

INSTITUTIONAL CHANGE AND THE POLITICAL PROCESS:
THE PAST, PRESENT, AND FUTURE REALITIES OF THE LEGISLATIVE ASSEMBLY OF
ONTARIO¹

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A Note about Methodology

This paper deals both with a history of Parliament and with the impressions recent changes have made on long-serving Members of Provincial Parliament and key Assembly staff. As a result, this is less an academic work than an anecdotal one.

Introduction

The Westminster model of Parliament² has a thousand-year history. It is steeped in tradition and honour and holds a special place in the hearts of students of parliaments and parliamentary procedure. Many of the processes we see today in Commonwealth Parliaments have their origins in historical fights for rights; often, they were a *reaction* to external events and not a conscious decision to create an institution.

One such example is the introduction of Bill 1. It is traditionally a *pro forma* bill designed to express – either formally or through symbolism – the independence of Parliament from the Crown. If it is an unsubstantial bill, it usually speaks directly to the rights of Parliament and the long history it has of choosing to consider its own business. If it is a more substantial Government bill, it is an initiative to which the Throne Speech did not refer.

Another example is the notion of the “three readings” of a bill before Parliament. Any first-year political science student could tell you that every bill in Parliament requires three readings before it is passed, but very few could give a reason for it. Many will talk about the need to examine a bill closely before passing it into law, but the origins of the “three readings” are rarely, if ever, taught to students of Westminster political traditions.

It turns out that there is a much more prosaic reason for “reading” a bill three times. When Parliaments first assembled, Gutenberg hadn’t invented his press yet, so copying documents by hand was tedious at best. Moreover, not everyone could read, so copying bills numerous times would have been wasted on MPs. Instead, Clerks of the

² This paper will use the terms “Parliament” and “Legislative Assembly” interchangeably. Although the terms are not, strictly speaking, synonymous, both are used to describe the Ontario Legislature at Queen’s Park.

House literally “read” a bill aloud each time MPS amended it. Consider: A bill is “read” for the first time and MPs can consider it. Later, a bill is “read” for a second time and MPs debate its principle. Finally, the bill is amended and “read” for a third time, at which point MPs debate sending it to the Crown for Royal Assent.

This procedure is carried out in Westminster Parliaments across the Commonwealth, but has its origins in a mundane, practical requirement for debate of the Crown’s policies and measures. Other processes and procedures in Westminster Parliaments have similar origins and traditions associated with them. To students of procedure, this is one of the more fascinating topics of discussion and consideration.

Consider, however, the ways in which Parliaments have evolved over the last thousand years. Although Parliaments are still the same institutions with the same basis of governance, the need to modernize is ever-present. As technology and public desire to be closer to elected officials increase, so too does the need to change the way in which Parliament operates. Witness the publication of *Hansard* after the British House of Commons stopped jealously guarding its privacy; the addition of television to the Ontario Legislature in 1986; or the addition of paid staffers in the offices of parliamentarians.

Ontario’s experience has been somewhat more radical. Over the last two or three decades, the province has – politically speaking – undergone a number of radical cultural changes which have, in turn, affected the operation of the Legislative Assembly. Successive governments have made modifications to the Standing Orders to change the way in which Members of Provincial Parliament (MPPs) conduct House business. As a result, the culture of the Ontario Provincial Parliament has changed significantly.

In order to appreciate these changes, it is necessary first to examine how Parliament came to be, in both its origins in England and the evolution Parliament underwent in Canada and Ontario. Next, we will discuss the changes in Ontario's Parliament since 1980 and the reactions to those changes. Finally, some key players in Ontario politics over the last thirty years have some suggestions to improve work in the Legislative Assembly of Ontario.

Parliament: An Evolving Institution

In 1215 at Runnymede,
Doo-dah, doo-dah
The nobles and the King agreed,
Oh, de doo dah, day!

– Lisa Simpson, *The Simpsons*
(Sung to the tune of *Camptown Races*)

Although eight-year-old Lisa Simpson used the above rhyme for a history lesson, the statement is inherently true. The English king, John I, signed a peace treaty with a number of barons who rebelled against him. The treaty, later known as *Magna Carta*, formed the basis of the constitutional principles under which Commonwealth nations are governed. Among its provisions:

- Ensuring that justice is not denied;
- Establishment of *habeas corpus*
- Establishment of a council of barons, which would ensure that the Sovereign lived up to his obligations. The barons retained the right to wage war against the Crown if he did not.

Magna Carta is the first document to enshrine these important rights in law. Interestingly, it was not designed to do so; instead, its purpose was to put an end to the internal feuding of the English government so that John I could concentrate on his wars

in France. However, *Magna Carta* codified for the first time the obligations of a Sovereign to his people. The Crown was as subject to the rule of law as anyone else, and its power could be limited by a written grant.³

This first Parliament – it wasn't called a Parliament yet – was the first successful attempt by Englishmen to curb the absolute power of the king. King John I and his successors were forever subject to English law in the same way as the lowest peasant. The king also had to consult with a council made up of barons and chosen by the nobility. In this arrangement, we see the beginnings of Parliament and the ways in which Westminster governments formed.

