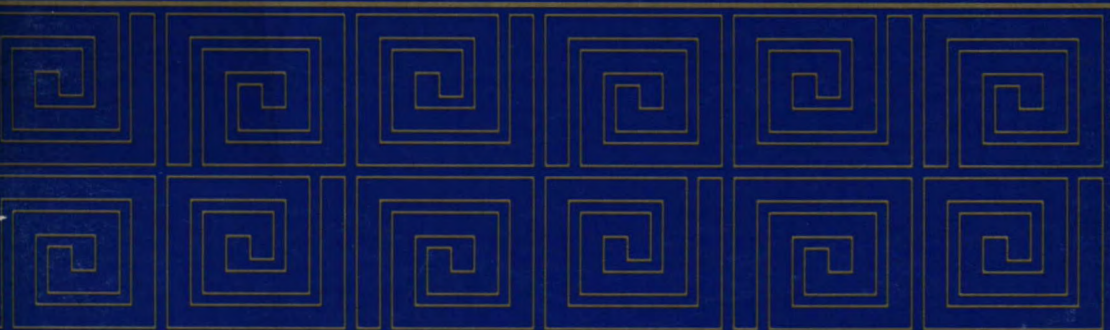


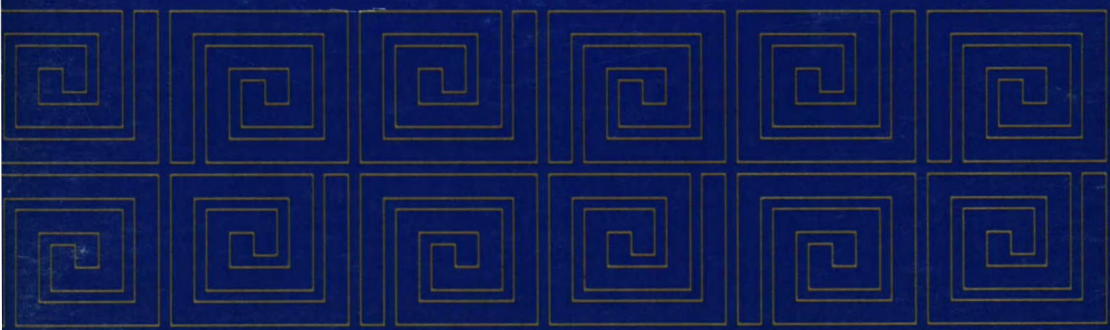


Department of Justice  
Canada

Ministère de la Justice  
Canada



# The Federal Legislative Process in Canada



Canada



JUSTICE CANADA

# **THE FEDERAL LEGISLATIVE PROCESS IN CANADA**

Published by authority of the  
Minister of Justice and  
Attorney General of Canada,  
Government of Canada

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Available in Canada through

Associated Bookstores  
and other booksellers

or by mail from

Canadian Government Publishing Centre  
Supply and Services Canada  
Ottawa, Canada K1A 0S9

Catalogue No. J2-64/1986

ISBN 0-660-54773-2

Second printing 1989.

JUS-P-386

# Preface

At some point in their careers, many federal government employees are involved in the federal legislative process. Some are called upon to work on revisions of statutes for which their Ministers are responsible. Others may be asked to participate in the development of policies or programs requiring legislative measures. It is therefore important that public servants be knowledgeable about the legislative process.

This booklet has been prepared to assist government employees in participating effectively in the federal legislative process. Designed as an information tool, it will assist users in understanding the steps involved in the legislative process and in clarifying their own roles in this process.

The information on the following pages will introduce the reader to a complex process that involves many institutions and individuals. I trust this booklet will prove helpful to federal public servants in gaining a more thorough understanding of the process itself, and of the roles played by specific individuals within that process.

Ray Hnatyshyn, M.P., P.C.  
Minister of Justice and Attorney General of Canada

May 1987



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# **I OVERVIEW OF THE PROCESS**

The 14 steps involved in the complete legislative process, from initial policy proposal through to enactment, are depicted in Appendix I. In this booklet, the 14 steps have been reduced to six major stages. This has been done for ease of discussion, as well as to emphasize key stages that will be of particular interest to readers. The six stages are:

- A. Policy Approval by Cabinet
- B. Drafting the Legislation
- C. Printing the Draft Bill
- D. Cabinet Approval of the Draft Bill
- E. Parliamentary Study, Amendment and Passage of the Bill
- F. Regulations

In brief, the process begins with the development of a policy that must be approved by Cabinet. Cabinet approval of the policy authorizes the drafting of the proposed legislation, a process carried out for the government by the Legislation Section of the Department of Justice. After the drafting stage, various proofs of the bill are printed, as required. Once the draft bill is in a form that is satisfactory to the sponsoring Minister, it must be approved by Cabinet. Finally, the bill is introduced in Parliament, where it is first debated as to principle. The bill is then studied, clause by clause, and amended as necessary, prior to ultimate passage by both Houses and Royal Assent.





## **II BACKGROUND**

Before a detailed description of each individual stage is given, it will assist readers to have at least a basic understanding of the context within which legislation is developed and passed. Similarly, some knowledge of who the key participants are and of the major sources and types of legislation will help to make Part III more useful.

The federal government has many tools and mechanisms for putting its decisions and policy proposals before the Canadian public. The most formal communication mechanism is the bill, which is the draft of a proposed Act of Parliament submitted to Parliament for consideration and adoption.

Prior to 1948, the responsibility for drafting government legislation was left to the department or agency within whose jurisdiction the subject-matter in question fell. Draft bills were scrutinized, revised and often redrafted under the direction of the Law Clerk and Parliamentary Counsel of the House of Commons. In 1948, the legislative drafting function was centralized into a single office: the Legislation Section of the Department of Justice. This centralization, achieved under government directive, has three major advantages over the earlier decentralized system. It has helped to ensure:

- the availability of a group of skilled legislative drafters;
- consistency of terminology and form in the Statutes of Canada; and
- the preparation, in a timely and orderly manner, of the legislative program of the federal government.

