

INQUIRY INTO CONSULTATION ON HIGHLY CONTENTIOUS BILLS

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CONSULTATION IN THE CANADIAN HOUSE OF COMMONS LEGISLATIVE PROCESS

Submission to the New South Wales Legislative Council's
Procedure Committee Concerning its Inquiry into
Consultation on Highly Contentious Bills

Procedural Services, House of Commons

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Overview

This submission focuses on opportunities for consultation during the legislative process in the Canadian House of Commons. The pre-legislative phase and any consultative techniques used therein fall within the purview of the government of Canada, rather than Parliament, and are therefore not addressed in this submission.

In the Canadian parliamentary system, all bills must pass through the same stages of the legislative process. This submission will focus on the legislative process in the House of Commons for public bills, both government bills and private members' bills, noting in each case how the process provides opportunities for consultation and, more specifically, on how parliamentary committees use consultation to inform their studies of legislation.

Consultation and the Legislative Process

Government Bills

The legislative process provides some flexibility to accommodate different needs and objectives in the development and parliamentary scrutiny of government legislation, the text of which is drafted by lawyers at the Department of Justice following instructions given by cabinet.

- *Typical Legislative Process*

Ministers who intend to introduce government bills in the House of Commons must first give forty-eight hours' written notice to the Clerk of the House. After the notice period has expired, a Minister may introduce the bill, which is given first reading immediately. With this, the text of the bill becomes publicly available.

At the government's discretion, the bill is called for debate at the second reading stage. Second reading stage provides members an opportunity to debate the principle of the bill, as opposed to, for example, its individual clauses or the subject matter of the Act of Parliament it proposes to amend. The House, in its vote on the bill at second reading and referral to a committee, decides whether the bill should receive closer study in a parliamentary committee.

Committee studies of legislation typically include one or more committee meetings dedicated to hearing from witnesses and may include other forms of consultation. When a committee determines that it has completed the consultative phase of a study of a bill, it typically proceeds with the clause-by-clause consideration of that bill. It is during this phase of the committee's deliberations that committee members may propose further amendments to the bill. These amendments may be informed by the information gathered by the committee through its consultations. Once the committee has taken a decision on each clause of a bill (whether to adopt, remove or amend each clause), the committee staff proceed to draft and prepare a committee report explaining all changes, if applicable, the committee made to the bill. The committee usually then decides to instruct the committee chair to report the bill to the House.

Once reported to the House, the bill may proceed to consideration by the whole House at report stage. At this stage, and after giving proper written notice, members may propose further amendments to the text of the bill as it was reported by the committee.

Following report stage, third reading is the final stage through which a bill must pass in the House of Commons. Debate at third reading focuses on the final form of the bill. It is at third reading that members decide whether the bill ought to be adopted by the House.

Once the motion for third reading is adopted, the bill is sent to the Senate. In the Senate, the bill follows a legislative process very similar to the one in the House of Commons. The Senate may also suggest amendments to the bill. However, a bill can become law only if both Houses agree on the same version, and it has received royal assent.

In the typical legislative process, formal opportunities for consultation are concentrated in the committee stage. However, in the course of debate in the House of Commons at second reading, report stage and third reading, Members of Parliament share their views on the legislation before the House, oftentimes referring to their own consultations with constituents and stakeholders.

- *Reference to a Committee before Second Reading*

The rules of the House also provide for a legislative process whereby a minister may move that a bill be referred to a committee for study before second reading.