Over time, this notion of government refined itself to make the Crown subject to Parliament's direction. King John's council expanded from barons to include more nobles; from there, knights and burgesses (the Commons) demanded their own representatives. Finally, property owners earned the right to vote and to send an MP to Parliament; eventually, universal suffrage brought with it the model of Parliament we have today: the Crown, the Lords (Senate in Canada), and the Commons.⁴

How governments work

At its heart, a Westminster Parliament works because Members of Parliament collectively agree that a group of people are empowered to act as a government. This is also known as “confidence.” Although not written in any Canadian statute or Standing Order, it is still “an essential feature of parliamentary government.”⁵ It is essential

³ <http://www.royal.gov.uk/output/page64.asp> *History of the Monarchy; The Angevins; John Lackland*, last visited May 14, 2005 and <http://www.bl.uk/treasures/magnacarta/basics.html> *British Library Treasures in full: Magna Carta – the basics*, last visited May 14, 2005.

⁴ All provincial legislatures are unicameral in nature. They have one house and the Crown's representative in the Lieutenant Governor.

⁵ Robert Marleau and Camille Montepit, *House of Commons Procedure and Practice*. (Ottawa: House of Commons, 2000), p. 36.

because the government – the executive – is a part of and reports to the House of Commons. The House must approve the government's actions; although the House does not have to agree with *every* governmental measure, it must approve of the major pieces of a governmental agenda. Moreover, the government must win any vote that expresses confidence in its ability to administer the affairs of the country or province.

Generally speaking, there is no question of confidence in Canadian governments; voters usually return majority governments, which means that confidence is assumed to exist and that the Government can function without worrying about Opposition reaction. This is, after all, the cornerstone of the British parliamentary system: the Government is *supposed* to get its way. There is a role for the Opposition parties, to be sure: they can oppose legislation, suggest amendments to it, and work as a government-in-waiting. At the end of the day, however, the Opposition knows that the Government is supposed to win.

It is for this reason that parliamentary procedure developed. Parliamentary business required a certain amount of regulation in order to proceed through the day. It provides opportunity to Opposition members to speak their minds and bring to Parliament's attention the issues that matter to them.

The Canadian Experience

After the American Revolution, United Empire Loyalists fled to the British colony of Canada. They brought with them ideas about English representative government and set up a colonial government that was similar to that found in London. The government in Upper Canada (what is now Ontario) consisted of a governor, an appointed Legislative Council, and an elected Legislative Assembly. The Legislative Council and the governor

(advised by a council known as the Family Compact) had most of the political power in Upper Canada. In fact, it was the excesses of the Family Compact that led to the 1837 Rebellion in Upper Canada and the introduction of responsible government.

The provisions of responsible government require that the executive (the Prime Minister and his Cabinet) are *responsible to* the elected Legislative Assembly. They must govern from within the House and with the permission of the House. For Upper Canada, this was a watershed moment. For the first time, the Legislative Assembly had the legitimate right to hold the government to account and to run the affairs of the colony effectively.

Responsible government also means that Parliament has four major jobs within government processes:

- To form a government;
- To fund the government;
- To have a government-in-waiting;
- To hold the government to account.⁶

It is these tasks – all performed within a parliamentary setting – that require rules to govern the processes of the House.

Ontario: Unruly Loyalists

Ontario has a dual reputation across the country. On one hand, Ontario politics have been known as “boring.” On the other hand, when the 1985 Liberal/NDP accord brought down forty-two years of Conservative rule, it set in motion twenty years of boisterous

⁶ Sean Conway, Churchill Society Lunch Series, March 9, 2005.

behaviour in the Ontario Legislature.⁷ For example, politicians and Assembly staff in other legislatures routinely point to Ontario's Assembly as "raucous."⁸

This dichotomy is the focus of this paper. Changes in the political culture of both Ontario and its legislative chamber led to changes in the way Ontario's parliamentarians govern themselves.

*"Welcome to the 1980s..."*⁹

The Clerk of Ontario's Legislative Assembly, Claude DesRosiers, has the perspective, common to all clerks, of absolute neutrality in a partisan environment. In his role as Clerk in Ontario since 1986 (and as a Clerk in Ottawa before that), M. DesRosiers has seen the changes in culture and processes in the Ontario Provincial Parliament and in the House of Commons in Ottawa.

The 1980 House of Commons was particularly fractious. The Progressive Conservative Party, led by Joe Clark, had just come off a devastating electoral defeat that "shouldn't" have happened. Many Conservatives felt that they shouldn't have lost the budget vote; that they shouldn't have had to fight Pierre Trudeau; that they shouldn't have lost the election. Somewhat understandably, this made them rather angry.

On the other side of the aisle sat a Liberal government that had come back into power after a 1979 defeat – their first in twenty years. After a nine-month hiatus in Opposition, they were sitting once again at the Speaker's right hand. There must have

⁷ <http://archives.cbc.ca/300c.asp?id=1-73-893> *Ontario Elections: Twenty Tumultuous Years*, last visited May 15, 2005. This is not to suggest that the Ontario Legislature was the most sedate of legislatures; rather, Ontario politics was considered boring because of the length of Tory rule: 42 years, starting in 1943.

⁸ In fact, as an Ontario Legislative Intern, I had the privilege of seeing some of these differences firsthand: in both Alberta and Québec, Question Period was much more sedate than even routine debates in the Ontario Legislature. Additionally, Ontario MPPs routinely ignore the Speaker in a way that no Alberta or Québec politician would dare to do.

⁹ Many of the comments in this section come from a May 12, 2005 interview with Claude DesRosiers, Clerk of the Legislative Assembly of Ontario.

been a certain sense of triumph on the government benches in the first days of the 32nd Parliament.

This, then, is the situation at the beginning of the 1980s: both the Government and the Opposition parties must have felt a certain sense of entitlement to the levers of power. The Liberals had it back – in fact, they’d held power almost continuously for almost twenty years – and the Conservatives had just tasted power for the first time in just as long. Members from both parties were undoubtedly “feeling their oats” in this Parliament. Moreover, both sides were likely more combative than at any time in the recent past.

