
The Senate and Bill C-22:

A

Question

of

Responsible Government

All laws must be passed by both the House of Commons, which is elected and the appointed Senate. In November 1986 the Conservative Government introduced Bill C-22 to extend the patent protection for certain pharmaceutical products. After extensive debate in the House and in Committee the bill was passed in May 1987 and sent to the Senate where the Liberals enjoy a large majority. Following consideration by a Senate Committee, the Bill was returned to the House with amendments. The government agreed to some but not all changes and returned C-22 to the Senate. Another Senate committee looked at the bill and once again returned it to the House with amendments and a request for a joint conference. The House declined and returned the bill once again to the Senate. On November 19, 1987, the Senate again considered C-22. By this time the argument was not longer over drug patent protection but over the proper role of the Upper House in the Canadian system. The following speeches by Senators Douglas Everett and Duff Roblin were delivered shortly before the division on third reading. The final vote was: 27 in favour, 3 opposed and 32 abstentions. While C-22 passed the issues raised in these two speeches will be debated for months and years to come.

My reservations on this legislation are not based so much on the content of the bill or the amendments that have been proposed but rather on the way it has been handled by the government in the other place. I agree with Senator Murray that this has now become a constitutional matter. If you examine how this was handled, you have to start from the fact that the minister at the outset stated that he would not pay attention to anything that the Senate said. He said that not just once, he said it several times and in a very pejorative manner.

The Senate, as Senator Molson has stated, created a special committee to look into this matter. The committee made substantial amendments to the bill. These were rejected by the government. The bill came back again and was referred to the Standing Senate Committee on Banking, Trade and Commerce. That committee introduced an entirely new set of amendments. They accepted the major provisions of the bill in a compromise, and they proposed in explicit terms amendments to make possible what the minister said the bill would actually do. These amendments were largely ignored by the minister, although he did make minor changes – two technical amendments. He stated that the Drug Prices Review Board must deal with any increase in drug prices over the Consumer Price Index. But there were no sanctions attached to his amendment, which was an element requested in the Senate amendment....

Further, the Leader of the Government in the Senate has stated that this is a major piece of legislation in the government's program. So we are not dealing with something that can be passed off as an administrative matter. What the Leader of the Government is saying is that this is crucial to the government's legislative program.

The Senate's wishes from the beginning have been ignored. As a matter of fact, the minister produced a pamphlet which he distributed to the drug industry. That pamphlet certainly implies that the legislation will go through without interference from the Senate.

What are the obligations of the Senate? It most certainly has the power to amend this legislation. The question is whether or not it should use that power. It is clear – it has been said a number of times – that at the end of the day the elected representatives must prevail. I suggest to you that the elected representatives have a duty to consult with the people and that, in fact, it is the people who must prevail. If the elected representatives have indicated from the very beginning through the mouth of their minister that they will not listen to the Senate, that they will not make a change of a substantive nature to the bill, then it is my belief that they have not consulted with the electorate, because they have said from the beginning that they will make no changes and that they will enter into no consultation. For that reason I come to the conclusion that this is not the end of the day.

Senator Roblin made a speech the other day following a speech that I had made with respect to this matter. I must say that Senator Roblin and I agree on one point, and that is that this body should be an elected body. Senator Roblin said that the Senate clearly has the legal authority and the constitutional right to amend the legislation. With that I agree. Then he went on to the question of a convention.

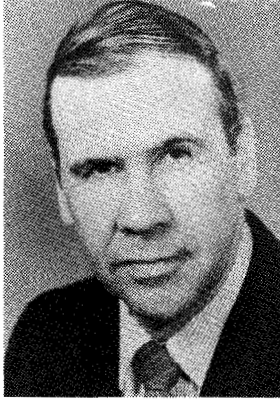
“What bothers me is that if we are not prepared to insist on our amendments when the minister and the government have said, ‘We will not listen to you no matter what you do,’ then we lose all legitimacy as a legislative body and we should be abolished.”

Senator Everett

Is there a convention that somehow removes the right of the Senate to exercise that power? The analogy that he used was that the Governor General has the right in certain circumstances to refuse to assent to legislation. In fact, the Governor General does not do that. A convention has arisen, but that is a convention that has arisen out of an election that was fought when Lord Byng was Governor General. The public clearly had an opportunity to express its view and stated that the Governor General should not exercise that power. Such a view has not been expressed in relation to the Senate. Therefore, I think we can distinguish the convention that applies to the Governor General from any convention that applies to the Senate. In fact, I think if one were to say that the Senate should not exercise its power, one might well say to the judges, “You should not exercise your power because you have not been elected.” We do have the power; we were given it at the time of Confederation. It is interesting to note that for the time being that power has been brought up to date by the Meech Lake conference.