### **A. Key Participants in the Process**

It is not possible to identify precisely which individuals will participate in the legislative process in any particular instance, as this can vary depending on a number of factors, including the type of legislation and the initiators of the draft. However, there are certain key individuals and institutions whose participation in the legislative process is considered mandatory. They are:

- the sponsoring Cabinet Ministers and their officials, and the Department of Justice Legal Services Unit of the sponsoring department;
- the appropriate policy Cabinet Committee;
- Cabinet, or the Cabinet Committee on Priorities and Planning;
- the instructing officer of the sponsoring department;
- the Legislation Section, Department of Justice;
- the Cabinet Committee on Legislation and House Planning;
- the Leader of the Government in the House of Commons;
- the Leader of the Government in the Senate;

- the Offices of the Law Clerk and Parliamentary Counsel of the Senate and of the House of Commons;
- Parliament; and
- the Governor General.

## **B. Sources of Legislation**

Ideas for legislation at the federal level in Canada may originate from any of the following five major sources:

- the public;
- the government;
- the Public Service;
- Parliament; or
- the judiciary.

### *1. The public*

Requests from, or concerns of, the public are often the source of legislation. Such requests may be brought to the attention of the government by members of the public at large, public interest groups or their representatives.

### *2. The government*

This is the main source of legislation. Proposals may stem from party policy, convention resolutions, the caucus, government policies, or reports and recommendations of Royal Commissions or similar bodies charged specifically with the review of particular aspects of public policy.

### *3. The Public Service*

Recommendations from within the Public Service arising out of administrative experience and the evolution of existing government programs frequently provide a source of legislation.

### *4. Parliament*

The legislature, through such vehicles as committee reports and private members' bills, is also a source of legislation.

### *5. The judiciary*

Certain legislative measures originate as a consequence of judicial decisions.

## **C. Types of Legislation**

In parliamentary terms, there are private bills and public bills.

Private bills confer specific powers or rights on, or create an exception to the general law for the benefit of, particular persons or groups of persons. While they are passed by Parliament in much the same way as public bills, the procedure governing

their introduction in Parliament is quite different. As a rule, their preparation is coordinated through the Office of the Law Clerk and Parliamentary Counsel of either the Senate or the House of Commons and does not involve the Public Service. Private bills will not be discussed further in this booklet. Readers interested in learning more about private bills may wish to contact the Office of the Law Clerk and Parliamentary Counsel of either the Senate or the House of Commons.

Public bills may be initiated by either the government or Members of Parliament. Those initiated by the government are introduced in Parliament through a Minister of the Crown and are numbered consecutively from C-1 to C-200 in the House of Commons and from S-1 in the Senate. Those introduced by Members of Parliament under their own names are numbered consecutively from C-201 to C-1000 in the House of Commons and from S-1 in the Senate. Officially called Private Members' public bills, these latter bills can only be considered during limited time periods (i.e. in the House of Commons during Private Members' hours, which are usually scheduled between 5 p.m. and 6 p.m. on Monday, Tuesday and Thursday and between 4 p.m. and 5 p.m. on Friday). They are prepared by the Members or Senators with the assistance of the Office of the Law Clerk and Parliamentary Counsel of the House in which they are to be introduced.

In this booklet, we are concerned only with public bills that are initiated by the government in the House of Commons or in the Senate. They may be categorized into seven different types:

1. New Acts;
2. Major revisions of existing Acts;
3. Amendments to existing Acts;
4. Fiscal bills;
5. Appropriation Acts;
6. Borrowing authority Acts; and
7. Statute Law Amendment Acts.

Another category not discussed fully here is amendments to the Constitution of Canada. Some can be made exclusively by Parliament through Acts of Parliament. Others require a proclamation of the Governor General authorized by resolutions of the House of Commons, the Senate and legislative assemblies under conditions set forth in the *Constitution Act, 1982*. Amendments of this latter kind are not government bills.

Each of the seven types of legislation listed above has unique characteristics, some of which are described in the following pages. It should be noted that the process for drafting, approving and passing legislation is the same for the first three types listed above: new Acts, major revisions of existing Acts and amendments to existing Acts. The legislative process as described in Part III refers primarily to those types of legislation.

#### 1. *New Acts*

A new Act that is proposed to Parliament often represents the culmination of a

major government initiative or policy, or the acceptance by the government of recommendations arising out of a report of a Task Force or Royal Commission of Inquiry. New Acts are also needed to implement treaties, conventions or agreements, to carry out administrative measures or to deal with special problems or emergencies. Examples of these are:

- the *Investment Canada Act* (major policy initiative);
- the *Canadian Security Intelligence Service Act* (in response to a report of a Royal Commission of Inquiry);
- the *Canada–United States Tax Convention Act, 1984* (treaty);
- the *Western Arctic (Inuvialuit) Claims Settlement Act* (agreement);
- the *Garnishment, Attachment and Pension Diversion Act* (administrative measure); and
- *An Act to amend the Customs Tariff* (special situation).

## 2. *Major revisions of existing Acts*

Existing Acts may require revision from time to time for a variety of reasons. Acts are generally revised either because they contain a sunset clause (e.g. the *Bank Act*, which must be revised every 10 years) or because they are outdated due to changing social, economic or technological standards or circumstances. Examples of Acts that have recently undergone revision include the *Juvenile Delinquents Act* (which has been replaced by the *Young Offenders Act*), the *Customs Act* and the *Divorce Act*.

## 3. *Amendments to existing Acts*

An amendment to an existing Act involves making changes of either a substantive or a housekeeping nature. Amending bills frequently deal with social legislation (under which, for example, the benefits may need to be increased) or provide for financial assistance to certain groups such as small businesses, farmers or fishermen.

## 4. *Fiscal bills*

Fiscal bills are based on Ways and Means Motions tabled in the House of Commons. The purpose of these bills is to create a new tax or to extend, continue or increase an existing tax. Most important among these bills are those arising out of the Budget Speech, including amendments to the *Income Tax Act*. Amendments to the *Income Tax Act* are drafted within the Department of Finance where drafters from the Legislation Section of the Department of Justice are located on a full-time basis as part of the Department of Justice Legal Services Unit.

## 5. *Appropriation Acts*

These acts are based on the government's Estimates in the amounts approved by the House of Commons. Their preparation is the responsibility of the Office of the Law Clerk and Parliamentary Counsel of the House of Commons. The Estimates

contain, for each item, vote wording prepared by departments in conjunction with their legal branches and approved by the Treasury Board.