As M. DesRosiers points out, Westminster parliamentary institutions are designed specifically to insure the government gets its way. There is, to be sure, a place for debate and discussion of the major issues of the day, but governments should be able to accomplish their agendas. This is especially true when, as in 1980, Canadians returned a majority government to Parliament.

Although the 32nd Parliament was fractious, it was also very productive.¹⁰ Think of the major debates and legislation passed: the National Energy Program; significant rule changes within the House; and the Constitution. It is entirely possible that these major policy initiatives helped make the 1980 Commons so divided.

One of the results of the high tensions in the Canadian House of Commons was a group of MPs more likely to use the rules to their advantage. Ontario’s Clerk of the House recalls one incident in which several MPs approached the Speaker in order to intimidate him from putting the question on one of the major bills of the session.

¹⁰ This is not as major an accomplishment as it might seem. The first session of the 32nd Parliament was also the longest in Canadian history.

Another incident occurred when the Opposition decided they didn't want the Government to do any business one afternoon. At the time, the Standing Orders provided that the whips of the Government and Opposition had to walk into the House Chamber together to signify that the MPs were present and ready to vote. Until the whips walked in, the voting bells rang to call in the Members. The Opposition declined to send in their whip and kept the bells ringing for two weeks.

Although the House of Commons accomplished a great deal in the period from 1980 until 1984, it did not do so without divisive conflict. It was, however, a turning point for a Canadian Parliament and provided an example for Ontario just a few years later.

A Hung Parliament: Ontario, 1985

Elections do not come much closer than Ontario's 1985 election. Frank Miller's Progressive Conservative government squeaked by with 52 seats in the then-125 seat Legislature. The Liberal Party, led by David Peterson, won 48 seats, while the New Democratic Party of Bob Rae earned 25 seats. In the 1985 election results, we see attitudes similar to those in Ottawa developing.

In many ways, however, the situation in Ontario was considerably worse. The Conservatives, after all, had just watched their most beloved leader – Bill Davis – retire at the height of his popularity. They had governed the province for more than 42 years and believed as NDP leader Bob Rae – and many others – said, that the government was theirs “by divine right.”¹¹ This minority government was, at best, a blow to the party.

The Opposition, on the other hand, hadn't really won the election. They were in the same spot they were in 1975 and 1977; they could bring down the government or they

¹¹ Ontario *Hansard*, June 7, 1985.

could allow the Conservatives to continue to govern. Unlike the Davis minorities, however, Miller's government had lost the popular vote and only held on to power by the slimmest of margins. It's not hard to understand why the Opposition parties reached an agreement.¹² By the beginning of July, the parties switched sides in the House. The Liberals sat on the Government benches and the Conservatives – for the first time – joined the NDP as the Official Opposition.

It is no wonder, then, that the Opposition in the Ontario Legislature moved to make life difficult for the new Government. Like the 1980 federal Progressive Conservatives, the 1985 provincial Tories felt somewhat cheated out of their place in Government. They were also, therefore, somewhat less accommodating to the new Peterson regime.

These facts are actually less important than they seem on the surface. Minority governments are notoriously unstable (as we see in Ottawa), and even the Liberal/NDP accord only had a shelf life of two years. More important, however, is the culture shift that the new Parliament underwent in those first two years.

Interviews with Norm Sterling, the longest-serving Progressive Conservative MPP, indicate that the nature of the hung Parliament made sure that the government could not just “forge ahead” with its plans. In fact, Peterson's minority government had to negotiate with the Opposition parties to make changes to the Standing Orders.¹³

¹² Interestingly, Bob Rae first offered Conservative leader and Premier Frank Miller the same deal he offered David Peterson. The cornerstone of this deal was an agreement to keep Parliament running for two years. Miller and his caucus rejected the deal, which led to the Peterson ministry. Source: <http://archives.cbc.ca/300c.asp?id=1-73-893> *Ontario Elections: Twenty Tumultuous Years*. Last visited: May 19, 2005

¹³ Interview with Norm Sterling, May 4, 2005.

Many of the changes were “housekeeping” in nature, but there were some significant reforms to the way the House does its business:

- Ending evening sittings;
- Dedicated time for Private Member’s Business on Thursday morning;
- Responses to Ministerial Statements;
- Member’s Statements;
- Order of Oral Questions¹⁴

As Mr. Sterling noted, these changes came about as a result of give and take between the parties; the changes benefited the Opposition more than the Government. All of a sudden, private members had time specifically allocated to deal with Private Member’s Bills. They were also able to take ninety seconds to address any issue they liked in a ten-minute period called “Member’s Statements.” As the Speaker said on the first day of use:

Members' statements give a private member, other than a party leader or a minister, an opportunity to make a statement of up to 90 seconds with a total time for such statements of 10 minutes. These times will be strictly enforced so that all members have an opportunity to participate. As stated in the report of the standing committee on procedural affairs and agencies, boards and commissions in November 1985, "The new standing order will provide an opportunity for members to express themselves on matters which are of concern to them and their constituents."

In the past, there have been a number of members who have risen on different occasions on what I might call fictitious points of order or points of privilege. I hope this will relieve that situation. It will be my duty to call those members out of order because, in turn, they will have an opportunity to make their points during members' statements.¹⁵

¹⁴ Ontario *Hansard*, April 26, 1986.

¹⁵ Ontario *Hansard*, April 27, 1986. Interestingly, this does not seem to have stopped the spurious points of order. Members routinely rise in their places on “a point of order” to introduce constituents or stakeholders who have arrived in the Legislature.

