
House of Commons Committee Chairs: Perspectives of Two Members of Parliament

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In this article, the author looks at the issue of the impartiality of chairs of the House of Commons standing committees during the 41st Parliament. He explains the importance of the Standing Orders of the House of Commons, constitutional conventions on responsible government and the disciplinary mechanisms influencing the behaviour of committee members. He suggests reforms to improve the operation of Canada's House of Commons by examining the situation in the United Kingdom and the way in which the Standing Orders of the House of Commons have evolved over time.

In his classic book *The Parliament of Canada*, which describes the many aspects of the business of the House of Commons, C.E.S. Franks noted a paradoxical aspect of the roles and responsibilities of standing committee chairs that is still apparent today:

Chairmen in effect wore three hats: one, they were to ensure that the committee proceedings were orderly and fair, the same sort of impartial role as the Speaker plays for the House; two, they had some responsibility for the effectiveness of the committees and the quality of this work, and helped to organize and lead investigations; and three, they had a function of protecting the government's interests when these were under attack by opposition members of the committee.

To the parliamentary observer, a committee chair's first and third roles appear to be in clear contradiction. How is it possible for a member of the government party to be impartial while protecting the interests of the executive branch, or the interests of the opposition parties in the opposite case? This paper will describe the tension that arises in the course of committee chairs' work, thus revealing the limits of their impartiality. The normative position on this point is that it is desirable

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for the proper operation of parliamentary institutions that the first two roles, as outlined above, be properly performed, even if that means abandoning the third.

The analysis is built on a literature review which includes a roundtable discussion conducted by the *Canadian Parliamentary Review* with different Speakers of legislatures around Canada in the summer of 2004. Other examples were taken from a research conducted by Lynn Matte, parliamentary intern in 2010-2011, with government committee chairs Hon. Michael Chong and James Rajotte. To supplement the research, Michael Chong, Chair of the Standing Committee on Official Languages, and Pierre-Luc Dusseault, the then Chair of the Standing Committee on Access to Information, Privacy and Ethics and member of the Official Opposition, were interviewed on May 8 and 16, 2012, respectively.

Standing Orders, party cohesion and interests

Committee work is characterized by a set of rules, conventions and privileges (both express and implicit), that members must know how to use in order to perform and fulfill their legislative roles.

The *Standing Orders of the House of Commons* provides the rules that a MP must obey and are the primary source of information on legislative matters. Chapter 13 contains numerous provisions on parliamentary committees, such as the political affiliation of the chair (Standing Order 106 (2)), membership of committees

(Standing Order 104 (2)) and powers and mandates (Standing Order 108). Committee members may introduce motions for the purpose of organizing the conduct of proceedings, establishing the committee's agenda (studies, bills, appointments, travel and so on) and allotting speaking time. For practical or procedural reasons, they may also strike a subcommittee on agenda and procedure responsible for those matters. The Standing Orders also apply to all activities of the House of Commons and remain in force from parliament to parliament until the House decides otherwise. Historically, amendments to the Standing Orders have mainly been made by consensus among the parties represented in Parliament. All cases for which no provision is made in the Standing Orders must be decided by the Speaker of the House.

A number of less formal, unwritten conventions and practices particular to Westminster-style systems do exist, although it is difficult to provide an exhaustive list, and they influence members in the course of their legislative work. Unlike American-style presidential systems, it is a constitutional convention of responsible government that every government that is defeated in the House on a question of confidence (motions of no confidence, motions that the government declares to be questions of confidence, some motions for the granting of supply, the budget and the Address in Reply to the Speech from the Throne) must resign. Consequently, mechanisms to guarantee party cohesion have been developed to ensure greater predictability in legislative business by guaranteeing a higher degree of coordination of members' individual actions. In formal terms, a parallel may be drawn between the parliamentary secretary in a committee, who acts as a link to the Minister's office and as a spokesperson to explain the government's position, and the government whip in the House in that the former ensures that the party's position is known to committee colleagues. Consequently, since the governing party holds a majority in all committees in the 41st Parliament, if it maintains cohesion, it can exercise a major influence by virtue of its numeric superiority. According to Michael Chong, Chair of the House of Commons Standing Committee on Official Languages and member of the governing party, the analogy between the parliamentary secretary and the whip is not quite accurate. "It's even worse," he suggests. "Parliamentary secretaries are essentially run by the ministers' offices and every parliamentary secretary is assigned a staffer out of the minister's office, a parliamentary secretary assistant." As a result, work done in committee is controlled by the executive branch based on specific political objectives, in addition

