



THE LEGISLATIVE PROCESS: FROM GOVERNMENT POLICY TO PROCLAMATION

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Introduction

How does government policy become law in Canada?⁽¹⁾ A better understanding of the law-making process can be achieved by outlining its three distinct stages:

- the Cabinet stage;
- the parliamentary stage; and
- the coming into force stage.

The Cabinet Stage

The primary purpose of the Cabinet stage is to review and decide which options the government wants to implement through legislation. Government policy – which can originate in the Throne Speech, the budget, international or federal/provincial agreements, ministerial proposals and other sources – is the point of origin for most federal government legislation. The appropriate federal departments review these policy sources to determine whether legislation is required. If legislation is needed to implement a policy, the minister is encouraged, but not required, to allow departmental officials to proceed with policy consultations. These consultations allow stakeholders, other departments, provincial governments and others to provide input into the legislation before it is drafted.

The decision to address a matter through a bill or regulation is made by Cabinet on the basis of information developed by the Minister's departmental officials.
(Privy Council Office, Cabinet Directive on Law-Making)

Following these consultations, and contingent upon a decision being made to proceed with legislation to achieve the policy objectives, the sponsoring department prepares a Memorandum to Cabinet.⁽²⁾ The Memorandum to Cabinet will seek policy approval and authorization for the Department of Justice to begin drafting the legislation.

Before completing the Memorandum to Cabinet, the sponsoring department hosts an interdepartmental consultation. After the meeting, the Memorandum to Cabinet is revised, taking into account comments from other departments. Once finalized, it is submitted for approval to the appropriate Cabinet policy committee, which reviews the Memorandum to Cabinet and prepares a Committee report. In order for the policy to proceed, Cabinet as a whole must ratify the report of the policy committee.

Once Cabinet approves the Memorandum to Cabinet and the drafting instructions, the legislative drafters of the Department of Justice prepare a bill in both official languages. This is done in consultation with the sponsoring department and departmental legal services. The draft bill is reviewed and approved by the sponsoring minister, as well as by the Government House Leader, who ensure that it is consistent with past Cabinet decisions.

The Government House Leader will then seek delegated authority from Cabinet to approve the bill for introduction in Parliament. The chamber in which the bill will be introduced and the timing of introduction are determined by Cabinet, on the advice of the Government House Leader, in consultation with the sponsoring minister. Typically, government bills are introduced in the House of Commons, rather than in the Senate. Legislation that involves spending or taxation measures *must* be introduced in the House of Commons. When these decisions have been made, the Government House Leader can approve the bill, with Cabinet approval.

At this point, the bill is almost ready to be introduced in Parliament.⁽³⁾ Bills that involve expenditure of public money require a royal recommendation⁽⁴⁾ before they are introduced in the House of Commons. A royal recommendation is obtained from the Governor General or a deputy of the Governor General (a Supreme Court judge). The royal recommendation is

communicated to the House of Commons before the bill is introduced and is included on the *Order Paper*. After first reading, the recommendation is printed in the Journals and included in the first reading copy of the bill.

If the bill is to be introduced in the House of Commons, the Government House Leader gives the Clerk of the House of Commons notice of introduction pursuant to Standing Order 54. The bill appears first on the *Notice Paper*⁽⁵⁾ and is subsequently moved to the *Order Paper*,⁽⁶⁾ where it will wait for introduction by the appropriate minister.

If the bill is to be introduced in the Senate, no notice is required pursuant to Rule 59(11) of the Rules of the Senate.

The Parliamentary Stage

The bill, once introduced, must pass through both the House of Commons and the Senate. Normally, the procedure is as follows.

The process of reaching a decision in a democracy involves an enormous amount of talk. The success of a political system, in truth, can be roughly measured by the degree to which decisions are reached through talk rather than force or other instruments of coercion. (C.E.S. Franks, *The Parliament of Canada*)

House of Commons

- The bill is introduced and undergoes first reading.⁽⁷⁾
- The principle of the bill is debated at second reading and the bill is referred to a committee for more detailed study. (In the House of Commons, it is possible to refer a bill to committee prior to second reading pursuant to Standing Order 73.)
- After studying the bill and a clause-by-clause deliberation, the committee reports the bill back to the House of Commons.
- The bill, as passed by the committee, is debated at report stage, where further amendments can be proposed by the Government or individual members.
- The bill and any amendments to the motion for third reading are debated.

Senate

- The bill is introduced and undergoes first reading.⁽⁸⁾
- The principle of the bill is debated at second reading and the bill is referred to a committee for more detailed study. (In the Senate, it is possible for a committee to study the subject matter of a bill introduced in the House of Commons prior to second reading, pursuant to Senate Rule 74.)
- The committee reports back to the Senate.
- When a committee reports a bill back to the Senate with amendments, the bill is debated at report stage and the committee's report is either concurred with or amended. The Senate considers a bill at report stage only if the Senate committee has reported the bill back with amendments. Bills reported back to the Senate without amendments are adopted without a motion.
- The bill and any amendments at third reading are debated.

