

# Four places you'll find Caltex with not a petrol pump in sight.

Caltex does more for the community than just supply it with petrol. We are, in fact, sponsoring many of this year's Bicentennial events.

Sydney's Macquarie Street has definitely benefited from our support. Chances are you've already noticed the Caltex commemorative plaques on the footpath. There are twenty

and each pays tribute to an interesting historical site. Then there's the tour by the Texas Boys' Choir Show. Thirty-six dynamic young performers, taking in over forty venues and singing everything from Brahms to the hits of Broadway.

We also co-sponsored the recent International Skill Olympics '88. There, you would've seen our own young talent, along with overseas participants, performing some fairly unusual feats. (Last

year a team of whizzkids erected a replica of the Harbour Bridge in just under 12 minutes.)

Perhaps our most significant event, however, will be the National Trust's Heritage Week, which will include the Parramatta Colonial Day, the Hunter Valley Steamfest, and a vintage yacht race off Balmain.

But the festivities won't be limited to just New South Wales. Heritage Week is celebrated nationwide, so similar events will also be taking place in country shires all across Australia.

These are just some of the Bicentennial events we're sponsoring this year. So keep your eyes open and you're bound to see more of the Caltex name where you least expect it.



PROUD TO BE PART OF THE BICENTENARY

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## Progress and Retrenchment: The State of the Legislature in Canada

Gary Levy

Suspended animation is perhaps the best short description of the state of the House of Commons in the autumn of 1988. With an election imminent most opinion polls indicate that the next Parliament will not have anything like the overwhelming majority enjoyed by the present government. The question on the minds of many observers is how the procedural reforms enacted in the past few years will work in a more evenly balanced House or even a minority situation? This paper will look at two of the more radical proposals contained in the Report of the Special Committee on Reform of the House (McGrath Committee) in 1985 — the election of the Speaker by secret ballot and a suggestion for legislative scrutiny of order in council appointments.

Insofar as it is possible to pinpoint the origin of the proposal to elect a Speaker by secret ballot the date would be March 1982. The Official Opposition, frustrated by the failure of the Speaker Jeanne Sauvé to rule out of order the omnibus *Energy Security Bill*, moved a motion of adjournment. The Opposition Whip then refused to present himself at the bar of the House, the traditional indication of readiness to vote. In the circumstances Speaker Sauvé declined to call a vote and the bells calling in the members continued to ring for fourteen days! Finally as a result of negotiations among the parties the unprecedented boycott ended with a rather sensible agreement whereby the Government replaced the omnibus bill with eight separate pieces of legislation in return for an agreed timetable for passage of each.

The incident shook up members of all parties and even veteran journalists who usually consider proceedings, aside from question period, unworthy of much attention. It eventually dawned on even the most partisan participants and cynical observers that when boycott replaces debate and coercion, in the form of walk out, replaces due process, eligibility for membership in the politically developed community of nations is cast in doubt. Following the bells crisis a debate on parliamentary reform was held and a special committee established to make recommendations. This committee, chaired by Tom Lefebvre, produced ten reports but only a few of its recommendations were adopted before the end of the 32nd Parliament.

In 1984 the Liberals, in office with only four short interruptions since 1896, went down to a crushing defeat. Brian Mulroney and the Conservative Party captured 211 of the 282 seats in the House. Parliamentary reform was one of the planks in his electoral platform and the very first item in his first Throne speech announced the creation of a special committee on reform of the House.

This committee, chaired by James McGrath, undertook an extensive review of the rules and procedures. The philosophy of the McGrath Committee was to restore the House of Commons to its rightful place in the Canadian political process and to do this by giving private members a more meaningful role in the legislative process. Incorporating much of the work of the earlier committee it produced three reports.

### The Election of Speaker by Secret Ballot

Both the Lefebvre and McGrath committees recommended that the Speaker of the House cease to be nominated by the Prime Minister and should instead be elected by secret ballot of all members. The idea was to emphasize that the Speaker belonged to all members and not to the government or to the opposition. No overt criticism was made of former Speaker Sauvé, who had gone on to become Governor General, but both reports stressed that the Speaker was expected to show leadership in promoting and safeguarding the interests of the House and its members.