to being subject to the usual rules of the House of Commons. Pierre-Luc Dusseault, the then Chair of the Standing Committee on Access to Information, Privacy and Ethics and member of the Official Opposition, contends a comparison can be drawn not only with the position of whip, but also with that of House leader:

The parliamentary secretary is often the person who tells the member who will ask the witnesses questions and in what order, who issues the instructions most of the time, and the initiative rarely comes from any other member (during meetings of the Standing Committee on Access to Information, Privacy and Ethics).

Parliamentary secretaries may also sit on subcommittees on agenda and procedure, where those committees are struck. A similar mechanism is in place on the opposition side. Although the *Parliament of Canada Act* is silent on this point, the opposition parties tend to have critics for similar issues falling within committee mandates. For example, NDP and Liberal transport critics stand in opposition to the Conservatives parliamentary secretaries and Minister of Transport in the 41st Parliament. Like parliamentary secretaries, critics enjoy greater visibility and influence in the House and in the committees. Mr. Dusseault confirms this analysis: "Most decisions are made jointly, but sometimes the opposition members' role within the opposition party is to support the critic's position." Consequently, critics occupy an enviable leadership position in ensuring that party's actions are coordinated and that the party maintains cohesion similar to the government party. On June 1, 2012, opposition critics sat on all committees and 16 of the 22 House of Commons subcommittees on agenda and procedure.

These mechanisms clearly achieve the desired results and parties can expect a very high degree of party cohesion in committees and in the House. Dissent is therefore unusual. As Mr. Chong confirms: "It's rare and MPs usually get disciplined on it." Several disciplinary options are available to party leadership. One of these measures is to switch the member to another committee, although harsher ones, such as expulsion from caucus, may be considered. From a methodological standpoint, however, it is impossible to say, in the absence of admissions by parliamentary players, whether disagreement with the party line is the sole reason for disciplinary action. After all, a member may be switched to another committee for various reasons besides individual actions. Neither the member at fault, out of fear of a harsher reprimand, nor party leadership, which would then appear very rigid and autocratic, tend to have any interest in disciplinary action taken against a member

being known. As committee votes are not required to be recorded individually, this researcher has no actual data with which to calculate the percentage of votes during the current parliament (41st) in which a member voted against the majority position of his or her party in committee.

However, the case of Royal Galipeau, the Conservative member for Ottawa—Orleans, appears to suggest that these disciplinary practices do exist. In the wake of the government's appointment of a unilingual anglophone to the position of Auditor General of Canada, members of the New Democratic Party and Liberal Party of Canada opposed the action. In debate in the Standing Committee on Official Languages, Mr. Galipeau, a Franco-Ontarian member representing a riding in which one-third of constituents are Francophone, expressed an unfavourable opinion with respect to the appointment on November 22, 2011. Even if many reasons can justify the absence of a parliamentarian from a committee meeting, a disciplinary mechanism may have been applied here. Subsequently, another MP was present instead of Mr Galipeau at every meeting of the Standing Committee on Official Languages. This lasted until January 31, 2012 when the MP was removed from the Committee.

Individually and collectively, according to David C. Docherty in *Mr. Smith Goes to Ottawa* (1997) and Christopher Kam in *Party Discipline and Parliamentary Politics* (2011), members use the Standing Orders to further their interests and objectives, which may be divided into three main categories. Even though there is a high degree of party cohesion, despite the brief length of the average parliamentary careers, members as individuals want to ensure they are re-elected. They must therefore work to achieve the success of their party, their leader and their proposed policies in order to achieve two other categories of objectives. First, as members of political parties representing certain interests, ideas and values, they have objectives for public policy. Legislative work helps them achieve these objectives by affording a range of opportunities (motions, bills, visibility and so on). Second, at a professional level, members try to extend their influence by taking on more important and prestigious positions. The positions of party leader, House leader, whip, minister and critic, committee chair and parliamentary secretary, with the opportunities they afford, help them achieve their legislative preferences. Last, the

aforementioned combination of objectives enables members to achieve a high degree of satisfaction with parliamentary work.