#### 6. *Borrowing Authority Acts*

Borrowing authority bills are periodically presented to Parliament to seek authority to raise money for public works and general purposes. They are drafted by the Legislation Section of the Department of Justice and their passage through Parliament is subject to the same procedure as other public bills.

#### 7. *Statute Law Amendment Acts*

This type of legislation is needed periodically to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada. The Statute Law Amendment Program, formerly known as the Miscellaneous Statute Law Amendment Program, is carried out by the Legislation Section of the Department of Justice and coordinated by a member of that Section, called the Program Coordinator. In order to be included in the Program, a proposed amendment must not:

- be controversial;
- involve the spending of public funds;
- prejudicially affect the rights of persons; or
- create a new offence or subject a new class of persons to an existing offence.

Anyone may suggest to the Minister responsible for an Act amendments to that Act for possible inclusion in the Program.

Before a bill containing proposals for amendments is introduced in Parliament, the proposals are reviewed at least four times. First, they are reviewed by the Program Coordinator who receives and assesses the proposals before they are submitted for approval to the Minister of Justice. The Minister then submits a Memorandum to Cabinet. The second review is by the Cabinet Committee on Legislation and House Planning, which examines the proposals prior to their approval by Cabinet and their subsequent tabling in Parliament. The third and fourth reviews are carried out by the Legal and Constitutional Affairs Committee of the Senate and by the Justice and Legal Affairs Committee of the House of Commons, respectively. An important feature of the Statute Law Amendment Program is that a proposed amendment will be deleted if a member of either Committee objects to its inclusion for any reason.

At the conclusion of the review process, a Statute Law Amendment bill, based on the reports of the two Committees and containing only proposed amendments unanimously approved by them, is prepared by the Legislation Section and introduced in Parliament by the Minister of Justice. Such a bill normally receives all three readings in each House without debate since the proposed amendments it contains have already been thoroughly reviewed.



### III THE PROCESS IN DETAIL

In the previous section, the major types and sources of legislation were identified. We now look in some detail at the six major stages of the legislative process. The roles and responsibilities of key individual and institutional participants in the process are described briefly in this Part.

#### A. Policy Approval by Cabinet

A proposed legislative measure must be approved by Cabinet as to policy before it may be drafted and introduced in Parliament. An exception to that requirement is legislation dealing with the organization of government, which is a prerogative of the Prime Minister. A recent example of this type of exception was the *Government Organization Act, 1983*; the other exceptions are fiscal bills and borrowing authority bills, each of which was briefly described in Part II.

The legislative process begins at the policy level. All policy initiatives that require legislation must be sponsored by a Cabinet Minister who must formally present them to Cabinet in the form of a Memorandum to Cabinet.

The preparation of the Memorandum to Cabinet is critical, as the legislation ultimately must reflect precisely the record of decision of the Cabinet. Guidelines and standards for the preparation of Memoranda to Cabinet have been prepared by the Privy Council Office, under the title *Memoranda to Cabinet, a Drafter's Guide*. The Cabinet Liaison Officer in each department can provide the latest Memorandum to Cabinet drafting information.

The exact process that leads to the development of the policy and the preparation of the Memorandum to Cabinet depends upon the internal organization of the department concerned. However, because legislation is being proposed, the Legal Services Unit of the sponsoring department should be involved early in the policy development stage. For the same reason, it is of paramount importance that the department consult the Chief Legislative Counsel as to the estimated amount of time required for drafting if a time frame for completion of the project is to be presented to Cabinet.

Policy approval is sought through the Cabinet committee system. It is initiated when the sponsoring Minister sends the Memorandum to Cabinet to the Privy Council Office. That Office is responsible for circulating the Memorandum to Cabinet, ensuring that it receives proper examination and that it is placed on the agenda of the appropriate Cabinet committee for review. Once that committee approves the policy, a Cabinet Committee Report (CR) is issued by the Secretary of that committee for consideration and approval by either Cabinet or the Cabinet Committee on Priorities and Planning.

Upon approval of the Cabinet Committee Report, a Record of Decision (RD) is issued which repeats the recommendations of the initial memorandum with any changes made by the relevant Cabinet committee, Cabinet or the Cabinet Committee on Priorities and Planning. Included in the recommendations is the standard formulation that:

“the Legislation Section of the Department of Justice be authorized by Cabinet to draft the required legislation in consultation with the sponsoring department or agency (and any other pertinent departments), in accordance with priorities established by the Cabinet Committee on Legislation and House Planning”.

## **B. Drafting the Legislation**

It must be emphasized that the Memorandum to Cabinet is a policy paper. The Memorandum shall NOT be in the form of, or accompanied by, a draft bill. This strict rule is based on very practical reasons. The drafters' responsibility is not to establish or develop the policy on which legislation is based; rather, it is to critically examine the approved policy, determine how that policy can be implemented as intended, and express the intention of the policy in appropriate legislative language. Only when Cabinet has approved the Memorandum to Cabinet may drafting of legislation begin.

Cabinet approval of the Memorandum to Cabinet authorizes the Chief Legislative Counsel of the Government to set in motion drafting of the required legislation.

The Chief Legislative Counsel assigns two drafters from the Legislation Section to prepare the draft legislation, one of whom is given primary responsibility for the bill. Each drafter is responsible for drafting the legislation in one of the official languages. In this way, parallel versions of the bill are prepared. This is extremely important, as it ensures that both versions are authentic in the sense that neither is a translation of the other. Both versions must convey the same concepts and must meet the same high standards of technical accuracy. The choice of whether the drafter with the primary responsibility for the bill is an English-language lawyer or a French-language lawyer is an internal decision of the Legislation Section and is governed by a number of factors, including the workload and experience of the respective drafters and the subject-matter to be addressed.

Once the drafters are selected and assigned their respective responsibilities, the drafter with primary responsibility makes contact with the sponsoring department in order to identify who the department's instructing officer will be. The instructing officer is the senior-level liaison between the sponsoring department and the drafters. Contact is also made with the head of the Legal Services Unit of the sponsoring department unless that person is the instructing officer. At this point the drafting process begins.

