scrutinize revenue and expenditure projections over a three or more year period.
- 12 April 1978 - Report of Public Accounts Committee called for amendments to the Financial Administration Act and other changes to give Parliament more control over public corporations.
- March 1979 - Final Report of the Royal Commission on Financial Management and Accountability (appointed November 1976). Part V contained 11 recommendations relating to parliamentary reform mainly dealing with the structure and operation of the committee system.

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- 23 March 1979 - Public Accounts Committee called for an entirely new format for the estimates to be introduced on a government-wide basis in 1981-82 in line with recommendations made by Auditor General in 1978.
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- April 1979 - The Business Council on National Issues published a study of Parliament. Its recommendations included the following: Standing Committees be given independent power to select and initiate subjects for investigation within their jurisdiction; the size of Standing Committees be reduced and membership fixed for at least two years and not changed except under extraordinary conditions; Chairmen to be chosen from a panel chaired by the Speaker; opportunities for private members' bills and resolutions should be increased by allowing a fixed number of such resolutions and bills to come to a vote; expenditures should be projected on a three-to-five year basis in a White Paper to be presented to Parliament. A new Standing Committee on the Expenditure Budget should study this White Paper.
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- 13 May 1979 - In a televised debate Mr. Joe Clark said he intended "to return to the House of Commons the power to control spending".
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- 9 October 1979 - The Speech from the Throne opening the 31st Parliament said proposals will be submitted to the Standing Committee on Procedure and Organization to strengthen the powers and resources of parliamentary committees to accord more prominence to private members' initiatives, and to make ministers more accountable.
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- 23 November 1979 - The President of the Privy Council tabled in the House of Commons a position paper on the reform of Parliament. It suggested the membership of committees should be reduced to a maximum of 11; annual reports of all departments, agencies and Crown corporations be referred automatically to relevant Standing Committees. Up to five committees at any one time would be allowed to ask the House for permission to undertake a special investigation. Such requests would be deemed approved by the House if they were supported by at least 50 Members of Parliament including at least ten from each of two political parties. Committees making such requests would be required to specify the exact terms of reference, their anticipated reporting date and their staffing and travel requirements. The government would be required to table a response to all Committee reports within 21 sitting days.
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In other areas the position paper proposed the time limit on speeches be reduced from 40 to 20 minutes; a fixed adjournment time for Christmas, Easter and at the end of June; the elimination of motions under Standing Order 43 with question period being lengthened to fill in the time; the adjournment debate should be moved to 6:00 p.m. with the House adjourning at 10:00 p.m.; the number of MPs required to block a motion to extend the hours should be changed from 10 to 25; Private Members' time should be consolidated into larger blocks on alternating Wednesdays and Thursdays; the opportunity to move concurrence in reports of Standing and Special Committees should be provided under Private Members' business rather than under motions; Private Members' bills could still be talked out but alternative procedures would be introduced.

23 May 1980 - Establishment of Parliamentary Task Forces.

19 December 1980 - Report of the Special Committee on Regulatory Reform.

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