Impartiality of the House of Commons Speaker and committee chairs

As noted above, the business of the House of Commons is characterized by a high degree of party cohesion, by coercion or persuasion. In committee, members align their individual actions by working and voting together in accordance with party allegiance. Committee chairs must deal with this dynamic when they balance the rights of the government and opposition, while ensuring that they remain impartial in the performance of their duties. Although considerable research has been conducted on the concept of parliamentary impartiality as it applies to the office of Speaker of the House of Commons, much less has been written on the chairs of House of Commons' standing committees.

"They can tell me whatever they want but at the end of the day, I'm interpreting the rules in a fair and equitable manner."
~Hon. Michael Chong on the committee chair's impartiality

Regardless of party allegiance, the Speaker of the House of Commons, once elected by fellow members, represents the institution, not a particular political party. He or she is the guardian of order and decorum in the House, its interests, the rights and privileges of all members,

the right of the majority to govern and the right of the minority to speak. The Speaker is independent of the executive branch of government and is impartial with regard to all members, basing his or her decisions, which have not been subject to appeal since 1965, on parliamentary practice and procedure.

Standing Order 10 clearly states: "No debate shall be permitted on any such decision [of the Speaker], and no such decision shall be subject to an appeal to the House." George Hickes, Speaker of the Manitoba Legislative Assembly from 1999 to 2011, summed up that description in 2004 by saying, with respect to other members, that "I am not their boss; they must comply with the Standing Orders" and that "they [the Standing Orders] dictate the conduct of members, not I."

The corollary of that duty of impartiality and independence with respect to one's own party is that the Speaker must exercise the necessary reserve in debates in Parliament. Standing Order 9 provides: "The Speaker shall not take part in any debate before the House." Michel Bissonnet, Speaker of Quebec's

National Assembly from 2003 to 2008, notes: "A speaker must be very careful when he speaks, and every speech must be made in a dignified, non-partisan manner to avoid undermining his impartiality and credibility with all his colleagues." In extremely rare cases, to break a tie vote, the speaker will cast the deciding vote (leaning, by convention, toward the status quo or toward future consideration of the matter). Such occasions have arisen only 15 times in the House of Commons since 1867. Considering the number of recorded divisions (363) in the previous parliament (40th) alone, for example, this is clearly an exceptional situation.

Using the method of comparing analogous cases, it is possible to determine the nature of the impartiality of the Speaker's office and to draw a parallel with the committee chair. In committee, debate generally focuses on subject matter limited by its mandate, as defined in the Standing Orders. As confirmed by Standing Order 116, the Standing Orders apply in full, "except the Standing Orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and the length of speeches."

Mr. Dusseault made an interesting observation in describing his office as "almost the same as that of the Speaker of the House, except on a smaller scale." In addition to the duties referred to in the comment by C.E.S. Franks cited in the introduction, the duties of committee chairs also include those of managing members' speaking time, presenting committee reports in the House, participating in the conduct of studies as other members and participating in and reporting to the Liaison Committee. Unlike the Speaker of the House, however, the decisions of a chair may, as provided in Standing Order 117, be appealed to the committee.

House of Commons committee chairs must be able to enforce the Standing Orders and not serve strictly partisan interests. Mr. Chong is clear with his colleagues on this subject: "They can tell me whatever they want but at the end of the day, I'm interpreting the rules in a fair and equitable manner." Mr. Dusseault added, "You have to be open and fair with everyone and not favour one party over another." When the chair renders a decision, this kind of behaviour establishes the necessary credibility with all players, not one political party in particular. If conflicts and impasses increasingly arise, the chair, if impartial and credible,

can try to establish consensus and agreement among the parties in order to perform the duties described above.

Although there is an essential need for impartiality among committee chairs and in the House of Commons, impartiality can be nevertheless sorely tested during the election of committee chairs and in attendance at caucus meetings.