The other two major changes to the Standing Orders also changed the way in which Members conducted House business. The first was “Responses to Ministerial Statements.” This new procedure allowed each Opposition party up to five minutes to respond to whatever policy statement the government made on a given day. It allowed the Opposition parties to respond outside debate to the government’s initiatives.

The final piece made an official change to parliamentary tradition. One of the Speaker’s jobs is to select MPPs to speak. In doing so, the Speaker uses his discretion with regard to both order of questions and the number of supplementary questions each MPP may ask. Although the Leader of the Opposition traditionally gets the first questions, it is the Speaker who ultimately made that judgment.

The new Standing Order read:

In exercising his discretion pursuant to standing order 27(d) to permit supplementary questions, the House recommends that the Speaker permit supplementary questions as follows:

- Official opposition -- one question and two supplementary questions;
- Official opposition -- one question and two supplementary questions;
- Third party -- one question and two supplementary questions;
- Third party -- one question and two supplementary questions;
- All other questions -- one question and one supplementary question.¹⁶

Although the Speaker retained his right to determine the order of speakers and the number of supplementary questions, the House expressed its desire to have a certain amount of order in its proceedings with this addition to the Standing Orders.

¹⁶ Ontario *Hansard*, April 26, 1986.

1987: The Hot, Magical Summer

When David Peterson signed the accord with Bob Rae, he knew he had two years to show Ontarians what he could do and what kind of Premier he'd be. When the accord expired in 1987, Peterson called an election and won a stunning number of seats: 95 out of a possible 130. Arguably, this is when rule changes in the House became more important. The 1987 election started a process whereby the "parliamentarians" of the Tory years left the Legislature to be replaced by rookie MPPs. Consider: the 1987 election elected a massive majority for Peterson, many of whom were new to the process; the 1990 election decimated the Liberals, bringing to power the NDP, which had never formed a government; in 1995, the Harris Tories swept to power with its own contingent of brand new members. These members had no sense of the traditions of a stable parliament and little understanding of how Parliament is designed to work.

To illustrate, it might be useful to recall an old scientific experiment. Four gorillas are placed in a cage. Each day, some kind of fruit is put into the cage, but it is set up so that any gorilla touching the fruit receives a nasty shock. Over time, the gorillas learn to stay away from the fruit. One gorilla is replaced with one who knows nothing about the electrified fruit. The other three gorillas ensure that the new gorilla stays away from the fruit, even using force if necessary. One by one, the original gorillas are replaced, ensuring that no gorilla in the cage has direct experience with an electric shock delivered by fruit. However, the gorillas all ensure that no one touches the fruit, even if they have to resort to violence to do so. The *reasons* for keeping away from the fruit are lost; all that remains is violence without known reason.

This is not to suggest that our elected officials can be compared to gorillas. Far from it. Instead, this story is meant to illustrate what happens when we lose sight of the reasons for particular rules. With rookie MPPs every few years, it is easy to forget about the civility of past Parliaments and only older members can remember “the good old days.”

Although the 1987 election did not start the series of rule changes, it was the first Parliament in which massive numbers of new members replaced so many long-serving ones. Those members left tended to be longer-serving, or at least had some sense of how Parliament is designed to operate.

With a majority government, the Peterson Liberals had a greater leeway to act in whatever ways they chose. This, in turn, led the Opposition parties to act in a more disruptive fashion than they had before. By May 1989, matters reached a head. Peter Kormos, MPP for Welland-Thorold at the time, rose on a point of personal privilege. He accused Premier Peterson of lying to the House, which is considered unparliamentary language. Mr. Kormos refused to withdraw the word, and the Speaker named him.¹⁷

The current Standing Orders do not allow Members to challenge a Speaker’s ruling. In 1989, however, individual Members could challenge a ruling and the House could vote to accept or reject the Speaker’s ruling. The NDP House Leader did just that on May 29, 1989. The Speaker called in the Members to vote at 4:43 p.m.

Voting in the Legislative Assembly of Ontario has changed dramatically over the years. The Standing Orders currently spell out the length of time the bells must ring for

¹⁷ As an aside, MPPs are referred in the House by their riding names, not their personal ones. The practice of “naming” a Member is an old one, and allows the Speaker to call on a Member by name instead of riding. In Ontario, this practice has changed so that the Speaker simply states “I name the Member for [name of riding].”

almost every vote in the House. This was not always the case. The Whips of the parties used to walk into the Chamber together to indicate that the Members had assembled and were prepared to vote.¹⁸ The Opposition chose to hide their Whips and kept the bells ringing.

At 6:32 on June 1, the Speaker suspending the sitting and ordered that “the bells are deemed to be ringing until the sitting is resumed at 9 am, Friday, 2 June 1989.”¹⁹ He repeated this order each day until 1:13 p.m. on Tuesday, June 6. The Opposition’s tactics succeeded in disrupting the House for an entire week.

Two days later, the Government House Leader announced changes to the Standing Orders, a subject that caused some considerable consternation among the Opposition parties. Dave Cooke, the NDP House Leader, commented on the changes:

... we went through a process between 1985 and 1987. Remember the time? No walls, no barriers, a new age in Ontario? We negotiated. We had the standing committee on the Legislative Assembly look at the rules of this place and make recommendations.

After the 1987 provincial election, when these guys got their majority and took on the arrogant attitude they are displaying here today, we sat down with the government House leader -- the Conservative Party did; my party did -- and we said, ‘We’ll accept the entire package from the Legislative Assembly committee,’ which included reforms for all the rules. The government House leader’s representative, the chief government whip, negotiated that with my whip, the member for Oshawa (Mr Breough), our representative, and the member for Carleton. We had a package.