A more detailed explanation of the parliamentary stage can be found in the House of Commons *Compendium* and the Senate document entitled *Making Canada's Laws*.

When both the House of Commons and the Senate have passed the bill in the same form, the bill awaits Royal Assent. Royal Assent is the point at which a bill becomes an Act. Traditionally, Royal Assent was granted only during a special ceremony in the Senate chamber involving the House of Commons, the Senate and the Governor General or a deputy of the Governor General (a Supreme Court judge). In 2002, legislation was passed that permits Royal Assent to be signified by a written declaration, which can take place away from the Senate and House of Commons. The *Royal Assent Act* requires, however, that the traditional ceremony also be maintained. It is to be used at least twice in each calendar year, including for the first appropriation bill in each session. The new procedure requires that the Speakers of both the House of Commons and the Senate be notified of the written declaration before a bill is deemed to have received Royal Assent.

The Coming Into Force Stage

Although a bill becomes an Act when it receives Royal Assent, the legislation is not automatically in effect. Acts may come into force in various ways, and each Act must be examined to determine which commencement mechanism applies.

An Act has the force of law upon Royal Assent, unless it provides otherwise.
(Privy Council Office,
Cabinet Directive on Law-Making)

If an Act does not contain a provision specifying the date that it enters into force, the *Interpretation Act* states that the Act comes into force on the day it receives Royal Assent.

If the Act has sections providing for the coming into force of the Act, these provisions can take many forms:

- The date on which the Act comes into force may be fixed. For example, there could be a section stating that the Act comes into force on 1 January 2009.
- The Act comes into force on the day it receives Royal Assent.
- The Act comes into force if an order is issued by the Governor in Council.⁽⁹⁾ This and other statutory instruments can be found in Part II of the *Canada Gazette*. These orders of the Governor in Council state that all or part of the Act comes into force on a certain date or dates. For example, the statutory instrument for the *Act to Amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act* (SI/2008-93) states that “the Governor General in Council ... hereby fixes September 12, 2008 as the day on which the Act comes into force, other than sections 51 and 52.”

It is also possible for an Act to take a very long time to be proclaimed in force. Some Acts that were granted Royal Assent decades ago have yet to be proclaimed in force by the Governor in Council. In response to this situation, a Senate public bill was passed during the 2nd Session, 39th Parliament, which repeals legislation that has not come into force within 10 years of receiving Royal Assent. This Act, known as the *Statutes Repeal Act*, comes into force 18 June 2010.

When an Act comes into force, the transition from policy to an enforceable law has been completed. (Please see the Appendix for a schematic diagram of the legislative process.)

Notes

- * The original version of this paper was prepared by Megan Furi, formerly of the Library of Parliament, and by Peter Niemczak.
- (1) For information about private members’ bills, private senators’ public and private bills, see House of Commons, *Private Members’ Business: Practical Guide*, October 2008, http://www.parl.gc.ca/information/about/process/house/PMB_PracticalGuide/PractGuide_4PMB-e.htm, and Senate, *The Senate Today*, “Making Canada’s Laws,” <http://www.parl.gc.ca/information/about/process/Senate/senatetoday/laws-e.html>.
- (2) The Memorandum to Cabinet is the key instrument of written policy advice to Cabinet.
Ministers use Memoranda to Cabinet to:
 - describe a particular policy context;
 - outline the problems associated with the current situation; and
 - recommend solutions.The Memorandum to Cabinet should include:
 - the type of public consultation to be undertaken;
 - whether the draft bill is to be used in this consultation. If so, Cabinet approval is necessary; and
 - drafting instructions. It does not include a draft bill, but rather a set of instructions that will facilitate a policy discussion of a legislative proposal and provide a framework for the bill.
- (3) Parliament is the legislative branch of government, and is composed of the Sovereign (represented by the Governor General), the Senate and the House of Commons.
- (4) A royal recommendation is a message from the Governor General; it is required for any vote, resolution, address or bill for the appropriation of public revenue. Only the Government (as opposed to an opposition party) can obtain such a recommendation.
- (5) Both the Senate and the House of Commons publish a *Notice Paper* for each sitting day; the *Notice Papers* present all notices of bills, motions and questions that senators, ministers or private members may wish to bring before their respective chambers.

- (6) The *Order Paper* is the official agenda of the Senate and the House of Commons. Both chambers publish this document for each sitting day. It lists all items that may be brought forward in that respective chamber on that particular day.
- (7) When Government bills are introduced in the House of Commons, they are numbered C-2 to C-200. Private members' bills are numbered C-201 to C-1000, and private members' private bills are numbered C-1001 and up.
- (8) Bills introduced in the Senate are numbered S-2 and up, with no distinction between Government, private senators' public bills and private senators' private bills.
- (9) The Governor in Council is the Governor General acting by and with the advice and consent of those members of the Privy Council who make up the Cabinet. The Privy Council is a formal advisory body to the Crown appointed by the Governor General on the advice of the Prime Minister. All Cabinet members must be sworn to the Privy Council, to which they are named for life.

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APPENDIX

The Legislative Process in Canada