Electing a House of Commons committee chair

Unlike in the House, the credibility of a committee chair can be questioned on the basis of a democratic criterion that relates not to the electorate, but to the other members of a parliamentary committee and to the other members of Parliament. Standing Order 106(3) provides for a specific procedure for electing the chair (or vice-chair) of a committee where several members are in the running.

The process is not necessarily as competitive as in the House. When the Speaker of the House is chosen by members, those not interested in the position must indicate that fact and the remaining members are automatically candidates for the position. In the election of the Speaker of the 41st Parliament on June 2, 2011, eight candidates expressed their interest, including seven from the government party. Ultimately, the Hon. Andrew Scheer won the election. Even though there was a majority government, there was competition for the position, as may be seen from the seven ballots that were required to produce the outcome.

At the first meeting of a House of Commons committee, the chair must be elected and a process is in place should more than one candidate contest the position. Committee members move motions to nominate people for chair. Just as it assigns members to every committee, party leadership maintains control over the process and decides on the candidates. Based on their own criteria, that leadership, exercised by the party leader, whip, parliamentary leader and their respective teams, may designate candidates at their own discretion to the available positions. They must then be confirmed by a vote.

The use of this procedure was confirmed by Mr. Chong and Mr. Dusseault. The members vote, of course, but they do so in the same way as in the House, in accordance with party line. According to Mr. Chong and Mr. Dusseault, parliamentary committee chairs

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are thus members who enjoy the party leadership's confidence. The official opposition, which is in the minority on all committees, may approve or reject appointments, but with a government majority on the committee, supported by discipline, the chances of influencing the outcome of the election of the chair remain very small.

It is important to note, however, legitimacy as a committee chair does not take its only source from the electoral process to the position. After all, personal qualities such as diplomacy and the ability to listen to other's opinions, professional qualifications and experience can also afford what a committee chair needs to perform his or her duties. Nevertheless, the democratic legitimacy of elected chairs in the view of other members could be addressed by simply making a few amendments to the committee chair election process, as will be suggested in the section on reforms.

Attendance at pre-committee meetings

Interactions within caucuses are another cause of tension over the impartiality of committee chairs. The contrast with practices in the House of Commons in this regard is striking.

According to Audrey O'Brien and Marc Bosc (eds.) in *House of Commons Procedure and Practice*, Second Edition, "in order to protect the impartiality of the office, the Speaker [of the House of Commons] abstains from all partisan political activity (for example, by not attending caucus meetings), does not participate in debate...." The reason for this imperative is obvious. Since these weekly meetings consist of *in camera* discussions on partisan strategy within a political party and are an opportunity for the party's leadership to exercise its influence over all party members in the House (this has been extended to include the executive in the government party), the presence of the Speaker of the House in the audience poses a problem. If the Speaker is aware of the party's upcoming parliamentary strategies or takes part in their development, how can he or she claim to have performed this duty of impartiality upon returning to the Speaker's chair? Consequently, as acknowledged in the works on practice and procedure in the House of Commons by Beauchesne and by O'Brien and Bosc, it is important for the Speaker to cut ties with caucus. Michel Bissonnet, former Speaker at the Québec's National Assembly, confirms that this is necessary, noting that the Speaker never attends the caucus meetings of his party. This is also confirmed by former speakers of provincial legislatures such as George Hickes (Manitoba), Bev Harrison (New Brunswick) and Ken Kowalski (Alberta).

However, the situation is entirely different for committee chairs. As might be expected, these members attend all their Wednesday morning national caucus meetings on Parliament Hill, take part in the meetings of their local executive and, if they are from the governing party, may make announcements on the government's behalf. As a result, they appear to be much less independent of their party. However, even if there are not necessarily any formal meetings for the members of a parliamentary group in committee such as a caucus, pre-committee meetings are nevertheless their equivalent. These meetings, which have become very common in the recent string of minority parliaments (38th, 39th and 40th), are parliamentary party meetings for the purpose of developing strategy for committee meetings. A committee chair is not barred by any procedural rule from attending such meetings, which are the equivalent of caucus meetings. Considering the large number of committee chairs elected from the government party (20 out of a total of 24), as stated in the Standing Orders, their involvement in this kind of exercise may undermine their impartiality. Given the potential presence of parliamentary secretaries (and parliamentary secretaries assistants coming from the Ministers offices) at pre-committee meetings, the blurring of powers, which benefits the executive, is apparent and a problem. The same is true of the impartiality of the office of committee chair.

