

OP-ED / GUEST COLUMN

Reinstatement of bills after prorogation: a thirty year odyssey

Electorate can distinguish between a prorogation and a perogie, but prorogation has lost its meaning

By GARY LEVY

Parliament prorogued on Nov. 12, 2003 amid speculation over which bills will be reinstated in the new session. Practices relating to carrying over bills has evolved in the last three decades. With a new government ready to take over this is an opportune time to reflect on the evolution and see if we want to keep going in the same direction.

The Constitution simply stipulates there must be one session of Parliament per year but is silent on how long or short that may be. Each session begins with a Throne Speech and ends with prorogation. For a century after Confederation the tradition was to have annual Throne Speeches. The first 30 Parliaments had an average of four sessions each. In the seven Parliaments since 1979 (all but one had a majority government) the average has been just two sessions. With fewer and longer sessions one would expect governments to have less trouble getting their bills through the House and Senate. But this has not been the case.

The first attempt to carry a bill over from one session to another occurred in October 1970 when Allan MacEachen, House leader in the Trudeau government, introduced a motion to allow a bill on the Federal Court that had been considered and amended by the Justice Committee in the previous session to be deemed introduced, read a first time, read a second time, referred to and reported by a standing committee and placed on the Order Paper at report stage for debate in the new session. He obtained all-party support for this idea. Even NDP rules expert Stanley Knowles went along and in due course the bill was adopted.

Four years later, the government asked that two bills, one providing funds for the Canadian National Railways and Air Canada and another amending the National Parks Act be revived from the previous session. Both the 1970 and the 1974 reinstatements were done early in a new session. In late July 1977 Mr. MacEachen tried another tactic. The second session was coming to an end and three bills were obviously going to die. So he proposed a "sunset" amendment to the Standing

Orders that would disappear at the end of the Parliament. It provided that these three specific bills be brought forward to the third session and be deemed to have received second reading and be referred to the appropriate Standing Committee — one to Fisheries and Forestry, one to Transport and Communications. The other bill had already passed committee stage so it was deemed to be at report stage.

A variation on this approach was used following the infamous "Bells Crisis" which suspended Parliamentary business for two weeks in 1982. In the aftermath, a detailed agreement was worked out between the parties and put in a temporary standing order. It included a provision that the agreement would continue if interrupted by prorogation.

The Progressive Conservatives came to office in 1984 and two years later Don Mazankowski asked for and received unanimous consent for three bills to be reinstated. Two were deemed to have had second reading and were sent to legislative committee. The other was deemed to have been considered by a legislative committee with amendments and put down for consideration at report stage.

When the Conservatives tried to reinstate six bills in 1991 the Opposition balked. As a result Speaker John Fraser was asked to rule whether bills could be reinstated by a majority vote rather than by unanimity. He said they could but suggested there need be a separate vote each bill. Two of the most eloquent voices in opposition to this way of proceeding were Paul Martin and Peter Miliken, currently Speaker of the House.

The Liberals returned to power in 1993 and in their second session they too wanted to reinstate several bills. The first item of government business in the second session was a motion to "facilitate the conduct of the business of the House." It included a mechanism for reinstatement of both government and private members bills. Under this mechanism, a member could introduce a bill during the first 30 sitting days of a new session and request that the new bill be reinstated at the

stage to which it had progressed at the time of prorogation. Should the Speaker be satisfied that the bill was the same as the previous one, he or she could then order it reinstated at the appropriate stage.

Herb Gray argued that this was a different procedure than the one the Conservatives had used in that it did not deal with specific bills. He also pointed out that the Reform Party had previously tried to get all private members' bills reinstated. After a long discussion, the government moved to cut off debate and the new mechanism was adopted.

This mechanism was refined in October 1999 when Mr. Boudria brought in two separate motions, one allowing ministers to bring back government bills in the first 30 days of the session and the other allowing private members to do the same for their bills. This time there was no closure and the NDP even joined the Liberals in supporting the motion. As a result six government and 11 private members bills were brought back to life.