They took it to their caucus and their caucus rejected that package. They said as a majority at that time: ‘To hell with the opposition. We’ll get at the rules by imposing.’²⁰

¹⁸ This practice still exists in Ontario, although in a slightly modified form. The Whips may walk in together to end a bell early, but the bells are otherwise timed per the Standing Orders.

¹⁹ Ontario *Hansard*, May 29, 1989.

²⁰ Ontario *Hansard*, June 8, 1989.

Sean Conway, the Government House Leader, responded to Opposition comments on his rule changes by saying that the Government would get its business done and would do so without continuous obstruction from the Opposition:

I have to say, on behalf of 94 members, that we have seen over the past number of weeks and months a pattern of obstruction that has nothing to do with opposition. It has to do with paralysing the business of this Parliament. This government believes it has a responsibility to ensure that Parliament works, that it is not hijacked, that it is not paralysed.

...

Mr Speaker, I find it strange that people who talk about opposition none the less engage in frivolous, sometimes outrageous challenges of your rulings, ring the bells on first reading, walk away and refuse to come to this place and engage in the public business, and read petitions endlessly so that we cannot get on with the business of this House, a House that it costs \$130,000 a day to operate.

We are here to do important business. We expect a vigorous opposition. These rule changes will provide the opposition with a range of new opportunities, but we will not tolerate endless bell-ringing --²¹

Mr. Conway's reaction to the Opposition appears to be typical of governments, which want to get their business done. They have a right to expect a certain amount of co-operation from the Opposition, which is why the rule changes were unnecessary until 1989. Simply put, the Opposition stopped working with the Government and became a hindrance to it.

The Liberal rule changes affected the operation of the House in several significant ways:

- Limited the division bells on a recorded vote;
- Allowed the Chief Whip of any recognized Party to defer a vote until the next sessional day;

²¹ Ontario *Hansard*, June 8, 1989.

- Creation of Opposition Days²²

Mr. Conway noted that the Opposition was engaging in a more vigorous attack on the Government than what might otherwise be warranted. He acknowledged his role in mounting what he called “a vigorous Opposition,” but also opined that “what we saw here through the spring of 1988 through late spring 1989 was unprecedented in so far as the traditions and the customs and the practices of this Legislature were concerned.”²³

The rule changes Mr. Conway introduced formed the basis of the Standing Orders that exist in Ontario today. They are designed to make the business of Parliament more efficient; more importantly, they were in reaction to Opposition tactics. The debate itself was surprisingly civil. All parties agreed that the Standing Orders need changes. Although they did not all agree with the content, Members did appear to welcome them.

A Turning Point: 1990

In 1990, Ontarians were stunned to learn that Bob Rae defeated David Peterson to become Premier of the Province of Ontario. Peterson had gone into the election with a commanding lead, but lost it over the course of the campaign. The reasons for his loss have been documented in great detail elsewhere, so we will not relive the 1990 campaign. What is important to remember is that Rae’s party won 74 of the 130 seats; the Progressive Conservatives (under brand new leader Mike Harris) increased their seat count to 20; and David Peterson’s Liberals lost 59 of 95 seats, including his own.

It is at this point that the processes and procedures of Ontario’s Standing Orders become much more important. Mike Harris won the leadership of his party just before the 1990 election. His rise to power and the methods by which he won the leadership have

²² Ontario *Hansard*, July 25, 1989.

²³ Ontario *Hansard*, July 25, 1989.

been chronicled in any number of books, but it is important for our purposes simply to realize that he and Bob Rae had diametrically opposing viewpoints of the role of government in Ontario. Harris's opposition to the Premier's policies resulted in any number of tactics designed to delay government legislation.

Let us examine some of these tactics.

Arguably, Mike Harris's most famous stalling tactic was the day he read into the record the name of every lake, river, and stream in the province. On May 6, 1991, the Conservatives unleashed their plans to oppose the NDP. It started during Member's Statements, when Conservative MPP Norm Sterling said:

The members of our caucus, as representatives of many Ontarians, are angry. We are angry and frustrated by the atrocious budget which was introduced by the New Democratic government one week ago today. The anger has not gone away as the days have passed into a week. In fact, it has become more intensified as we watch and listen to individual Ontarians react to this budget. If the NDP's members made themselves available to the general public over the weekend, I am sure that they would have got this message.

The members of our caucus believe that the government is using the routine procedures of this House, specifically the ministerial statements, to deflect the tension away from this outrageous budget, that it is making ministerial statements unnecessarily long and drawn out and that it is attempting to market its schemes as good news announcements in order to deter the attention of members of this House and the general public.²⁴

Mr. Sterling continued to try and delay the government by rising on related points of order before Oral Questions. It is after Oral Questions, however, that Mike Harris stood up to introduce a bill, the title which contained the name of every Ontarian body of water. Mr. Harris started just before 4:00 p.m. that day and the length of the bill's title (in addition to the interjections from frustrated MPPs and the repetition of the title by both

²⁴ Ontario *Hansard*. May 6, 1991. This was not the first attempt by the Conservatives to delay proceedings. The third party had to this point spent much of the first seven months since the election doing everything within their power to delay government business.

the Speaker and the Clerk, as required by the Standing Orders) carried the House to the end of the sessional day.