In addition to their knowledge of the law (especially federal statutes) and of the organization of government, the drafters rely on a number of resources to assist them



in preparing the legislation, including:

- the Memorandum to Cabinet and other background documentation upon which the draft legislation is to be based;
- the Record of Decision of Cabinet;
- information from the sponsoring department, obtained through the instructing officer;
- legal expertise available within the Legal Services Unit of the sponsoring department or within the Department of Justice to assist where knowledge of a specialized area of the law is needed;
- precedents that can be found on-line from QUIC/LAW, an information retrieval system that provides access to most federal and provincial statutes, as well as most judicial reports;
- standard reference works;
- legislative editors; and
- specialized support staff, including data processing operators, knowledgeable about the processing and printing of draft bills.

The above underlines the importance of the coordinating role of the instructing officer who is expected to:

- be knowledgeable in the substantive policy area in question, or have experts on hand as required;
- be at such a management level as to have ready access to key decision-makers, including the Deputy Minister and the Minister;
- provide the appropriate support to the drafters by ensuring, without interfering in the actual drafting, that *each language version* of the draft bill accurately reflects the policy, that both versions carry the same legal concept and that one version is not assumed to be accurate just because the other version is judged to be so;
- ensure that where the head of the sponsoring department's Legal Services Unit is not the instructing officer, that person will be involved or consulted at each stage in the process; and
- respect any constraints that might be imposed on the drafters as a result of other government legislative priorities, drafting conventions (both legal and linguistic) and other requirements.

### **C. Printing the Draft Bill**

The Chief Legislative Counsel is responsible for all printing of draft bills until they are introduced in Parliament. The bills are confidential until that stage and are not communicated to anyone who is not directly involved in their preparation or progress through Cabinet and Cabinet committees.

Prior to introduction of the bill in Parliament, any extra copies requested by the sponsoring department for distribution outside government immediately after intro-

duction (e.g. to the media or special interest groups) are printed at the expense of the sponsoring department and are clearly labelled "Confidential until tabled in Parliament". Authorization for such special printing is obtained through the Office of the Chief Legislative Counsel.

After introduction of the bill in either House of Parliament, responsibility for its printing and distribution lies with the Office of the Law Clerk and Parliamentary Counsel of the House in which the bill has been introduced. Copies of bills introduced in Parliament and of all successive printings are available through Supply and Services Canada or accredited representatives.

#### **D. Cabinet Approval of the Draft Bill**

Once the bilingual version of the bill has been drafted to the satisfaction of the officials of the sponsoring department, the sponsoring Minister and the Chief Legislative Counsel, it is put into the Cabinet Paper system as a Cabinet Document by the Secretariat of the Cabinet Committee on Legislation and House Planning.

The process for review of the bill is similar to that undertaken for the policy paper on which the bill is based. At this stage the Secretariat of the Cabinet Committee on Legislation and House Planning is responsible for coordinating the review process. Copies of the draft bill provided by the Legislation Section are distributed to Cabinet by the Secretariat. A bilingual one- or two- page summary of the purpose and essential provisions of the bill should be provided in advance by the responsible department to the Secretariat for distribution to Ministers along with the bill itself. The draft bill must be approved by the Cabinet Committee on Legislation and House Planning and then by full Cabinet or the Cabinet Committee on Priorities and Planning. The draft bill is scrutinized very closely at this point to ensure that:

- it accurately reflects the policy that was originally approved by Cabinet and, if not, that changes are brought to the attention of Cabinet or referred to the Cabinet Committee that originally reviewed the matter; and
- its provisions, as formulated, will allow for the policy to be implemented effectively and as intended.

Differences of opinion regarding the draft bill that may arise between officials are settled by the Secretary of the Cabinet Committee on Legislation and House Planning and, as a final resort, by the Chairperson of the Committee.

Once Cabinet approval has been given, the bill is ready to be introduced in Parliament. If Cabinet has not determined the time of introduction the decision is made by the Leader of the Government in the House — who is responsible for both the legislative process and House business — in consultation with the sponsoring Minister. If a bill is to be introduced in the Senate, the date of introduction is determined in consultation with the Leader of the Government in the Senate.

This part of the process is handled within the Privy Council Office by the Secretariat of the Cabinet Committee on Legislation and House Planning. The draft

bill is signed by the Prime Minister or, on his behalf, by the Leader of the Government in the House and is forwarded by the Secretariat on behalf of the Prime Minister to the Clerk of the House of Commons. This delivery serves as notice of the sponsoring Minister's intention to introduce the bill.

If the draft bill provides for an expenditure of public funds, no matter how minimal, a Royal Recommendation is prepared by the Law Clerk and Parliamentary Counsel of the House of Commons, on behalf of the Secretariat of the Cabinet Committee on Legislation and House Planning and is approved by the Governor General and printed in the bill. It is a constitutional requirement that such bills originate in the House of Commons. A typical Royal Recommendation reads as follows:

"Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "An Act . . .".

Bills to be introduced in the Senate are transmitted to the Office of the Clerk of the Senate. The decision as to whether a non-money bill is to be introduced in the Senate or the House of Commons is a matter left to the discretion of the Leader of the Government in the House, in consultation with the sponsoring Minister and the Leader of the Government in the Senate.

### **E. Parliamentary Study, Amendment and Passage of the Bill**

All bills must pass through a series of parliamentary stages before they become law.

The beginning of the parliamentary phase is marked by the introduction of the bill in Parliament by a member of the Senate or of the House of Commons. The process is guided by a set of rules of order called "Standing Orders of the House of Commons" and "Rules of the Senate". Their function is to ensure that the parliamentary process of debate and decision-making is as orderly as possible; that the rights of members to speak freely, scrutinize the draft bill, and propose amendments are protected; and that the legislative program of the government is brought to a vote with all reasonable dispatch. The House of Commons adopts from time to time provisional rules some of which affect the legislative process.

While the rules of procedure and the stages involved in passing legislation are essentially the same in the Senate and in the House of Commons, there are some differences. One difference worth noting is that, in the Senate, the practice has been adopted of making an advance study of important government bills that have been introduced in the House of Commons. This is done by referring the subject-matter of such bills to an appropriate committee. This procedural device allows the Senate to make a thorough study of such bills and to recommend amendments before the bills are formally introduced in the Senate.

The following is a summary of the stages in the parliamentary phase of the legislative process for public bills. There are nine major stages:

1. Notice of Introduction
2. Introduction and First Reading
3. Second Reading
4. Committee Study
5. Report Stage
6. Third Reading
7. Consideration by Other House
8. Royal Assent
9. Proclamation.

