
Appropriation Acts and Governor General's Warrants

by Peter Milliken, MP

From the earliest times, Parliament has claimed control over the expenditure of public monies. Consequently, the business of supply has come to be regarded as one of the principal functions of the House of Commons. Indeed, the Constitution Act of 1982 (s. 53) states that: "Bills for appropriating any part of the Public Revenue, or for imposing any Tax or Impost shall originate in the House of Commons." This section has remained unchanged since 1867.

The Crown, being the executive power, has the responsibility for the raising and spending of money. Acting through responsible Ministers, the Crown makes known to the Commons the financial necessities of government. The Commons grants such aids and supplies as are necessary to meet the demands of the Crown and provides through taxes and other sources of revenue the ways and means to meet the supplies that have been granted. The Crown, therefore, demands money, the Commons grants it and the Senate assents to the grant. The Commons does not vote any money except for the necessities of the country as defined by the Crown.¹

The current arrangement for disposing of the business of supply in the House provides that the government submit its Estimates to the House of Commons on or before March 1 of each year for the ensuing fiscal year, which commences on April 1.

Once the Estimates are tabled, they are referred to the various House Standing Committees for study. During the period for consideration of the Estimates, days are set aside for the House to discuss issues chosen by the opposition. On certain of these days the opposition may present a motion which is votable. The loss of one of these

motions could result in a loss of confidence in the Government, forcing its retirement from office or the dissolution of the House.

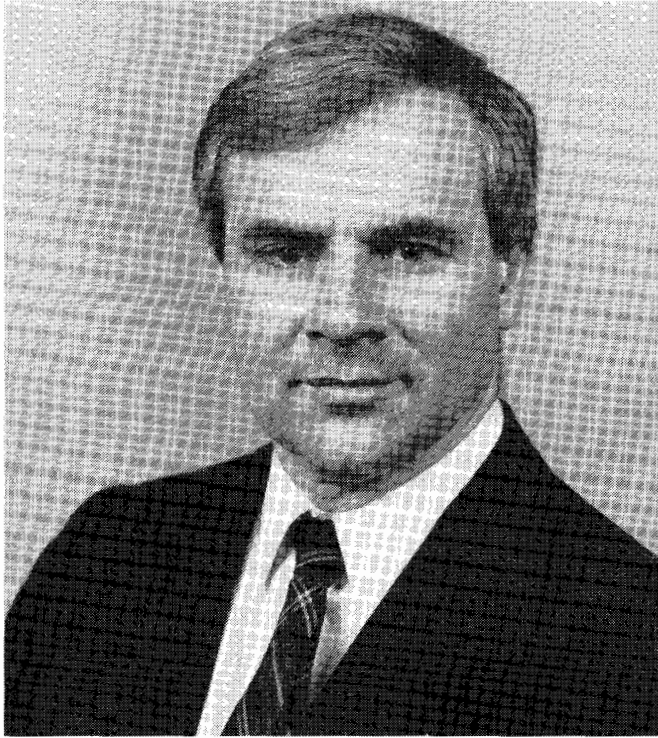
The Standing Committees study the Estimates which are then reported back to the House. If they are not actually reported back they are "deemed" to have been reported by May 31. Once the Estimates have been approved an *Appropriation Act* based on them is presented to the House and usually passes all stages in a very short time. The *Appropriation Act* is then forwarded to the Senate for consideration and ultimately for Royal Assent.

The passing of Appropriation Acts is one of two means by which the Government may lawfully access money in the Consolidated Revenue Fund of Canada for the payment of the expenses of carrying on the Public Service of Canada. There is one alternative method and that is by the use of Governor General's Special Warrants.

Canadians went to the polls for a general election on November 21, 1988. Parliament was reconvened thereafter at the earliest possible date, namely December 12, 1988. No supply, that is, the granting of public funds to the government, was requested from the Commons by the Sovereign's representative in the course of the Speech from the Throne. The speech dealt solely with the issue of Free Trade and the ratification of the Free Trade Agreement with the United States.

The session lasted for two weeks and on December 30 when the sitting adjourned, only one item of government business had been introduced and dealt with in the

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House and that was the Free Trade Agreement. The House adjourned on December 30 with the intent to have a lengthy break before resuming business on March 6. In January, the Government ran out of funds required for the Public Service and a Governor General's Special Warrant was approved in the amount of \$80,851,000 to authorize payment of those expenses. In February, further funds were required and an additional Special Warrant was issued in the amount of \$507,357,918. Subsequently it was decided to prorogue the then existing session of Parliament and recall Parliament into new session on April 3, and the appropriate proclamations were issued by Her Excellency the Governor General.

On April 3, at the recall of Parliament, once again there was no mention of supply in the Speech from the Throne, a curious omission. The next day the House passed a Special Resolution dealing with the business of supply and extending the dates for approval of the Estimates until a date in September.

Meanwhile on April 1, immediately before the recall of Parliament the Government obtained another Special Warrant in the amount of \$6.2 billion. This sum was sufficient to defray the expenses of the Public Service for the period up to approximately the middle of May, it being assumed that Parliament would adopt and pass an *Appropriation Act* for interim supply before that date.

In fact, the Government subsequently laid before the House a statement explaining the use of the funds taken by the Special Warrants. But obviously there was no consideration of the amounts in the House since the Estimates upon which the Warrants had been based were only tabled after the commencement of the session of April 3. The question was raised as to whether or not the use of the Special Warrants in this case, particularly the Warrant on April 1, was proper.