Shortly after this recommendation was adopted the Speaker at the time, John Bosley, chose to resign in order that a new Speaker could be chosen under these rules. An election lasting some eleven hours was held on September 30, 1986. While some were unhappy about the time it took to choose a Speaker among the thirty-nine candidates who appeared on the first ballot and the six or seven serious contenders who emerged, others saw it as part of the price to pay if members want to have a larger role in what goes on in the House. In fact there were some subtle hints that the process was not a bad way to encourage some collegiality and personal respect that has been in short supply in recent years. As the evening progressed the atmosphere in the House turned

festive with members mingling on the floor between ballots. At one point the Prime Minister and the Leader of the Opposition engaged in a long relaxed conversation in the centre aisle untroubled by staff, telephones or microphones. This might not seem unusual until one tries to imagine under what other circumstances it could happen. Eventually John Fraser was elected Speaker and there is general agreement that both the idea of a secret ballot and the actual choice were wise ones.<sup>1</sup>

*The House of Commons exists to represent the people of Canada, to legitimize the rule of the executive and to hold the government accountable. It must receive the tools to pursue that mandate. One of those tools is the scrutiny of government appointments.*

The effect of the change became clear in April 1987 when Speaker Fraser put a stop to what had become an increasingly popular means of obstruction — the use of Routine Proceedings to delay government business. The opposition was systematically delaying further consideration of controversial drug patent extensively in committee and in the House. The government moved to supersede Routine Proceedings and go directly to Government Business thereby stopping obstruction. Precedent suggested the motion was out of order; however, Speaker Fraser allowed it saying the chair had a duty in a particular set of circumstances to use its discretion to see that the interests of the House as a whole were protected. Previous Speakers have been reluctant to exercise discretionary authority in part because they owed their position to the government and, despite attempts at objectivity, would always be associated with it.

In addition the secret ballot probably laid to rest a peculiar Canadian convention that had long outlived its usefulness — the tradition of alternating the Speakership between francophones and anglophones. With the advent of simultaneous translation in 1959, the existence of language training programs over the past fifteen years, and the expansion of the number of assistants to the Speaker, the argument in favour of alternation is strictly symbolic. Yet the pool of talent

available for and interested in the Speakership is relatively small and it was becoming counter-productive to overlook competent individuals because they did not happen to be anglophone or francophone as dictated by the convention. Of course the House is a bilingual institution and linguistic ability is a factor just like experience or knowledge of the rules. But it is a sign of political maturity when the bilingual basis of the highest political institution can be left to nothing more than the common sense of the 282 representatives elected to represent all Canadians.

#### Scrutiny of Order-in-Council Appointments

During the last campaign a major issue was the question of patronage appointments by Liberal Prime Minister John Turner. The new Prime Minister promised to give the House of Commons a voice in the appointment process. While vague on the details he left the impression he was talking about a kind of advice and consent process as used in the United States. This question too was considered by the McGrath Committee.

The committee noted that an American type confirmation process could be perceived as removing from the cabinet the appointment power which is constitutionally fixed with the executive. Indeed if appointments came to be considered tests of confidence, the procedure could actually increase party discipline which is the opposite of what the committee desired. Scrutiny of *all* order in council appointments would lend some relatively minor positions an unwarranted importance; on the other hand if only a *few* were subject to scrutiny what criteria would be used to distinguish between those scrutinized and those not? Would such a distinction make non-scrutinized appointments seem even more independent and therefore less accountable?

While anticipating these problems the committee felt that the potential benefits of some kind of confirmation process outweighed the problems. "Parliament's traditional relationship with the executive comes not only through approval, rejection, or alternation but also through the deterrent effect of bad publicity. The House of Commons exists to represent the people of Canada, to legitimize the rule of the executive and to hold the government accountable. It must receive the tools to pursue that mandate. One of those tools is the scrutiny of government appointments."<sup>2</sup>

The committee recommended two types of scrutiny: one for deputy ministers and crown corporation appointments; the other for officers of the House and for three specific regulatory agencies, the Canadian Radio-Television and Telecommunications Commission and the Canadian

Transportation Commission and the National Energy Board. These agencies were singled out because of their substantive role in policy making and the absence of executive control over their activities.