Senator Roblin goes on to ask the question: “When will this chamber present itself for endorsement as the elected chamber has to do?” It seems to me to be pretty obvious that, while we do not stand for election, if we were to refuse this legislation; if we were to insist upon our amendments, we would stand for endorsement. There would be an immediate move by the government to do something to change the powers of the Senate, and the public would eventually decide, as it did in the matter of Lord Byng. We would be put to the test. We are not above having to present ourselves for endorsement for anything we do.

Douglas Everett



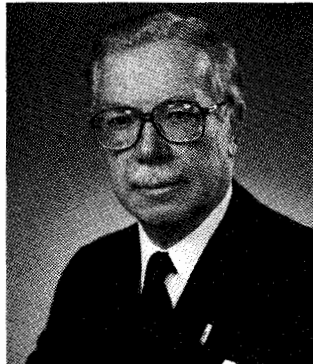
Senator Roblin goes on to say that we do not have political legitimacy. Again, I say we may not have immediate political legitimacy, but what we do in the end must be legitimate in political terms.

The *Globe and Mail* has stated as follows: "In flouting the convention that the Commons prevails, the Senate is abusing a fundamental condition of representative government."

The *Montreal Gazette* states that the Senate has a duty to know its place, and invites proposals for reform or abolition. If that is the case, then does that not argue that all we really have an obligation and a right to do is to comment on the legislation from the other place? When it passes us by we simply say, "Well, you should change this, you should do that, but if you do not choose to do that it is perfectly fine with us." If that is the only right of the Senate, then we could get a better job done at a devil of a lot less money by appointing a committee for that purpose.

The Senate means a lot more to me than just that. If it cannot exercise its legislative power – if that is what the *Globe and Mail* and the *Gazette* are saying, namely, "You must not exercise your legislative power" – then there is no reason for the Senate to exist at all. What the government should do – and I hope that they do it in consequence of the history of this legislation – is consider amending the powers of the Senate to what they see as being the powers that we should be exercising. There is no question that we have the power; there is no question that we have the legitimacy. However, there is a question as to whether or not we should exercise that power. If we will not be able to do it – if all we are is a nice body of commentary on what the House of Commons does – then I agree with Senator Roblin. He said that "any Senate other than this one would be better for the future of the country." I think that that is quite true. This is a constitutional matter. This is a matter that goes to the root of whether the Senate means anything. ■

Duff Roblin



In expressing his opinion about the issue that has been put before us, the battle has been fairly joined, because there is the position taken by Senator Everett, which I agree is constitutionally and legally correct, that this body has the capacity to thwart or to deny the policies approved by the House of Commons. That particular view of our political situation has to be reconciled with the principles of responsible government. I say to this chamber that it cannot be done. You must make your choice as to whether you will stand up for the right of this Senate to contradict the House of Commons and to thwart their will, or as to whether you will accept the principles of responsible government.

What are the principles of responsible and representative government? In this issue I think they are clear in every respect. That is that the government as represented in the House of Commons has the right to govern the country. It has earned the right to govern the country, because it has been successful in a general election and it still retains within the House of Commons the power to command a majority of those who sit in that chamber. That is the principle of responsible and representative government. To say that by any combination of words or ideas a body such as this that is appointed, not elected, has the right, when the day is done, to contradict, to thwart, to prevent and to stultify the policies of a government which is elected to carry on the administration of the country is the question that is before us.

“Some of us senators have told the House of Commons what we think is wrong with this bill. We have discharged that duty of revising the legislation to the best of our ability, but that is where our responsibility ceases.”

Senator Roblin

I take the view that you have to make up your mind as to whether you wish to stand with Senator Everett and say that we will not accept this bill for reasons which seem good to him, or because we have the right both legally and constitutionally to do so – or whether we should say that there is a higher principle which we have to take into account, the principle of responsible government.

