Empowering Ontario Legislators

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Members of Provincial Parliament are elected to represent their constituents, fight on their behalf in the Legislature and in Government and to legislate on issues of local importance. Despite their job description, Members are not always able to represent their constituents as well as they might. The practises and Standing Orders of the House make representing local constituents difficult. Changes could be made to the Standing Orders to enable local representatives to put their constituents first.

The first area we should look at relates to Private members' Bills. A number of surveys have shown that people have little faith in Government's ability to fix problems; it's not hard to see why. In a previous era, Private Member's Bills throughout the Commonwealth were used to cause sea changes in the law.

Slavery would not have been abolished in the British Empire were it not for the countless Private Member's Bills William Wilburforce introduced on the issue. Abortion and homosexuality were decriminalized in the United Kingdom by Private Member's Bills. Smoking is restricted in Federally regulated workplaces and environs in Canada because of a Private Member's Bill in 1988. And that's not even mentioning the many local issues that they've solved throughout the Commonwealth.

Whether or not you agree with these pieces of legislation, it's clear that there was once a time where Private Member's Bills mattered and could do something of substance. That's a far cry from today's Ontario. Private Member's Bills are effectively dead on arrival.

Take for example the case of Kim Craitor's (Niagara Falls) *Children's Law Reform Amendment Act*, which has been introduced in six consecutive Sessions. Despite the fact that it passed second reading five of those times, it has never been studied by Committee, yet alone receive third reading.

Ernie Hardeman's (Oxford) Carbon Monoxide Detector Bill, which is by no means controversial or divisive, has been introduced to the House four times. It has not yet actually been called for third reading. Only once did it actually go to Committee, despite receiving and passing second reading three times.

Rosario Marchese (Trinity-Spadina) has introduced very similar Bills to amend the *Condominium Act* four times. They have each received second reading and been referred to Committee each and every time. Despite that, they have never been heard at Committee or gone on for third reading.

Statistics back up the assertion that Private Member's Bills are not the instrument of reform that they could be. From the first session of the Harris Government in 1995 to the 1st Session of the current Parliament, a total of 1424 Private Member's Bills were introduced. Only 4% of them received third reading. Of those 58 Bills, 23 were Bills proclaiming special days, weeks or months; while well-intentioned, they are a far cry from the repeal of slavery.

Scheduling is one reason why many Bills fall through the cracks. There is simply not enough time accorded to Private Member's Bills for them all to be heard at second reading. Another reason is that Standing Committees sometimes do not review all of the Bills referred to them. But the largest reason why so few of them ever make it into law is the Government's monopoly on the calling of Bills for third reading. Only 8.7% of non-proclamatory Bills that received second reading actually went on and received third reading in that time period. And the trend has been

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down over the past twenty years. Under the McGuinty Government, only 6% of non-proclamatory Bills that received second reading received third reading as well.

Removing the Government's monopoly on the calling of Bills for third reading would give representatives an increased ability to represent their constituents, their constituents' concerns and to do their jobs as legislators. This could be done by giving scheduling authority to a committee and/or by compelling the Government to call Bills for third reading at the end of a session. In the United Kingdom's House of Commons, the Backbench Business Committee is responsible for House scheduling one day a week.

Restoring Motions to Relevance

Motions show public discontent with an existing policy or that an absence of policy fails to address a public concern. Motions are meant to demonstrate to Government the need for change or action. But let's be honest, Private Member's Motions are irrelevant in Ontario's Legislature and have been for some time.

Part of the problem is the disconnect in stature between motions and legislation. The pair are supposed to work together. Legislation fixes the specific concerns with the law people have. But not every problem has a specific law which needs amending or creating or which their local representative can change. Many concerns that a representative's constituents have are problems with general administration, with Government policy or with other things that a Private Member's Bill cannot directly address.

There are a number of policies that can be changed to reduce this inequity. We can start by, very literally, reverting to the use of our voices.Though both motions and legislation are printed for all Members of the House and for interested members of the public, only legislation is read aloud. When a Member of the House introduces a Bill, they are afforded the opportunity to explain the Bill to the House. Members who introduce equally valid motions are not afforded the same courtesy. The consequence is the reduced visibility of motions. This, in turn, reduces their relevance as a tool for expressing constituent concerns.