In the case of Deputy Ministers and crown corporations, appointments would be tabled in the House and committees would have 30 days to call the appointee for questioning. They could submit a report but would have no power of veto over the appointment. In the case of the regulatory agencies and parliamentary officials, appointments would be deemed referred to the appropriate standing committee and if no report was received by the House within thirty days the nomination would be deemed to have been approved. "Should the committee report negatively on a nominee within the requisite time period, it would not be considered a matter of confidence, but the government would be obliged to withdraw the nomination."<sup>3</sup>

The committee realized it was heading into uncharted waters with this recommendation but if it worked the procedure could be extended to other agencies. If it turned into a means of tying up committee proceedings then "we will have misread and misunderstood the desire of our colleagues to pursue genuine reform of the House of Commons. . . . Of all the subjects the committee considered, this was by far the most difficult. But it is also the one that holds the most potential for the kind of changes we believe members of all parties desire. We have heard repeatedly about the need for new attitudes towards Parliament. However, unless imaginative new procedures are put in place, little progress can be made in developing new attitudes."<sup>4</sup>

The Government waxed and waned over the scrutiny recommendations which significantly watered down the committee proposal. It extended the recommendation regarding scrutiny of deputy ministers to all order in council appointments which is to say it rejected any idea of a veto. Committees can now examine government appointees, ask them questions and even make a report but cannot stop any appointments. In the view of traditionalists the original recommendation would have pushed parliamentary democracy beyond acceptable limits. Such proposals are viewed as ill conceived attempts to confer upon private members policy-making power which, in a parliamentary system, belong properly to Minister of the Crown.<sup>5</sup>

On the other hand the persistence of political patronage as an election issue indicates that Canadians might be more comfortable if the gap between the theory of a non political public

service and the practice of more and more political appointments was recognized and legitimized to some extent by giving elected members a say over certain appointments. Perhaps a government in a minority situation will be more amenable to such reasoning.

#### Conclusion

For over a hundred years Canadians have found solace in thinking they had a constitution similar in principle to that of the United Kingdom, despite significant differences such as the combination of federalism and the parliamentary system in 1867 and the adoption of an entrenched *Charter of Rights and Freedoms* in 1982.

Similarly standing order number one (which gave a special status to precedents of the British House before it was reworded slightly as a result of the McGrath committee) left the impression that the scope for reform was relatively limited and had to be constantly checked against the British model. This has now changed. The two reform proposals mentioned in this paper are among the most radical ever to receive serious consideration by Canadian legislators.

The secret ballot for the Speakership seems destined to endure regardless of the outcome of the next election. Effective scrutiny of appointments has been forestalled by traditionalists who remain an important force and can muster strong arguments against certain kinds of reform. But the door has been opened and there will no doubt be further attempts to come to grips with the role of the legislature in the appointment process.

#### NOTES

1. For more information on the election process see Gary Levy "A Night to Remember. The First Election of a Speaker by Secret Ballot" in Paul Fox and Graham White. *Politics Canada*, Sixth Edition, McGraw Hill, Ryerson, 1987; John Holtby "Secret Ballot in the Canadian Commons Elects New Speaker" *The Parliamentarian*, Vol. 68 (January 1987) pp.36-38. Marcel Danis, "The Speakership and Independence: A Tradition in the Making" *Canadian Parliamentary Review*, Vol. 10 (Summer, 1987).
2. Report of the Special Committee on Reform of the House of Commons, 1985 p.31.
3. *Ibid.*
4. *Ibid.*
5. The most articulate proponent of this position is C.E.S. Franks' *Canada's Parliament*, McGill-Queen's University Press, Montreal, 1987; see also the work by John Stewart, *The Canadian House of Commons*, McGill-Queen's University Press, Montreal and London, 1977.