

The Difficulties Inherent in the Amendment of Bills at the National Assembly

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I am pleased to have been invited here today to share with you my view of the current process for the amendment of legislative bills tabled in the Québec National Assembly and of the difficulties inherent in that process. This discussion will perhaps allow comparisons to be drawn with the situation prevailing in the House of Commons.

Parliamentary democracy in Québec has a history of more than two hundred years and Québec legislation is regarded as a model throughout the world. Our parliament, which adopted the new Civil Code of Québec in 1991, is indeed among the very few legislatures having succeeded in the past century in reformulating their *jus commune*. Nevertheless, the legislative process in Québec, albeit time-honoured and prolific, can be improved.

It has been said that democracy is an unfinished work which deserves more to be enhanced than to be criticized. What then are the obstacles to the improvement of the legislative process? As an answer to this question, allow me to reflect upon a number of factual situations and statistics pertaining to Québec. My primary source for this information is an assessment report on the impact of the parliamentary reform of 1984 on the parliamentary committees of the National Assembly, submitted by a committee of experts in February of 1995. The Québec Liberal Party was the Government at that time and the Parti Québécois was the Official Opposition in the Québec parliament.

It is common knowledge that the executive branch of government, which holds or at least controls the majority of the seats in the National Assembly, has always had the initiative in legislative matters and enjoys

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parliamentary rights which make it quite successful in achieving its legislative program. In any given parliamentary year, nearly 85% of the bills introduced by the Government are passed by the National Assembly. Now the time which elapses between the tabling of a government bill and its adoption by the Assembly averages less than two months. Such expeditiousness in the legislative process is probably best explained by the fact that the corrective action and solutions introduced in the community by new laws are eagerly awaited.

Furthermore, in the opinion of the Member's themselves, the activity for which parliamentary committees enjoy the least autonomy is the consideration of bills. MNAs feel that party discipline, partisanship, the control exercised by the executive branch and the interference of house leaders in the business of parliamentary committees are all factors which undermine the autonomy of committees, in addition to the Members' own lack of interest. It is interesting to note that a majority of the Members of the National Assembly favour a relaxing of party discipline, and even its outright elimination, except as concerns the examination of bills. This may well be an admission on the part of our elected representatives that the initiative in legislative matters is a government responsibility which they do not wish to appropriate. It would appear that parliamentarians do not consider themselves vested with either the mandate or the authority to define legislative policy, that is, the content of the legislative program of the Government, or to ensure the legal and legislative coherence of such policy in the place and stead of the executive branch. At the same time — and this is not a contradiction — Members have been known to complain about their inability to exercise any real control over the content of laws. They are aware that an essential task of the democratic mandate they have received from their constituents is to make sure that the executive branch of government does not abuse its power of initiative. As regards legislation, Members must see to it that laws do not violate constitutional law, do not without cause impair basic freedoms, do not impose excessive penalties, do not encroach on acquired rights and do not operate retroactively. Rather, Members must ensure that laws, whether they are meant to protect or to sanction, do provide moderate, reasonable rules that apply equally to all. This is the function of our elected representatives, essential for the protection of parliamentary democracy, that they do in fact perform.

This role of Members as guardians of legislative relevance is an efficient check on the behaviour of the Government in determining the

content of legislative proposals. Before they are even introduced in the National Assembly, bills undergo a complex development process within the administration, where they are subjected to systematic scrutiny to ensure that government policy, once translated into unequivocal legal language and tabled in the National Assembly, attains the highest degree of coherence and effectiveness. It is no wonder then that nearly half the Members admit to feeling that parliamentary committee sittings are often a waste of their time. And Members of all parties agree that the consideration of bills, especially in the case of a filibuster, is the most tedious task they are called upon to perform. When all is quiet, keeping watch can be wearisome. Moreover, 82% of Members are satisfied with the information made available to them to facilitate their work as legislators and 83% are happy with the assistance they are provided when examining proposed legislation.

Interestingly, it is only as regards the consideration of bills that the members of the opposition (62.5%) sitting in parliamentary committee are generally more satisfied than their counterparts from the government party (47.7%). Members belonging to the majority party complain that they cannot really involve themselves in the process of examining bills, since they are condemned to be mere onlookers in the duel between an ever-present minister and the opposition.