1. *Notice of Introduction*

The Standing Orders of the House of Commons require that, prior to introduction of a bill in the House, a 48 hour notice be given, in writing, stating the title of the bill. A copy of both the bill and the Royal Recommendation accompany the notice. As already explained, this aspect of the procedure is coordinated on behalf of the government by the Secretariat of the Cabinet Committee on Legislation and House Planning. Notice of introduction is not required in the Senate.

2. *Introduction and First Reading*

The first reading of a bill in the House of Commons consists of the adoption of two motions: one is a motion for leave to introduce the bill, the second is a motion that the bill be "read" a first time and that it be printed. These motions are purely formal, in that they are not debatable and the bill is not actually read aloud. Exceptionally however a vote may be requested by members. After the second motion, the bill is printed overnight by the Queen's Printer for Canada under the authority of the Speaker of the House of Commons, on request from the Office of the Law Clerk and Parliamentary Counsel. It is distributed to members the next day. At that time it is also available to the public.

In the Senate, no motion for first reading is required. A Senator simply presents the bill, stating its title. This presentation, together with the Clerk Assistant's announcement that the bill has been read a first time, constitutes the first reading of the bill. The bill is printed overnight by the Queen's Printer under authority of the Senate, on request from the Office of the Law Clerk and Parliamentary Counsel of the Senate.

3. *Second Reading*

In both Houses, the principle of the bill and its broad purposes are fully debated at the second reading stage. It is frequently a lengthy process that begins with the sponsoring Minister explaining the bill and ends when there are no more speakers on the bill, or when the sponsoring Minister speaks for a second time on the bill. In the House of Commons, debate at this and other stages may be ended by a time allocation motion, which restricts the amount of time to be spent on the bill. In the House of Commons only, a motion of closure may also end debate.

To facilitate the debate process, sponsoring departments should prepare, well in advance of the second reading, briefing materials or a briefing book to support the bill in its two language versions, as well as a draft statement to be used by the Minister at second reading. This advance work will save time in an already lengthy process. The assurance that all materials are ready will allow for flexibility in calling a bill for second reading. The format and contents of the briefing materials or book are the responsibility of the department concerned.

#### 4. *Committee Study*

After approval in principle on second reading, a bill is referred to a committee for detailed review. This is normally a legislative committee but can be, on occasion, the Committee of the Whole or a standing or special committee. Standing, special or legislative committees may receive briefs or hear witnesses, including the sponsoring Minister, government officials, interest groups, and individuals.

Each clause of the bill, its titles and its preamble (if there is one) are considered, amended if necessary, and adopted by the committee.

The sponsoring department can expedite the committee study by preparing in advance, in the two official languages, a background paper that describes the bill. Since Members of Parliament have many duties, the paper, except for major policy features, should be succinct and dispose of technical matters in just a few sentences. If the proposed legislation contains regulation-making powers of potential interest to Members of Parliament, the sponsoring department should, if possible, prepare an outline of the proposed regulations to assist the committee in its clause-by-clause review of the bill.

It should be noted that there are procedures in place for amending a bill after it has been introduced in Parliament, either at the Committee Stage or at the Report Stage. Normally, amendments of a technical nature are agreed to by the sponsoring Minister without Cabinet consultation. Amendments that change a policy already approved or add a policy not previously considered by Cabinet must normally follow the same procedure as the initial policy proposal, starting with the submission of a policy Memorandum to Cabinet and following through to approval of the draft amendments by the Legislation and House Planning Committee and Cabinet.

All amendments by the government must be prepared by drafters of the Legislation Section of the Department of Justice. Since the two drafters are on call and available on short notice, it is neither customary nor necessary for them to attend the committee meetings, except in rare instances to be determined in consultation with the Chief Legislative Counsel. Since members of the Committee have access to independent legal advice and legislative drafting assistance at the Office of the Law Clerk and Parliamentary Counsel of each House, their amendments are not, as a general rule, prepared by the Legislation Section.

A bill may be amended after it has been introduced in Parliament, if the amendment is not out of order on any of the following grounds identified by Fraser,

Birch and Dawson in *Beauchesne's Parliamentary Rules and Forms*, at page 233:

- an amendment is out of order if it is irrelevant to the bill, beyond its scope or governed by or dependent upon amendments already negated;
- an amendment must not be inconsistent with, or contradictory to, the bill as so far agreed to by the committee, nor must it be inconsistent with a decision which the committee has given upon a former amendment;
- an amendment is out of order if it is offered at the wrong place in the bill, if it is tendered to the committee in a spirit of mockery or if it is vague or trifling;
- an amendment is inadmissible if it refers to, or is not intelligible without, subsequent amendments or schedules, or if it is otherwise incomplete, and an amendment may not make the clause which it is proposed to amend unintelligible or ungrammatical;
- an amendment which is equivalent to a negative of the bill, or which would reverse the principle of the bill as agreed to at the second reading stage, is not admissible;
- an amendment to delete a clause is not in order, as the proper course is to vote against the clause standing part of the bill;
- an amendment is out of order if it imposes a charge upon the Public Treasury, if it extends the objects and purposes, or relaxes the conditions and qualifications as expressed in the Royal Recommendation;
- an amendment may not amend a statute which is not before the committee, and an amendment may not amend sections from the original Act unless they are specifically being amended in a clause of the bill before the committee;
- an amendment may not be proposed to insert words at the commencement of a clause with a view to proposing an alternative scheme to that contained in the clause or to leave out from the first word to the end of the clause in order to substitute other words or to effect a redrafting of the clause, such amendments being in the nature of a new clause;
- a substantive amendment may not be introduced by way of a modification to the interpretation clause of a bill; and
- an amendment to include in a bill a statute which has already ceased to have effect is out of order; but an amendment may be moved to continue the Act which is still in force but would cease to have effect if steps were not taken to continue its existence.

#### 5. *Report Stage*

The committee reports its findings, including proposed amendments, to the House in which the bill is being considered. Further amendments may be, and are often, proposed by the sponsoring Minister or by any other member of the House at the report stage, subject to a written notice of 24 hours. As is the case for amendments at the committee stage, amendments by the Minister must be prepared by the Legislation Section of the Department of Justice. Such amendments may be debated

and voted upon. A motion to concur in the bill, with or without amendments, is then proposed by the sponsor of the bill and the motion may be subject to a vote. Members of that House may agree to the bill as reported by the committee, or may amend it further or may send it back to the committee for further study (a rare occurrence). The report stage is the only opportunity for the majority of members (only a few of whom may be members of the committee) to propose amendments to the bill.