Invisibility isn't the only reason for the motion's irrelevance. A lack of debate is too. Unlike in some parliaments, there is no method for calling the debate of a Private Member's Motion other than the use of one's ballot day. This short-sighted rule has the effect of placing constituents' concerns at the back of the queue, behind legislation like proclamation days which may be of lesser importance than a motion to remedying very real problems in constituents' everyday lives.

Some people will argue that there is simply not enough time for the dispensation of Private Member's Motions. In the United Kingdom's House of Commons, the current Speaker changed the rules to grant one "Urgent Question" a week for debate. The Speaker made time for the debate of urgent issues. Similarly, when there is not enough time to debate pieces of Government legislation in a session, night sittings are often used. There is time that can be made available. There is no reason why these practises to ensure local voices are heard could not be implemented.

Another reason for the motion's irrelevance is its lack of any power. No motion in Ontario can compel any action. Opposition day motions cannot be used to cause a change in Government. Sometimes actual action is needed and, when a Private Member has no ability to change the law, motions should be an option available. By introducing binding motions and enabling opposition day motions the power to be used as want of confidence motions, we can restore a Private Member's ability to fight for their constituents.

Strengthening Regional Representation

As it stands currently, the Standing Orders prevent multiple Members of the Legislature from advocating on the same issue. While up to one Member from each recognized party, and an independent, may co-sponsor the same Bill or Motion, Members from the same Caucus may not co-sponsor the same Bill. While nothing prevents any Members from introducing the same Bill, when it comes to debate on that Legislation or Motion we ought to recognize that there may be multiple Members of the same caucus that want to advance the same issue but are prevented from doing so.

A clear example of this can be seen back in 2011, in the midst of the Labour dispute between York Regional Council and the Amalgamated Transit Union Local 1587. The Members from Thornhill, Newmarket-Aurora and York-Simcoe attempted to introduce 'back-to-work' legislation to ensure that their constituents who were being impacted by this dispute would not suffer.

Since these were all Members of the Official Opposition, they were not allowed to co-sponsor this Legislation. If they represented those same constituencies, but belonged to different recognized parties, they could have. This clearly is not in the best interest of representing constituents, and is something that could easily be corrected by allowing up to four Members of any affiliation to co-sponsor a Bill or Motion.

Being Responsible to Ourselves

The rules of Ontario's Legislature are determined by Ontario's Legislature. This fundamental principle dictates the way that our House is supposed to be run. Unfortunately, that isn't always how it works out.

The Standing Orders of the House are often a bone of contention for a Government. The Standing Orders, which are meant to protect an individual Member's rights, can be used to slow down a Government's agenda. Though this is a necessary part of democracy, it can often cause consternation on the Government's side. In the past, Governments of all parties have used whipped votes to change the Standing Orders to quicken the legislative process, often diminishing the role that local representatives have. Though some changes to the Standing Orders might be good - like limiting the time available for routine proceedings - these changes should be determined by the Members of the House, as is tradition, and not by Governments or political parties.

The election of the Speaker of the House is done via secret ballot in recognition of the fact that it is the Members of the House who are responsible for the running of the House. In a Speaker's election, Members of the House can vote for the candidate whom they believe will do the best job. That means that Members can vote against someone in their own caucus or from their own region without fear of reprisal or ill-will. This is how the House should vote on changes to the Standing Orders.

Ensuring Accountable Regulations

It is easy to believe that things have always been how they are today, but until 1969, Ontario's Legislature did not have a Standing Committee on Regulations and Private Bills. In the 1960's Ontario set up a Royal Commission Inquiry into Civil Rights headed by former Ontario Chief Justice James McRuer. The Commission recommended a number of changes to the Standing Orders of this House to ensure public oversight of regulations.