The most recent resurrection occurred in October 2002 when the government motion added several new twists. It set out the 30-day reinstatement procedure for government bills (private members' bills were not included since the Standing Orders have been amended to allow them to come back). It also reinstated evidence from the last session with regard to committee work, authorizing the Standing Committee on Finance to travel for its pre-budget consultations. The same motion also reconstituted the special committee on the non-medical use of drugs. The opposition was unhappy with this omnibus approach and Speaker Miliken ruled that the motion would have to be split and voted on separately. Once again the government moved to cut off debate and the motions passed. This time nine government bills were reinstated and three of them were still on the order paper on Nov. 12, 2003.

One of the first indices of whether the new administration is serious about changing the relationship between the government and the House of Commons will be how it handles pressure to reinstate government bills from the last ses-

sion. There are certainly enough precedents and Speakers' decisions to justify bringing back one or several items that died on the Order Paper in November.

In thinking about the practices of the last 30 years the new government might want to carry the present state of procedure to its logical conclusion and follow Alberta's example whereby the Standing Orders provide: "A minister may, on one day's notice, move a motion to reinstate a government bill from a previous session to the same stage that the bill stood at the time of prorogation." Or it might look to other Commonwealth Parliaments based on the Westminster system.

They could also opt to continue the status quo which basically upholds the fiction that prorogation constitutes an end to most Parliamentary business, but provides a kind of anti-gravity pill to suspend some of its more unpleas-

ant effects. This represents an attitude, shared by successive governments both Liberal and Conservative, that implies the electorate cannot distinguish between a prorogation and a perogie so there is no need for governments to worry about the fine points of Parliamentary tradition. If that is the choice let us not expend more energy trying to figure out why the public holds Parliament in low esteem.

Of course, a third possibility would be a return to the traditional Parliamentary cycle with an annual Throne Speech, annual prorogation and nothing brought back to life. This should appeal to Mr. Martin, who must realize that a good CEO has to be concerned about scheduling, meeting deadlines and most importantly choosing between competing priorities when resources are limited.

Through tough chairmanship, a Prime Minister can force Cabinet to hash

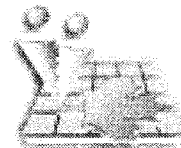
out its priorities and introduce only those bills needed to respond to those priorities. Parliament could cease to be a smorgasbord of departments' legislative wish lists and become a centre of debate on a few essential issues. Priorities (like budgets) have to be reviewed on a regular basis which is why the traditional approach would help bring some order to an inherently difficult process like governing. What is not passed by the end of the session would be lost and that would be the end. Everyone would have to work and behave with that in mind and take the consequences.

This old-fashioned approach requires a tough-minded but fair approach to Cabinet and to Parliament. Ultimately, that is the only way our institutions will regain some of their credibility.

Gary Levy is editor of the Canadian Parliamentary Review.

The Hill Times

Canadian Council of Technicians and Technologists



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CANADIAN COUNCIL OF TECHNICIANS AND TECHNOLOGISTS APPOINTS NEW PRESIDENT, VICE-PRESIDENT

The Board of Directors of the Canadian Council of Technicians and Technologists is pleased to announce that Réjean Touchette, T.P. and Lois Sterner, RET, have been elected to the positions of president and vice-president respectively.

An architectural technologist, Mr. Touchette is a senior officer at the Canadian Space Agency. He previously held several project management positions at Public Works and Government Services Canada, during which time he was twice awarded the Assistant Deputy Minister's Award of Excellence.

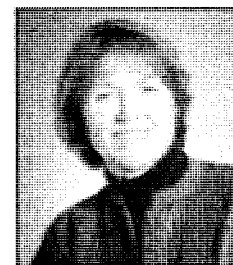
A chemical technologist, Ms. Sterner is a senior laboratory technologist with ATCO Gas. She is a national CCTT director, chair of CCTT's regulatory affairs committee, and an experienced lobbyist on behalf of Canada's certified technicians and technologists.

Through their proven leadership and expertise, Mr. Touchette and Ms. Sterner will promote a comprehensive vision of Canadian technology nationally and internationally, and will strengthen cooperation amongst CCTT's 10 provincial association members.

CCTT is a non-profit federation of 10 provincial associations representing more than 48,000 certified technicians and technologists in the fields of applied science and engineering. CCTT benefits Canada and Canadian technology by advancing technology through these professions.



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