We may infer from this feeling that a parliamentary committee is first and foremost a forum for the expression of divergent political views. Of course, this is the very nature of our parliamentary system and is not about to change. In such a context, it is to be expected that discussions will often assume a partisan tone. One may wonder whether, under the pretext of trying to enhance the democratic process, it would be appropriate to entrust parliamentarians with the task of improving the legislation proposed by the Government, thus allowing their expertise to prevail over the expertise of the public administration and the Government even though they have comparatively meagre human, material and financial resources. The crux of the matter is that mastership over legislative policy and the fundamental content of laws cannot in fact be fully shared between the executive branch and the legislative branch. It would do a disservice to democracy if, owing to a duplication of efforts, the making of laws became more expensive and more time-consuming.

In our opinion, the main problem which the legislative process poses for democracy is that government policy is substantially altered by the Government itself while it is being submitted to the scrutiny and

judgment of the Members of the National Assembly. Besides, the entire operation often takes place in a context of urgency in order to adhere to the schedule set for the realization of the Government's legislative program.

It is inevitable that this should happen since a bill introduced in the National Assembly is subjected simultaneously to the critical examination of parliamentarians and to the criticism of the public. Consequently, the Government is pressed to make changes, sometimes substantial changes, to the form and content of bills in view of the comments received from MNAs, private and public bodies, community organizations and even private citizens. The legislative process may then seem a disorderly affair although in fact it continues to be firmly controlled by the Minister having proposed the bill and the Minister's advisors, principally legal advisors, who are ultimately responsible for the coherence of legislative policy, while the credit officially goes to parliamentarians as the legislators. This being the case, we are obliged to recognize that the parliamentary reform of 1984 did not succeed in solving the very problem which it was undertaken to resolve, that is, the little real power held by the Members in relation to the ascendancy exercised by their political party and especially by the executive branch of government.

In a calendar year, a parliamentary committee examines an average of 60 public bills introduced by the Government, containing some 4,000 sections. It passes 725 amendments, hears 85 intervenors in the course of 128 sittings totalling 400 working hours. And the consideration of public bills only accounts for 42% of the annual business of a parliamentary committee. As noted recently by our speaker Jean-Pierre Charbonneau in a parliamentary reform proposal presented to the National Assembly, time — or rather the lack of it, the scourge of our age — is a considerable problem which besets all human undertakings, including the National Assembly. Our democratic system appears to recognize the right and power of the executive branch to have its legislative proposals speedily approved or ratified by the Parliament. Electors seem to value a government with the effective power to act, on the condition that such power, wielded under the supervision of parliamentarians, is not abused.

Notably, 60% percent of the Members of the National Assembly see themselves first and foremost as intermediaries between the Government or Administration and the citizens, only 28% of them consider that their role as legislators is their primary function while a mere

8% believe their most important duty is to act as a watchdog of the Administration. It would therefore appear that, in the eyes of MNAs, their function as legislators is a secondary one. For many, it is a function which derives from their role as representatives: in the words of one MNA, he is "in the service of the people and consequently, a legislator".

Moreover, it is noteworthy that one of the longest-serving members of the legislative Press Gallery believes that parliamentary committees play an essential part in parliamentary life, but that their effectiveness is moderated by the sluggishness of democratic expression, which expression is the very foundation of their existence.

In conclusion, one must recognize that bills are amply amended in the course of the parliamentary process, most often on the initiative of the Minister having introduced the legislation in the House. This is due to the fact that lawmaking is an on-going process and that a bill is constantly open to improvement both in its substance and in its form. It is an ever more frequent occurrence that a law is amended a year after its coming into force in order to make the corrections and adjustments which have proved necessary upon its application in everyday life. At the same time as he or she further defines policy through amendments, the Minister responds to pertinent comment from the public while the MNAs see to it that the power of legislative initiative in the hands of the Government is exercised with appropriateness and moderation and in the pursuit of the best possible cost-efficiency, efficacy and effectiveness.

Thank you.