Nor was this Mr. Harris's only attempt to delay government business in this way. He did so on May 15th, when he introduced a bill naming any number of Ontario industries. Over the course of the NDP government, Mike Harris's party managed to delay government business by using the rules of the House to their advantage any number of times. Generally speaking, his tactics dealt with the use of time in the Legislature. Introduction of Bills, for example, lasted as long as it took the Member, the Speaker, and the Clerk to read the title of the bill in both English and French. As the Speaker ruled each time a complaint came forward, the Standing Orders were very clear on the subject of Introduction of Bills.

These tactics produced a reaction from Ontarians, resulting even in petitions being sent to the House from a number of ridings. Each one made mention of the third party's delaying tactics and noted their negative reaction to the party's attempts to "hijack" the government.²⁵

The Progressive Conservative attack on the NDP government is predictable. Parliamentary government assumes that the government will get its way, but the Opposition parties do have the freedom to try and stop that business from occurring. One of the difficulties with these kinds of delay tactics, however, is the change in civility of the Ontario Provincial Parliament. M. DesRosiers points out that Parliament should be based on negotiation and agreement; that is, the Government should be able to count on

²⁵ Petitions, however, can be deceiving. Any number of people may sign them and it is unclear as to how many might have been prepared by the MPPs delivering them as a political tactic.

getting its business done with agreement on debate time and order of business by the Opposition parties.

The NDP government's time in office changed a lot of that. Mike Harris's tactics, crafted by MPP Norm Sterling, moved the culture at Queen's Park from civility to direct competition. The Opposition moved from simply debating the merits of bills to both attacking the bills and outright delaying tactics. It was, however, only a precursor of what was to come.

In response, the NDP made further changes to the Standing Orders. On June 8, 1992, MPP Jim Bradley rose on a point of order with respect to the NDP's proposed rule changes. Both he and MPP Ernie Eves decried the process by which the government introduced changes to the Standing Orders. Mr. Eves even went as far as to call the process "Gestapo."²⁶

Like the changes under the Peterson government, the NDP changes came as a result of dilatory tactics used by the Liberals and Conservatives. It's important to note that the delays could most often be attributed to Mike Harris and his Progressive Conservative colleagues.

The New Democratic Party brought in some of the most restrictive changes to the Standing Orders. The most sweeping of these changes involved time limits. The new Standing Orders limited speech in debate; they limited the amount of time available for Introduction of Bills; and they provided for time allocation of bills.

Essentially, these changes eliminated the possibility of the Opposition parties taking over the Legislature with the procedural tricks they used during the first two years of the NDP government. Most significantly, these changes removed power from the

²⁶ Ontario *Hansard*, June 8, 1992.

Speaker to run Parliament. Traditionally, the Speaker's role is to keep debate moving and call on Members from all parties in an equitable manner. The NDP rule changes removed that power and legislated it in the Standing Orders, which passed on June 29, 1992.

Ontario Revolutionaries: The Harris Government and Queen's Park Business

To say that Mike Harris redefined Ontario politics is to say that the Pope is a parish priest. His six years as Premier were some of the most controversial in Ontario's history. It is unsurprising, then, that the Opposition parties worked to disrupt the Government's agenda as much as possible. Harris, however, had other ideas.

It is a military truism that a successful trick only works once. The same aphorism applies to politics, and Mike Harris wanted to make sure that the same tricks he had used to such success couldn't be applied to stop his agenda. So he changed the rules of the game.

On June 2, 1997, Mike Harris's government launched a review of the Standing Orders. Ostensibly, it was a private member's initiative spearheaded by John Baird, MPP for Nepean, but the Opposition parties expressed some disbelief. Liberal MPP Jim Bradley wondered how "a set of proposals from a 27-year-old YPC trying to please the Premier for future considerations"²⁷ could get the government's attention so quickly.

Frances Lankin, MPP for Beaches-Woodbine, said:

You thought there was too much debate on the megacity. You thought there was too much debate on your overhaul of education. You thought there was too much debate on the creation of a hospital restructuring commission. You're tired of hearing from people who don't agree with you, and we're getting used to that from this government. Minister, I put it to you that in the past, government House leaders have either tabled rule changes in this House or proposed them at government or at House leaders' meetings or at both, and there's been a process of negotiation. Why are you changing the process here? Why are you pawing it off,

²⁷ Ontario *Hansard*, June 2, 1997.

letting someone else do your dirty work and insisting that members respond within two days?²⁸

This was in response to a number of the crises that had erupted over the course of the implementation of the Common Sense Revolution. One of the more famous was the sheer volume of amendments made to the new *City of Toronto Act* in 1996. The Opposition parties, displeased with the Government's stance on amalgamating Toronto, moved over 12 000 amendments in Committee of the Whole House. The House had to sit around the clock to hear them all.

During Question Period, the Opposition parties hammered the government over the rule changes, which they said were introduced secretly. The Premier of the day, Mike Harris, responded to the criticisms:

In my recent memory of rule changes to deal with, as I think one reporter said, the tomfoolery as opposed to the business of the House, never, I believe, since I've been here, have we had a non-cabinet minister develop, in consultation with backbenchers, a proposal for discussion before anything has been tabled.

Once again I say to you that we are pleased to listen. We will prepare to meet with you. I think the member for Nepean has offered to meet with both House leaders. I am taking from your reaction that you're not 100% in favour of all the changes, but perhaps when you read through them and reflect on them, if there are some that you feel need to be changed or if you have some of your own, we'd be pleased to listen to those. I can tell you that the member for Elgin has already brought forward some proposals just today to the member. We're happy to listen to backbench members as well if the leadership isn't interested in participating.²⁹

The changes made to the Standing Orders were introduced in the name of efficiency. They were designed to ensure that the government could do its business which, as we have already seen, is the purpose of Parliament. However, the combative

²⁸ Ontario *Hansard*, June 2, 1997.