With almost 500,000 regulations in Ontario today, elected representatives are often inundated with concerns with a variety of different regulations and how they affect people's prosperity and pursuit of happiness. Though Ontario had many fewer regulations in the 1960's than it does today, Chief Justice McRuer recommended that debate be allowed "on the merits of any particular regulation." Because subordinate legislation could affect someone's life as much as legislation can, the Commission thought it right that elected representatives be able to debate the merits of a regulation. This recommendation was not enacted and hurts the ability of local representatives to discuss regulations that are injurious to their constituents.

Another one of their recommendations was the establishment of a Standing Committee to oversee regulation guided by a set of 10 principles. Despite its endorsement by the first iteration of the current Standing Committee, McRuer's tenth principle, that regulations "should not make any unusual or unexpected use of delegated power", was left out. This is probably a clerical error. The exclusion of this guideline, which is common throughout much of Canada and the Commonwealth world, reduces the ability of elected representatives to review the regulations that most affect the lives of their constituents by restricting what sort of regulations can be reviewed by the Standing Committee on Regulations and Private Bills and excluding the regulations that can infringe on civil rights the most.

Modernizing the Legislature

One of the most often heard complaints about the democratic process is that it is exclusionary and very difficult for the general public to get involved in. The way the Legislature is operated today is very much a reflection of this common concern. While some changes have been made to the way in which the Legislature operates over the past several years, very little has been done to make it more open and and available to the public.

One of the most common and preferable mechanisms to get individuals involved with the Legislature is through the use of petitions, typically focused on a local issue. While many other jurisdictions such as Scotland, the English House of Commons, the National Assembly of Quebec and Australia all accept electronic petitions (e-petitions), Ontario currently does not.

Solely accepting written paper petitions is clearly an antiquated approach for public involvement and can be addressed quite simply. There are also additional mechanisms that could be adopted like that of the English House of Commons, where if a Petition receives over 100,000 signatures, it is referred to the Backbench Business Committee for consideration of debate. According to a recent poll conducted by Angus Reid Public Opinion for BC NDP MP Kennedy Stewart, 55 per cent of Canadians "strongly" support and another 27 per cent "somewhat" support a system to allow them to put requests to government via online petitions.

Beyond accepting e-petitions, the Legislature ought to ensure that it is as accessible as possible for those that wish to participate. While the proceedings in the Legislature are streamed through a webcast online, as well as some Standing Committee hearings by request, it should not be left up to the prerogative of the Committee Members to determine whether that hearing should be streamed online. All proceedings of the Legislature, with the exception of "In Camera" Committee hearings, should be streamed online and be made available to anyone who may be interested.

Recommendations

To deal with the problems outlined in this paper I would suggest the following changes to the Standing Orders

- **Removing Government Monopoly on Third Reading**

  The Standing Committee on the Legislative Assembly should be instructed to (a) consider the removal of the Government's monopoly on calling Bills for third reading; (b) propose any necessary modifications to the Standing Orders and the practices of the House; and (c) report its findings to the House no later than six months following the adoption of this order.

- **Night Sittings for Private Member's Business**

  The Standing Orders and practices of this House be changed to require night sittings in the last two weeks of every session reserved for private members' public bills which await third reading and that their third reading be compelled in those reserved times.

- **Recording Abstentions**

  Standing Order 28(d) be amended to remove the sentence "An abstention shall not be entered in the Votes and Proceedings or the Journals" and that Standing Order 28(e) be amended to read "The names of the members voting on each side of the question and members abstaining from the question shall be entered in the Votes and Proceedings and the Journals, except on dilatory motions when the number only shall be entered."

- **Compelling Committees to Hear all Bills Referred**

  Standing Committees of this House should be compelled and required to hear all Bills ordered to them for review.

- **Reading Motions Aloud**

  The Standing Committee on the Legislative Assembly should be instructed to propose modifications to the Standing Orders and the practices of the House so that all motions and resolutions presented to the Legislative Assembly be read aloud at the time of their tabling and be included in Routine Proceedings in the time allotted for "Motions".