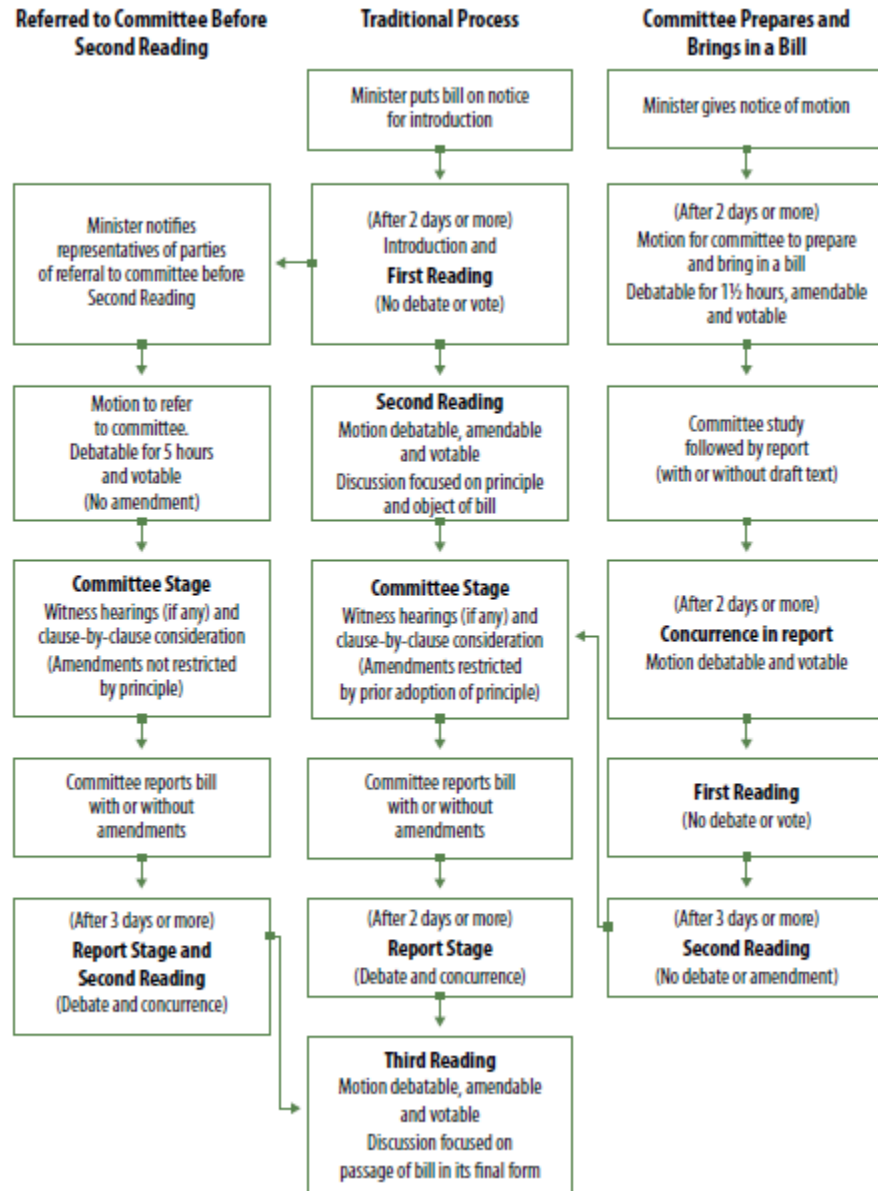
This allows members to examine the principle of a bill before it is agreed to by the House at second reading, thereby enabling members in committee to propose amendments to alter the bill's scope and giving the committee much greater latitude to amend the bill. Again, the committee stage normally includes consultations that inform the study of and possible amendments to the bill.

After the committee has reported the bill to the House, the next stage essentially fuses report stage and second reading. Members may propose amendments, after giving written notice two sitting days prior to the bill being called. When consideration of report stage is concluded, a motion "That the bill (as amended) be concurred in at report stage (with (a) further amendment(s)) and read a second time" is put and forthwith disposed of by the House, without debate or amendment. If concurred in, the bill is ready for third reading and passage at a subsequent sitting of the House.

- *Preparation of a Bill by a Committee*

Although not done since 1994, a minister may move a motion to appoint or to instruct a committee to prepare a bill, thereby giving a committee an order of reference from the House with much greater latitude to shape legislation.

Figure 1: The Three Options of the Legislative Process (Government Bills Originating in the House of Commons)



Private Members' Bills

Private members' bills are bills sponsored by a member who is not part of the cabinet. The majority of private members' bills are public bills, meaning that they deal with matters of public policy under federal jurisdiction, and they must pass through the same stages of the legislative process as government bills (see Figure 1, Traditional Process): introduction and first reading, second reading, committee stage, report stage and third reading.

In contrast to government-sponsored legislation, given the relatively limited time available for the consideration of private members' business and the comparatively large number of private members, the rules of the House set out an additional process to determine the order in which private members are afforded the opportunity to advance an item of private members' business through the legislative process in the House.

Typically, private members' bills are drafted with the assistance of Legislative Counsel in the Office of the Law Clerk, based on instructions from the private member. Once a bill has been drafted and certified by the Office of the Law Clerk and Parliamentary Counsel, the member may give the House notice of their intention to introduce the bill.

Should a private member's bill reach committee stage, the committee will usually call the member sponsoring the bill in the House as its first witness. If the committee wishes, it may proceed with additional consultations.

Committees and Legislation

While the rules of the House provide for several types of parliamentary committees, standing committees are now typically responsible for studies of legislation.

Standing committees are empowered by the rules of the House to study and report to the House on all matters relating to the mandate and the statute law of the relevant departments assigned to them. Returning session after session and composed of members representing all recognized parties in the House, they play a crucial role in the scrutiny of legislation and the oversight of government activities.

Legislation may also be referred to a legislative committee, created on an ad hoc basis by the House solely to draft or review proposed legislation. Ceasing to exist upon presentation of their report on the legislation to the House, they consist of members drawn from all recognized political parties in the House.

When a bill is referred to a committee, it is the committee's prerogative to decide when and how it will consider it. Nevertheless, the period of time devoted to the consideration of the bill may be restricted by the obligation to report the bill within a prescribed time pursuant to a special order of the House, or due to limits the committee has imposed upon itself.