Up until 1989 Special Warrants were used almost exclusively during the period between the dissolution of Parliament and the recall of a new Parliament following a general election. On only one occasion had they been used during the time between sessions. The government's power to issue Special Warrants is derived from Section 30 of the *Financial Administration Act* which states:

Where a payment is urgently required for the public good when Parliament is not in session and there is no other appropriation pursuant to which the payment may be made, the Governor in Council, on the report of the President of the Treasury Board that there is no appropriation for the payment and the report of the appropriate Minister that the payment is urgently required for the public good, may, by order, direct the preparation of a special warrant to be signed by the Governor General authorizing the payment to be made out of the Consolidated Revenue Fund.

In accordance with this Section it is readily apparent that the expenditures contemplated must be of an extraordinary nature. Consequently, the precedent created in 1988 - 1989 raises a fundamental issue as to the propriety of the use of this section of the *Financial Administration Act* and as to Parliament's control of the public purse. It is apparent that none of the expenditures in the April 1, 1989 Special Warrant was extraordinary or urgent, except that by failing to recall Parliament on March 6, the government had allowed itself to run out of cash. The Special Warrant authorized the normal operating expenses of the Government of Canada for a six week period. These were not extraordinary expenditures within the strict meaning of the *Financial Administration Act*.

A Question of Privilege concerning the propriety of the Special Warrants was raised in the House of Commons on April 6, 1989. In his decision handed down on May 2, 1989, the Speaker ruled that: "the government respected all the procedures required by the House" when it issued the Warrants. However, on the much larger question of whether or not the Warrants went against constitutional practice because they were not of an extraordinary nature

and Parliament could have easily been recalled, the Speaker said he cannot:

...sit in judgment on constitutional or legal matters. That role belongs more properly to the courts and the administration of justice. Previous Speakers have been very careful in strictly addressing themselves to matters of a parliamentary or procedural nature while avoiding dealing with constitutional or legal matters. Similarly, in this instance, the Chair must restrict its examination to the question of a possible infraction of the Standing Orders.

After studying the circumstances of this case to determine whether the ancient rights of Members of Parliament have been denied in relation to the granting or withholding of supplies, the Chair concludes that the Government has respected all of the procedures required by the House. As the Hon. Member for Kingston and the Islands has himself said, the House will have an opportunity to pronounce itself on the moneys found in the Special Warrants when the House votes on the next appropriation Bill.²

In the Senate however, objections to the constitutional propriety of the Warrants were given full voice, particularly in the proceedings of the Standing Senate Committee on National Finance. While appearing before the Committee on May 10, former Senator Eugene Forsey argued that "When Parliament has been recalled and is there to vote supply, and when Supplementary Estimates have actually been presented, never before has there been this recourse to the Governor General's Special Warrants, and I think it is wholly improper ..."³

Following committee hearings the Senate chose to amend the *Appropriation Act*, a virtually unprecedented move, and return the Bill to the House of Commons. The amendment stated that the Special Warrants issued in January, March, and April "shall be deemed to have been legal." This wording would make it clear that though the issuing of the Warrants was within the letter of the law, it clearly went against Parliamentary practice and should not be used as precedent by any other administration.

The Government rejected the Senate amendment and moved the appropriate motion which was debated briefly in the House of Commons on May 15. While speaking to the motion, N.D.P. House Leader Nelson Riis summed up the opposition position by stating that "if the

government had the courage, the decency and the honour to do things appropriately and the way Canadians want them to be done, this would not have occurred. The Minister of Justice should be honest and say: 'Yes, we have made a mistake. We have made an error in judgment. We did something rather dastardly when it comes to the parliamentary process. We should not have done it.'⁴

Faced with the government's refusal to accept the amendment, the Senate ultimately backed down and the Bill passed without further debate. The issue is whether or not a government can proceed to govern and help itself to the Consolidated Revenue Fund without the authority of Parliament by using Special Warrants.

The legal requirement is that Parliament meet once per year. Accordingly, a government, if it chose to be unscrupulous, could call Parliament into session for a day, have a Speech from the Throne and adjourn the House for a year and continue to run the administrative machinery of government by using Governor General's Special Warrants. This would clearly be a breach of our Constitutional practice and would undermine the authority of Parliament by enabling the government to in effect govern without parliamentary approval of any kind. Given the increasing use of the regulatory power, it would be easy to understand how a government might see fit not to bother with any additional legislation but simply live with the legal status quo.

While this scenario may seem a bit far fetched or extreme, it is none the less possible. Those who regard the protection of the rights of the subject as paramount in our system must take a keen interest in this radical departure from past practice in matters of supply. In an effort to redress the situation I introduced a Private Members' Bill, C-211 to amend the *Financial Administration Act* which was given first reading on April 10, 1989. It has not yet been debated.

Notes

1. Alistair Fraser, W.F. Dawson and John Holtby, *Beauchesne's Parliamentary Rules and Forms*, 6th Edition, Carswell, p. 183.
2. House of Commons, *Debates*, May 2, 1989, p. 1179.
3. Senate, Standing Committee on National Finance, May 10, 1989, No. 33, p. 14.
4. House of Commons, *Debates*, May 15, 1989, p. 1744.