After the report stage amendments have been voted upon, the bill is ready for a third reading. In the House of Commons, the third reading takes place at the next sitting of the House except that, with unanimous consent, it may be given immediately following the report stage. In the Senate, the third reading may take place immediately.

If the bill is reported by the committee without amendments, and if none are proposed by members of the House at the report stage, the third reading may take place immediately in the House of Commons, but must take place at a later date in the Senate. If several amendments are accepted at the report stage, the House may order that the bill be reprinted once more before third reading.

#### 6. *Third Reading*

The third and final reading allows for a review of the bill in its final form. Debate on third reading is generally shorter than that on second reading but is essentially a repetition of it.

#### 7. *Consideration by Other House*

Once a bill has had three readings in one House, it is then sent to the other House to be read, debated, and possibly amended, in a process similar to that which occurred in the first House. If one House amends a bill passed by the other, the first House is asked to concur in the amendments. If the first House cannot concur, reasons must be sent in writing to the second House. If the second House insists on its amendments, a conference may be held between representatives from each House and an attempt made to resolve the conflict. If the conflict is not resolved, the matter is dropped.

#### 8. *Royal Assent*

When a bill has been passed by both Houses, it is ready to be submitted for Royal Assent. This formal ceremony, during which a bill is enacted, is presided over by the Governor General or his or her deputy and attended by representatives of both Houses. It is held in the Senate Chamber.

Royal Assent is normally given by a Deputy of the Governor General, one of the judges of the Supreme Court of Canada.

Immediately upon Royal Assent, the bill becomes an Act of Parliament and has the force of law unless it contains a provision that it, or some of its provisions, should come into force on a specific day or on a day to be fixed by proclamation.

#### 9. *Proclamation*

Where the coming into force of an Act is on a day to be fixed by proclamation, the

Minister responsible requests the issuance of a proclamation through a submission to the Governor in Council for an order in council authorizing the proclamation to be issued.

Once the order is adopted, it is referred to the Registration Division of the Office of the Registrar General of Canada and thereafter to the Privy Council Office Section of the Department of Justice where the proclamation is drafted. The text is then examined by an anglophone lawyer and a francophone lawyer to ensure that the proclamation conforms with the text of the order in council.

The proclamation may be dated as of the date its issuance is authorized.

## **F. Regulations**

Most Acts of Parliament provide for the making of regulations. While the Act generally contains the basic provisions of the law, the regulations spell out the administrative arrangements that are required to make the Act work. Regulations are a form of legislation equal in their effect to an Act of Parliament.

Regulations (subordinate legislation) and amendments to regulations are developed and approved according to different procedures than those applicable to new statutory initiatives.

Most regulatory initiatives have been subject since 1971 to obligatory legal review under the Statutory Instruments Act. This review is conducted by the Privy Council Office Section of the Department of Justice on behalf of the Clerk of the Privy Council who has a statutory duty to ensure that each new regulation has been examined under the Act before it proceeds for approval by the Governor in Council or other regulation-making authority.

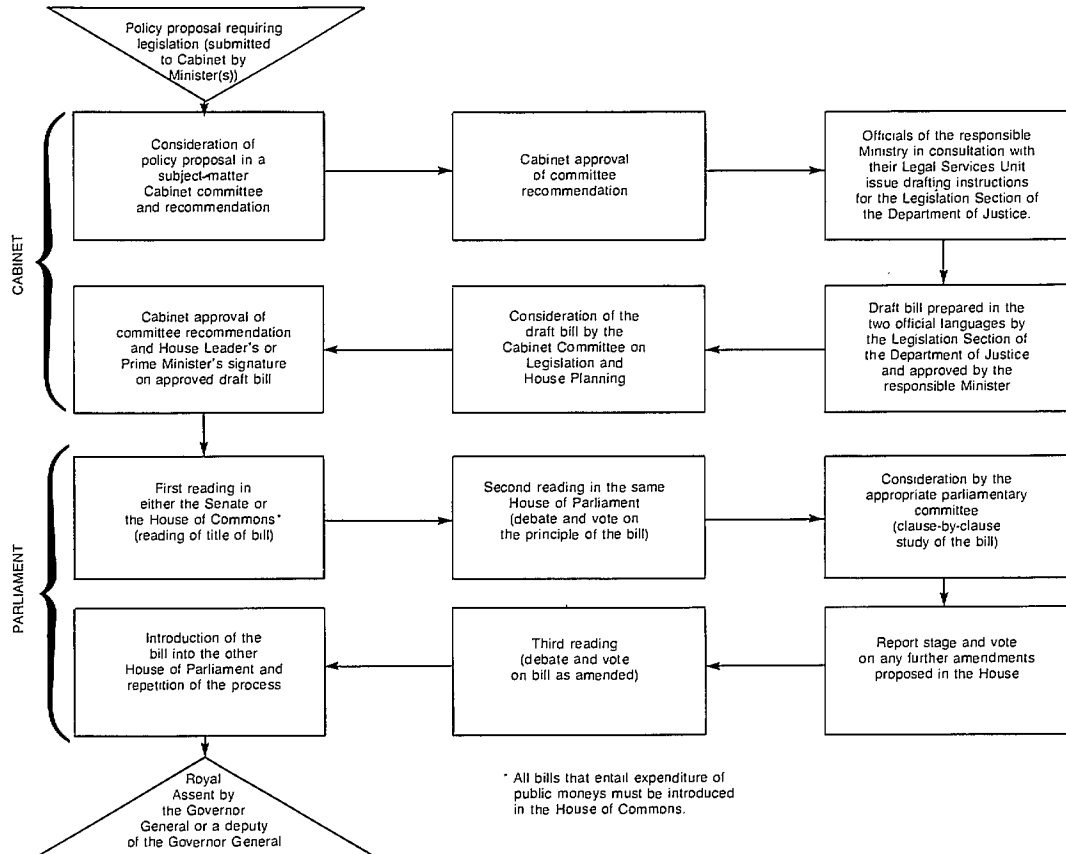
This legal review procedure continues in force but was substantially augmented by a Regulatory Process Action Plan introduced by the government as part of its new Regulatory Reform Strategy in 1986.