In the absence of a specific order of reference from the House to study a bill (or other matter), committees may initiate any study they feel it advisable to undertake, provided that the study falls

within the committee's mandate. Committees can use this authority to initiate a wide range of studies, including, for example, a review of specific pieces of enacted legislation.

Committee Consultations

Before undertaking a study on any subject, including the pre-study or study of a bill, a committee typically discusses and agrees to a plan for its work, including any consultation strategies the committee will use to gather information. Committees make use of a variety of methods to gather information to inform their work, including but not limited to the following:

- *Hearing Witnesses*

Committees regularly invite various stakeholders to appear before the committee, in person or by videoconference, to share with the committee their views on the matter before the committee. Committee witnesses may include government ministers, government officials and departmental representatives, stakeholders involved in the issue, subject matter experts, the Canadian public, other parliamentarians and foreign counterparts.

In the case of a government bill, committees typically first hear testimony from the minister responsible for the legislation, often accompanied by the public servants, to explain the provisions of the bill.

Committees then typically proceed to hear from other stakeholders and interested parties. Committee members may suggest potential witnesses for the committee's consideration. Alternatively, committees may choose to issue a formal call for witnesses, which could be publicized through the committee's website or other communication channels (see below). Individuals or groups may also proactively contact the committee to express an interest in appearing before the committee.

It is ultimately the committee's prerogative to determine which witnesses it will hear. Witnesses are often consulted during public proceedings, but committees may also hear witnesses in *in camera* meetings when deemed necessary by the committee. At the committee's discretion, witnesses may appear individually or on panels. Committees typically invite witnesses to make an opening statement of a defined length, following which committee members have an opportunity to ask questions.

- *Receiving Briefs*

Briefs are written submissions that provide opinions, comments and recommendations on a subject being studied by a committee. Any individual or organization may submit a brief to a committee of the House of Commons, even if they are not given the opportunity to appear before it.

Witnesses appearing before a committee are also encouraged to submit a brief in support of their presentation to the committee. Briefs can be submitted by mail, email or at the committee's discretion, via an application on the committee's website. Once received, briefs are typically translated, distributed to committee members and posted on the committee's website on the webpage for the relevant study. While each committee may establish its own parameters for the receipt of briefs on a given study, a

[Guide for Submitting Briefs to House of Commons Committees](#) is available online to support individuals who wish to make a written submission.

- *Electronic Consultations*

Electronic consultations are internet-based methods of obtaining input to inform committees in their deliberations. Depending on the purpose of the consultation, how many respondents are expected/sought, the desired breadth of consultation, and the complexity of the issues, questions and answers, electronic consultations may take various forms, including polling-style questions and free text responses. Electronic consultations have been used by committees to encourage greater participation in committee studies and to broaden committee members' access to public input.

- *Travelling*

Committees may determine that their study of a matter could be supplemented and strengthened by travelling to other locations, within Canada or internationally, in order to gather more information and continue the committee's consultations. When travelling in Canada, committees may choose to hold formal meetings (where proceedings are recorded, transcribed and minuted, and the committee is entitled to the privileges associated with parliamentary proceedings) or to conduct informal meetings, site visits and tours of facilities (where proceedings are neither recorded nor transcribed or minuted, and the committee is not entitled to any of the privileges associated with parliamentary proceedings). During formal meetings held across Canada, committees have sometimes decided to dedicate time to 'open mic' sessions, where anyone in attendance at the meeting is welcome to sign up to make a brief statement to the committee. This approach can allow for the committee to hear from more individuals than would otherwise be possible. While travelling outside Canada, committees can conduct informal meetings and site visits.

- *Leveraging Other Communication Tools*

To solicit additional public input on a particular study, committees may choose to promote their work through the use of various communications tools.

A committee may publish information about a study on its website. This may include news releases, which are shared with members of the media who cover parliament, or messages that provide additional background information or context about the study and information about how members of the public can share information about the topic with the committee.

Background information about studies is frequently repurposed, at the committee's request, for use in social media posts on the [@HoCCommittees](#) Twitter channel, an account that publishes a variety of content about the activities of all House of Commons parliamentary committees.

Committees may also hold press conferences in an effort to raise awareness of their ongoing work, to share information about or highlight key elements of committee reports with journalists, and to answer journalists' questions about the committee's work.

Other Committee Studies

Committees have broad discretion to initiate studies on matters within their mandates as defined by the House of Commons. In the case of any substantive study of a matter (i.e., as distinct from a study of a bill at committee stage in the legislative process), a committee may engage in consultations, as described above, and prepare a report for presentation in the House. The committee typically gives drafting instructions to the committee's analyst, a subject matter expert assigned to the committee by the Library of Parliament to assist with substantive questions, for the preparation of a report containing the committee's findings, informed by the committee's consultations. Following adoption of the report in committee, the committee chair presents the report to the House. Committee reports typically contain recommendations to the government about matters of public policy. These may inform the government's deliberations with respect to its legislative agenda.

References and More Information

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