²⁹ Ontario *Hansard*, June 2, 1997.

nature of the 1990 and 1995 Parliaments resulted in the accomplishment of less business and major bouts of Opposition gamesmanship.

Arguably, the 1997 rule changes returned Parliament to its original design in allowing the Government to complete its agenda efficiently. An equally viable argument, however, is that the changes curtailed debate in the name of a business-like approach. The argument an individual selects is based primarily on the side of the House on which they sit.

What do the rule changes mean?

One of the difficulties with making Parliament more efficient is that it is not *designed* to be efficient. Yes, the Government has public business to complete; but Parliament is about discussing ideas more than it is about doing business. Members assemble to talk about their ridings and about the province's direction. Efficiency is not a word known to parliamentary governments.

The Standing Orders currently allow for much more efficiency in producing legislation. One such item introduced by the Harris government allowed two sessional days in one calendar day. These so-called two-for-one days come from British Columbia's legislature. They are important because each Parliaments must consider each piece of legislation for a certain number of sessional days. Allowing for a sessional day in the afternoon and one in the evening means that the government can complete its business that much faster.

One feature of these two-for-one days not found in the Ontario Standing Orders is the repeat of Routine Proceedings. In British Columbia, the government is entitled to two

sitting days in one calendar day, but they must face the Opposition in a second Question Period. Ontario's Government has no such restriction on its second sessional day.

Changes to the Standing Orders increased dramatically over the last twenty years. To be sure, part of the reason for those changes was a change in culture at the Legislative Assembly of Ontario. Another part of those changes, though, is attributable to the discovery by successive governments that it was remarkably easy to make changes to the way the House does its business. As each change to the Standing Orders made its way through the House, it became more acceptable to change them to suit the needs of the Government of the day.

Each time an Opposition party became a Government, it made no attempt to change the Standing Orders back. This is especially interesting because of the attempts to forestall the implementation of these changes. However, when Jim Bradley was an Opposition MPP, he correctly predicted that no one would try to change the Standing Orders back. On June 16, 1997, he said "When you make this change, when you implement these changes to procedures, no future government will change those to make it easier for the opposition. That's why it's so important to defeat, to eliminate these changes today, because governments like the convenience."³⁰ This is quite true. Governments want to get their business done and like the efficiency the Standing Orders provide.

One of the dangers MPPs pointed out to me is that looking at "the way things used to be" often leads to nostalgia for "the good old days." It's an important point to keep in mind. Any analysis of rule changes has to include the caveat that the old days are viewed through the lens of hindsight. MPPs who lived through the rule changes

³⁰ Ontario *Hansard*, June 16, 1997.

necessarily have the perspective of whether those changes turned out to be good or bad from their individual points of view.

That said, a common refrain was that the rule changes over the last twenty years did provide a structure to debate that was lacking. This observation is not always a happy one, however. One of the first problems is that everything is timed. Member's Statements, Petitions, and Introduction of Bills take a prescribed amount of time each day. All three portions of Routine Proceedings are also now used as much as possible, especially when MPPs want to delay progress to Orders of the Day. MPPs take up as much time as they are allowed in the Standing Orders so that the Government has less time to do its business. Although these tactical delays are less effective than they used to be, they can help Opposition parties slow proceedings somewhat.

One of the worst results of timing every part of the legislative day is during debate. MPPs used to be able to talk as long as they could hold the floor. While this periodically resulted in a filibuster – Peter Kormos once filibustered for 17 hours – it more often allowed Members to make their remarks in a shorter time than now. Instead, applying timing to speeches has resulted in the use of the entire time available, whether there is something constructive to be said or not.³¹

The result of all these rule changes appears to be that the House is much less relevant than it was twenty-eight years ago.³² Two long-serving MPPs, both elected in 1977, point out a number of the shortcomings of the House in the twenty-first century. Both Jim Bradley and Norm Sterling have served in Government and in Opposition, and both provided interesting perspectives on how they view House proceedings today.

³¹ Members now have one hour for the lead-off speech in debate and twenty minutes to speak for the first 7 hours of debate. Following the 7th hour, speeches are limited to ten minutes apiece.

³² Interview with Jim Bradley. May 10, 2005.

Both commented on the use of television in the House. Although there is certainly an argument to be made – and Mr. Sterling did make it – that television is a useful extension of democracy, others believe that television makes the House that much less relevant. The reasons are obvious: why would anyone come into the House to listen to debates if it only requires the flick of a remote control?

To be sure, television does allow members of the public to see their elected officials at work, but it is equally true that it encourages fractious behaviour in the House. Both Mr. Sterling and Mr. Bradley commented on the changes in Question Period and in debates. They said that MPPs are now more interested in the sound bite or in the notoriety that comes with a successful TV stunt in the House. Without television, stunts would be less important and it is possible that House business could be more civilized.

In general, however, the comments on the Standing Order changes were mostly negative. MPPs did, however, have some suggestions for changes to the way the House conducts its business. Not all of the changes MPPs would make require changes to the Standing Orders, but they are constructive to think about nonetheless:

- Governments need to learn to share power over the House with the Opposition;
- Requiring unanimous consent on fewer items so that one MPP cannot scuttle the wishes of the others;
- Revise the Standing Orders to remove the references to parties;³³
- Increase the authority of the Speaker;
- Decrease the time for Oral Questions to 45 minutes;
- Let the Speaker decide whether to allow supplementary questions;

³³ The rules all currently depend on MPPs serving as a member of a recognized party. Independents have virtually no place in the current regime to speak on behalf of their constituents.