The Action Plan introduced standardized procedures affecting all federal departments and some regulatory agencies. It requires across-government regulatory planning and priority-setting, compulsory regulatory impact assessments to accompany all new regulations and regulatory program evaluations covering all federal regulatory programs over a seven-year cycle. Supervision of federal regulatory management has been assigned to a specific minister responsible for regulatory affairs who is assisted by a secretariat (Office of Privatization and Regulatory Affairs). The minister also chairs a new Cabinet Committee on Privatization and Regulatory Affairs which has oversight responsibility for all new regulatory initiatives of a statutory or subordinate legislative nature.

For details of the federal regulatory management system, readers should contact the Assistant Deputy Minister, Regulatory Affairs, Office of Privatization and Regulatory Affairs.



## Appendix I: Overview of the Legislative Process



\* All bills that entail expenditure of public moneys must be introduced in the House of Commons.



## Appendix II: Glossary

### *Act of Parliament or Statute*

An Act of Parliament, or statute, is a bill that has been enacted into law, having been approved at every stage of the legislative process and given Royal Assent. On becoming an Act of Parliament, a bill becomes a law of the land. Because amendments may be made during its consideration, the Act ultimately passed by Parliament can be different from the original draft bill introduced in Parliament.

### *Bilingual Drafting*

The process by which the same concepts are expressed in a bill in each of the two official languages of Canada. The process involves the preparation of two parallel versions of the bill, each version conforming with the spirit of the official language in question.

### *Bill*

A bill is a proposed Act of Parliament or statute in draft form. No bill, public or private, whether introduced by the government or by a private member, can become law until it has received the approval of Parliament and the Royal Assent. All bills are examined in Parliament, first with regard to their general principle (second reading stage), and then in detail (committee stage). Although the large majority of bills are introduced in the House of Commons, a bill may be introduced in either the Senate or the Commons. However, bills entailing public expenditures must be tabled first in the House of Commons.

### *Budget Speech*

This is the familiar term for the financial statement made by the Minister of Finance to the House of Commons. It announces the government's estimate of expected income and expenditures for the fiscal year; its views on the resources of the country and its resulting proposals to increase or reduce taxes, duties and other levies.

### *Cabinet Directive*

An administrative document issued by Cabinet that deals with the internal workings of Cabinet or with procedures governing its activities.

### *Canada Gazette, Part III*

Published under the Authority of the *Statutory Instruments Act*, chapter 38 of the Statutes of Canada, 1970-71-72, the purpose of the *Canada Gazette*, Part III is to publish public Acts as soon as is reasonably practical after they have received Royal

Assent, in order to expedite their distribution. Part III contains the public Acts of Canada and certain other ancillary publications, including a list of Proclamations of Canada. From time to time the Table of Public Statutes from 1907 to the present is also published in Part III, as is a table of Acts with the ministers responsible for their administration.

### *Closure and Time Allocation*

These are procedures used to end or limit debate on controversial legislation. A full description of closure and time allocation can be found in Chapter 12.b of the House of Commons *Précis of Procedure* (see Appendix III). Suffice it to mention that closure is used sparingly and that time allocation is preferred by the government because it allows for negotiations with the opposition parties to determine a timetable for the consideration of a bill.

### *Committee of the Whole*

The Committee of the Whole consists of all members of the House of Commons sitting as a committee presided over by the Deputy Speaker.

### *Case Law*

Case law is that part of the law of the land that is traditional and proceeds from the judgments of the courts, as opposed to that part that is statutory and made in or under the authority of Parliament or a legislature.

### *Constitutional Law*

Simply stated, constitutional law is law relating to the Constitution. It generally deals with the distribution and exercise of the functions of government and the relations of the government authorities to each other and to the individual citizen.

### *Explanatory Notes*

Explanatory notes, though not technically part of a bill, are printed on the page opposite the relevant clause or section of the bill. Prepared by the drafters, they are technical in nature and contain nothing of an argumentative character, but relate merely to the contents and objects of an amending bill. Explanatory notes appear only in the first reading print of a bill and cite the actual text of the provisions being amended, with the portion of the provision being amended printed in italics for easy reference. Unless consequential amendments to other Acts are required, new Acts contain no explanatory notes.

### *Green Paper*

This is a position paper setting out proposals for future government policy. The proposals are expressly intended to serve as a basis for discussion rather than as a commitment by the government to a particular course of action.

### *Memorandum to Cabinet*

This is a formal document prepared in a predetermined format, in which a Cabinet Minister submits to his or her colleagues policy proposals concerning a field within his or her area of competence as determined by constitutional conventions, the Statutes of Canada or decision of the Prime Minister. Policy proposals submitted in a Cabinet Memorandum require either administrative or legislative action.

### *Office Consolidation*

An Office Consolidation is a copy of an Act or a regulation incorporating all its amendments. It is prepared, at the request of the department responsible for the Act or regulation, by the Statute Revision Commission of the Department of Justice. Office Consolidations are prepared for ease of reference only and have no official sanction.

### *Parliament*

"A *Parliament*", in the sense of a duration, is the period between a general election and *dissolution*, not exceeding five years. A Parliament may have several sessions. A *session* commences when a Parliament assembles and ends when it is prorogued. *Prorogation* is a prerogative act of the Crown, the effect of which is to suspend all business until a new session commences. After a prorogation, bills must be renewed as if they were being introduced for the first time unless there is unanimous agreement between parties to reinstate them at the same stage of consideration. The period between prorogation and reassembly in a new session is called a *recess*. While a Parliament is in session, either House may adjourn itself for a duration of time known as an *adjournment*. Following an adjournment, which is merely an interruption in a session, all proceedings are resumed at the stage where they were left off before adjournment.

### *Proclamation*

A proclamation is a formal announcement, issued by the Governor in Council, that an Act adopted by Parliament, or a provision thereof, will come into force on a determined day. Proclamations are issued under authority of an order in council on the recommendation of the Minister responsible for the Act. A proclamation is only required when the legislation so provides. If the Act does not provide for a proclamation or a specific date for its coming into force, it comes into force immediately upon Royal Assent.