- **Making Motions Binding upon the Government**

  The House recommends to the Standing Committee on the Legislative Assembly that the Standing Orders and practices of this House be changed to allow motions, including Opposition Day motions, to be presented with a resolution that, if passed, is binding upon the Government and or the Assembly for implementation or for referral to a committee.

- **Opposition Day Want of Confidence Motions**

  Standing Order 43(b)(vi) on want of confidence motions should be repealed.

- **Backbench Motions**

  The Standing Committee on the Legislative Assembly should be instructed to (a) consider changes to the Standing Orders which would compel the Speaker to call at least one backbench motion to be called for debate each month; (b) study the practices of other Westminster-style Parliaments with regards to backbench motions being called before the House and similar instruments in other Parliaments being called before the House; (c) propose any necessary modifications to the Standing Orders and the practices of the House; and (d) report its findings to the House no later than six months following the adoption of this order.

- **Recording the Order of Debate**

  That, in the opinion of this House, the House recommends to the Standing Committee on the Legislative Assembly that, should the Standing Orders be amended to compel the Speaker to call at least one backbench motion for debate each month or to reflect other practices regarding backbench motions before the House, the Standing Orders and practices of this House be changed to require that the Clerk of the Legislative Assembly of Ontario record and publish the order of debate for all motions tabled before the House.

- **Extended Sittings for Private Members' Motions**

  The Standing Committee on the Legislative Assembly should be instructed to propose modifications to the Standing Orders and the practices of the House requiring that the Assembly not be adjourned earlier than 6 p.m., except by unanimous consent, if there are private members' motions on the Order Paper that have not been debated and that those motions will be debated in the chronological order of their introduction. Debate should rotate between all parties starting with the Official Opposition; should a party not have a motion in the queue or a mover of a motion is not present at the time of debate, that party's slot is lost in that round.

- **Co-Sponsorship of Bills**

  Standing Order 69(a) should be amended to read: Private Members' Public Bills may be co-

sponsored by up to four members of the House. It shall be the responsibility of the co-sponsors to select which among them will move the motion for introduction and first reading of the bill. Any of the co-sponsors shall be entitled to move the motions for second or third reading of the bill. The names of the co-sponsors shall be indicated on the introduction copy of the bill and shall thereafter be printed on the face of the bill.

- **Co-Sponsorship of Motions**

  The Standing Orders and practices of this House should be changed to allow for the co-sponsorship of motions by up to four members of the House.

- **Vote by Secret Ballot**

  Any modifications to the Standing Orders should be voted upon by secret ballot.

- **Parliamentary Debate on Regulations**

  The Standing Orders of the House be amended such that any member is permitted during Introduction of Bills to table a motion requesting a review and debate upon the merits of any regulation filed with the Registrar of Regulations; and that, if this motion is passed, the government ensure the motion is debated within that session of Parliament and allow up to two hours of debate.

- **Undue Delegation of Power in Regulations**

  The Standing Orders of the House pertaining to the Standing Committee on Regulations and Private Bills should be amended to include that the Committee shall review regulations to ensure that the regulation does not make any unusual or unexpected delegation of power.

- **E-Petitions**

  The Standing Committee on the Legislative Assembly should (a) consider the reform of Standing Order 39 to allow for electronically-signed petitions to be tabled before the Legislative Assembly of Ontario with equal standing to that of traditional petitions; (b) study the practices of other Westminster-style Parliaments in relation to e-petitions; (c) propose any necessary modifications to the Standing Orders and the practices of the House; and (d) report its findings to the House no later than four weeks following the adoption of this Order.

- **Improving Online Access to the Legislature**

  The Legislative Assembly should be instructed to (a) study the cost and feasibility of streaming every committee room with simultaneous interpretation and multiple camera angles, as the Amethyst Committee room is; (b) propose any necessary modifications to the Standing Orders and the practices of the House; (c) report its findings to the House no later than six months following the adoption of this order; and (d) in the time before these recommendations are enacted, the Legislative Assembly make available streaming of all committee rooms even if they are only streamed in one language or presented in a static wide-angle shot.