- Increase the power of committees to meet, create, and amend legislation;
- Require a Question Period for every sitting of the House;³⁴
- Ensure the House sits for its entire calendar allocation and not rise early;
- Provide speaking and questioning opportunities based on the number of seats a party has;
- Fewer government backbench MPP “lob-ball” questions;³⁵
- More opportunities for true Private Member’s business³⁶

Final Thoughts

The Clerk, as an impartial Assembly employee, shared a number of his thoughts on the rule changes over the last twenty years. Many of his thoughts have informed the discussions in this paper. His most radical suggestion, however, boils down to this: scrap the Standing Orders and start over.

This idea is not nearly as radical as it sounds. The Standing Orders have been modified by tinkering. As successive Opposition parties move into Government, they ensure that the tricks they played cannot be played on them. This is no more than efficiency, and it certainly makes sense. What M. DesRosiers is suggesting, however, is that the three parties sit down and determine exactly what is necessary to run Parliament. Once the bare bones are in place, the parties can add or remove the pieces they want to

³⁴ The Government can currently, on motion, have evening sittings to discuss Orders of the Day. Routine Proceedings are ignored, and there is no Question Period in an evening sitting, even though it counts as one sessional day.

³⁵ Government backbenchers typically ask relatively easy questions of their own Ministers. Many MPPs mock the questions: “Minister, I know how great you are, but could you please tell the House just how wonderful our policy is and how wrong the Opposition is in opposing it?”

³⁶ Some MPPs believe that Private Member’s time has been taken over by Government trial balloons and that it should be based more on ideas from Private Members.

ensure that a) the Government can do its business and b) the Opposition can have a voice in debating the issues of the day.

One of the things the 2004-2005 interns heard most in the Orientation period was that the Liberal government was trying to change the tone of debate and return things to “the way they used to be.” Governments need to stop and think about what how Parliament is designed to work. By considering the roles each party and each individual Member have to play within the Ontario Legislative Assembly, the elected officials can truly make Parliament work better.

It is entirely possible that we will see significant changes over the life of this Parliament. The big question, though, is which has to come first: changes to the Standing Orders or a return to more civility in the House? One may not necessarily follow the other, but the likelihood of either happening increases when the other occurs. If, for example, the Government moves changes to the Standing Orders, it is somewhat more likely that the Opposition – with more opportunities to delay and debate legislation – will use fewer dilatory tactics. It is also possible that the Opposition could continue using the rules to its sole benefit and take advantage of the culture shift in the Government.

Conversely, the Opposition could become more conciliatory, opening the way for the Government to make changes to the Standing Orders. The Government, in turn, could ram through its legislation without regard for the help the Opposition is willing to provide. It is certainly not an easy debate to resolve, and it will require goodwill on both sides.

M. DesRosiers suggests that the Liberal Government elected in 2003 is willing to move forward and make some of the necessary changes or at least allow for a culture

shift in the House. The election of Progressive Conservative leader John Tory has also changed the way the Opposition does its business. There is, for example, less heckling from the Opposition party and the House Leaders appear more able to negotiate. Whether this trend continues remains to be seen. It will also be interesting to discover whether Mr. Tory's stance on parliamentary behaviour and tradition remain if the Conservatives return to Government in Ontario.

Conclusion

As an institution, Parliament has evolved significantly over the centuries. The Crown no longer has the power to behead a Speaker because he does not take good news from the House or follow instructions from anyone other than the elected officials.

Responsible government requires that the executive reports to the House on all matters of substance. Moreover, Parliament has the power to create a government and hold it to account. Once the House gives a government that power, it is the responsibility of the House to hold the government to account and pass its legislation.

Over the course of the 1980s and 1990s, many of the principles that govern the way Parliament functions were either lost or forgotten. Governments changed rapidly and wanted to ensure that they could implement the agendas on which they were elected. While it is certainly fair and responsible for a governing party to make the changes it wants to, politicians must remember that there is an institutional history that they must respect.

Whether the elected officials in Ontario's Legislative Assembly listen to the Clerk's advice is somewhat irrelevant. Completely revamping the Standing Orders would require a great deal of commitment and goodwill by all three parties. It would require

reflection on the purpose of Parliament and the role played by MPPs of all stripes. It would also require a commitment by all MPPs to be more concerned with the institution of Parliament and less concerned with making the nightly news.

The MPPs with whom I spoke all pointed out the difficulty inherent in asking elected officials to stay off the news. Part of political life is ensuring that the politician can be re-elected. One of the only ways to do that is by capturing the attention of the media.

One of the questions the Members of Provincial Parliament could not answer was whether their responsibilities as elected officials were compatible with the need to run for election. For students of Parliament and parliamentary procedure, the answer seems to be “yes.” After all, the institution of Parliament requires a certain amount of respect and requires a particular viewpoint.

This is not to suggest that MPPs do not have respect for parliamentary institutions. Far from it; many, if not all, of the MPPs in the Ontario Legislature have nothing but the deepest respect for the way Parliament functions. But their responsibilities as elected officials must remain paramount.

The rule changes over the last twenty to twenty-five years have changed the way the Ontario Provincial Parliament works. These changes are not irrevocable, but require a change in the way MPPs and the Public think about the Legislative Assembly of Ontario. If that change occurs, the Ontario Legislature can return to what MPPs call a “more civilized” place. It can also operate the way Parliament is designed to without sacrificing the representative function of MPPs.

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