### *Regulation-Making Power*

An Act of Parliament may outline policies in general terms. Regulation-making powers contained in specific sections of the Act provide the authority for the details of the policies to be determined through the use of regulations, orders in council, ministerial orders or other instruments as defined in the *Statutory Instruments Act*.

### *Royal Assent*

Before it can become an Act of Parliament a bill that has been agreed to by both Houses of Parliament requires the Royal Assent. Immediately upon Royal Assent, the bill becomes an Act of Parliament and has the force of law unless it contains a provision that it or some of its provisions should come into force on a specific day or on a day to be fixed by proclamation.

### *Royal Commission of Inquiry*

Royal Commissions are a vehicle for fact finding, information gathering, public opinion sampling and policy initiation. They are established pursuant to the *Inquiries Act* and have the power to conduct public hearings, request papers and call witnesses. They provide opportunities for individuals and groups to make submissions to a body that in turn reports to the executive branch of government, and they provide an independent source of advice to government on proposed policy. The recommendations of Royal Commissions of Inquiry have been the source of many important Acts of Parliament.

### *Royal Consent*

Consent given by the Governor General, prior to second reading, for the debate of provisions of a bill that affect the royal prerogative.

### *Speech from the Throne*

The Speech from the Throne is generally a statement of the policies the government proposes to implement during the session of Parliament then commencing. The debate following the Speech is, in general, a debate on those policies. Specific legislation to be introduced during the Session is often mentioned in the Speech from the Throne.

### *Statute*

A statute is a law or enactment of a legislative authority, such as an Act of Parliament.

### *Statute Law*

That part of the law of the land that is contained in the Statutes of Canada and regulations thereunder or in the statutes of the Provinces and regulations thereunder.

### *Task Force*

Task forces, like royal commissions, are mechanisms for gathering information and public opinion concerning proposed government policy, to be used in advising the executive branch of government. Unlike royal commissions, task forces tend to place more emphasis on public hearings than on formal research. They are also normally shorter in duration than royal commissions.

### *Ways and Means Motion*

A Ways and Means Motion is a motion introduced in the House of Commons by a Minister of the Crown, generally the Minister of Finance or the Minister of State (Finance), and is a necessary preliminary to the imposition of a new tax, the continuation of an expiring tax or the application of a tax to persons not already paying it.

### *White Paper*

White papers are tools used by the government to inform the public and parliamentarians alike of government policy. Their purpose is to make the public more receptive to the change that will result from implementing the policy and to encourage debate. Unlike green papers, which test opinion at an early stage, white papers normally attempt to determine opinion on a policy already decided on by government.





### Appendix III: Reference Materials

- Barraine, Raymond. *Nouveau dictionnaire de droit et de sciences économiques*. Paris: L.G.D.J., 1974.
- Beaupré, Rémi Michael. *Construing Bilingual Legislation in Canada*. Toronto: Butterworths, 1981.
- Black, Henry Campbell. *Black's Law Dictionary*. 5th edition. Minnesota: West Publishing Company, 1979.
- Côté, Pierre-André. *Interpretation of Legislation in Canada*. Quebec: Les éditions Yvon Blais Inc., 1984.
- Dawson, W.F. *Procedure in the Canadian House of Commons*. Toronto: University of Toronto Press, 1962.
- Doerr, Audrey D. *The Machinery of Government in Canada*. Toronto: Methuen Publishers, 1981.
- Donaldson, A.G. General Editor, *Statute Law Review*, University of Edinburgh, Scotland.
- Driedger, Elmer A. *The Composition of Legislation*. Ottawa: Supply and Services Canada, 1976. (Catalogue no. 5 2-29/1976).
- Driedger, Elmer A. *The Construction of Statutes*. Toronto: Butterworths, 1974.
- Drueilhe, A.E., and Chaudesaigues-Deysine, A.E. *Dictionnaire anglais-français et lexique français-anglais des termes politiques, juridiques et économiques*. Paris: Flammarion, 1978.
- Dussault, René, and Borgeat, Louis. *Traité de droit administratif*. Quebec: Les Presses de l'université Laval, 1984.
- du Plessis, Raymond. *The Law-Making Process*. Revised Version. Ottawa: The Senate of Canada, 1984.
- Fraser, Alistair; Birch, G.A.; and Dawson, W.F. *Beauchesne's Rules and Forms of the House of Commons of Canada*. 5th edition. Toronto: Carswell Company Ltd., 1978.
- Jéraute, Jules. *Vocabulaire anglais-français/français-anglais des termes et locutions juridiques*. Paris: L.G.D.J.
- Jowitt, William Allen (Earl). *Jowitt's Dictionary of English Law*. 2 Volumes, 2nd edition. London: Sweet & Maxwell Ltd., 1959.
- Mulcair, Thomas. *Bibliographie sur la rédaction et l'interprétation des textes législatifs*. Direction générale des affaires législatives, Direction de la recherche, Ministère de la justice du Québec, 1980.

- Pigeon, Louis-Phillipe. *Rédaction et interprétation des lois*. Quebec: éditeur officiel. Collection études juridiques, 1978.
- Précis of Procedure*. Ottawa: Clerk of the House of Commons, 1985. (catalogue no. ISBN 0-662-53852-8).
- Quemner, Thomas Adolphe. *Dictionnaire juridique*. Paris: Editions de Navarre, 1977.
- Rules of the Senate of Canada*. Ottawa: The Senate, 1980.
- Schultz, Richard; Kruhlak, Orest M.; and Terry, John C., eds. *The Canadian Political Process*. 3rd edition. Toronto: Holt, Rinehart and Winston of Canada Ltd., 1979.
- Supply and Services Canada. *Guide canadien de rédaction législative française*. Ottawa: 1984. (catalogue no. J 2-36/1984F).
- Supply and Services Canada. *Permanent and Provisional Standing Orders of the House of Commons*. Ottawa: 1985. (catalogue no. X9-2/1985).
- Tremblay, Richard; Journeault-Turgeon, Rachel; and Lagacé, Jacques. *Guide de rédaction législative*. Quebec: Société québécoise d'information juridique, 1984. (catalogue no. ISBN 2-89032-109-6).
- Van Loon, Richard J., and Whittington, Michael S. *The Canadian Political System*. 3rd edition. Toronto: McGraw-Hill Ryerson Ltd., 1981.