That is the argument in a nutshell. You have to decide which one of those stands you will take. I believe that the principles of responsible government come first. Whether it is because I once ran for election that I have been indoctri-

nated with this principle of election, of responsibility and representation or not, I do not know. To me the answer to the issue is perfectly clear: We must say that we believe in this country in the principle of representative and responsible government. That means that the government that is supported by the House of Commons, has been elected by the people, and which still commands the majority in that House, has the right, the duty and the responsibility to run the government and to have its measures approved, and this branch of the legislature should not take upon itself the onerous responsibility of denying that principle of responsible and representative government.

I, for one, stand shoulder to shoulder with those who say that the Senate should not consider itself to be a rubber stamp and that we are not going to approve whatever comes before us without any comment, reservation or changes. We have the right to propose amendments, to propose changes, and we do. We have the perfect right to send those changes to the House of Commons and ask them what they think about them. The House of Commons has the duty, through the government to decide how it will react to proposals we have made.

In some cases they accept them. Indeed, in terms of the present argument we are having today, a number of proposals, although some say not the major ones – have been accepted. However, if the House of Commons, after two tries in this instance, decides that it will not accept the advice the Senate has given it, then I think our responsibility is discharged. We have done our duty. As some senators say, “One of our responsibilities is not to lend ourselves to early passage of legislation we do not agree with, to give public opinion time to build.” We have certainly done that.

To say that we have the constitutional right and legal authority to vote against the bill at this stage may well be true. But it clashes with, in fact it runs headlong into, the principle of responsible government and the principle of representative government, a course which I am not prepared to advise.

I was very interested in the arcane argument which my friend put forth to the effect that we really are responsible to the people. I did not quite follow how he came to that conclusion, but he left me with a clear impression that somewhere down the line there is probably a general election on the fate of the Senate, and that in the course of time, according to the political process, that may be considered to be a vindication, or otherwise by the people of what the Senate is doing. I must say, “Good luck.” That is a little bit removed from any kind of responsible government that I ever heard of. I think that responsible and representative government means that men and women who want to hold public office stand up and get themselves elected by the people, or not, as the case may be. That is how you get public responsibility, and there is no element of that that can be attached to our positions here in the Senate. I am here until I am 75, and, to use the expression of my

dear friend, Dr. Forsey, even the Archbishop of Canterbury could not get me out of this place under the present Constitution unless I committed some crime. The public cannot get at me. No matter what I do respecting Bill C-22 I am safe from public opprobrium – or public praise, as reflected in an election process. I do not see how you can get around that.

It is perfectly true that the Senate may be abolished. I hope it is not. I hope it is reformed; I hope it is elected. When we make those reforms we should also be careful to introduce mechanisms which will enable us to deal with logjams such as the one we have at the present time. Whether the Senate continues to be appointed or if it is elected, a change should be made to ensure that the principles of responsible government are incorporated into whatever we have to do.

It seems to me that the issue is very simple: Are you going to stand on the letter of the constitution even if it flies in the face of the principles of representative responsible government that has been developed in this nation and elsewhere over the years? I think not.

I think we have done our duty. We have expressed our view. I would ask you to consider the bizarre course which the whole of this debate has taken. The Special Committee of the Senate on Bill C-22 brought in recommendations which, in the words of Senator Molson “...would gut the bill.” One would have thought that that was a very important situation.

A second committee dealt with the matter and it threw out all of those things. They said they were not going to bother about those principles that the first committee had in mind. When the bill was referred to the Standing Senate Committee on Banking, Trade and Commerce, what did that committee do? Did it reaffirm the position of the special committee? No, it introduced a new set of ideas, none of which had anything to do with the recommendations produced by the first committee. They were abandoned; they were jettisoned. A new set of recommendations was brought in, recommendations that were of a far less fundamental character than those introduced in the first step.

What are we asked to do now? We are asked to say, “Well, we did not take our stand on the main issues. We did not take our stand on the first report, which was vital to the bill, but now, when we have a much watered down and modified set of suggestions, we are going to take our stand and throw the bill out on that account.” In other words, we have swallowed the camel and we are straining at the gnat. I have never heard of anything so ridiculous in my life. For this Senate to say that we are going to accept the decision of the House of Commons not to agree with our important changes to this bill and that, by George, we are going to stand our ground and we are not going to accept the fact that they won’t accept these relatively minor changes in the bill is a bizarre performance.

It is on that ground that we are being asked to violate the principle of representative and responsible government of this nation. I will have nothing to do with it. ■