Although Mr. Chong and Mr. Dusseault agree that this kind of situation exists, they differ widely in their analysis. Mr. Chong does not believe attending pre-committee meetings poses a problem. He feels he must interpret the Standing Orders fairly with respect to everyone and that being aware of his party's future tactics does nothing to change that fact. "If they (the party) tell me what they are going to do, well, it is only a nice point of information." From that perspective, the interaction between a committee chair and his or her parliamentary party seem necessary and inevitable for the operation of the legislative process. Consequently, based on that reasoning, there is no need to prohibit or restrict it. At best it would facilitate future business by lending the proceedings a certain degree of predictability. In Mr. Chong's view, the role of the chair at such meetings, and that of other government members, is negligible compared to that of the parliamentary secretary.

Like Jean Crowder, former opposition Chair of the Standing Committee on Access to Information, Privacy and Ethics, Mr. Dusseault does not attend pre-committee meetings. In his view, doing so would undermine his "impartiality and credibility." Mr. Dusseault believes that if his conduct as committee chair demonstrates

that he is impartial outside of formal meetings, he may then appear much more credible with all members when a decision has to be rendered. On the other hand, based on Mr. Dusseault's reasoning, if a chair assists in implementing a party's strategy, discusses with members of his caucus information intended for the chair as an impartial representative of the committee and is informed of government instructions for government party chairs, the impartiality of the position, the credibility of the chair among its members may be undermined. Although this kind of dynamic is not a very serious issue in the course of routine proceedings, the situation may be quite different if a tough decision has to be rendered. The chair's position may prove to be more difficult if tensions rise in committee, and, as witnessed on two occasions during the 39th Parliament, a motion may be introduced to remove the committee chair.

Toward reforms of committee work

As C.E.S. Franks notes, reforms have been proposed for the work of committee chairs over the past 60 years. Under John Diefenbaker, the first Official Opposition member was appointed to chair the Standing Committee on Public Accounts and under Pierre Elliott Trudeau, committee chairs were given more powers. To achieve reform, however, an essential premise must be considered. The consent of party leadership must be obtained for any reform involving an amendment to the Standing Orders - an action that normally requires a consensus among parliamentary players. Party leaders clearly have no interest in such reforms since that would cause them to lose the control and power they have over parliamentary players; this control is useful in ensuring a certain degree of predictability and efficiency in the legislative process. In an institution in which dissent is often seen as embarrassing to the leadership of a political party, what would be the benefit to party leadership of a loss of control and a decline in the predictability of proceedings? Consequently, it will be readily understood why the reform of democratic institutions is possible but extremely rare, even if it is desirable in increasing legislative power relative to executive power. For this researcher, however, practical consideration aside, there are possible solutions to the problems raised in the previous two sections.

First, in the election of committee chairs, it is possible to copy the procedure used to elect the Speaker of the House. Franks raises this possibility by describing the British model of 1987 (which has evolved since that time), while David C. Docherty in *Legislatures* (2005) proposes that the House model be used. The two approaches are complementary, as the current experience of the British House of Commons shows.

In the United Kingdom, the political allegiance of the chairs of every committee must be determined at the start of each Parliament (with the exception of the Public Accounts Committee, the chair of which is filled by the Official Opposition). Members may then run for available positions. To do so, they must obtain the support of 15 per cent of the members of their party in Parliament or 10 per cent of all members. The election process is then conducted by preferential balloting of all members of the House, which prevents the process from working to the benefit of the majority party.

This would also be beneficial for other reasons. First, the vote by secret ballot by a very large number of members (650 in the case of the British House of Commons and 308 in the case of Canada's House of

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Commons) would encourage many candidates to run from a single political party, making it virtually impossible to use disciplinary sanctions towards elected members who would dissent from the party line. There would be genuine competition for the office, and the involvement of all members in confirming appointments would confer additional legitimacy on the process, in addition to that

based on the qualifications of the committee chairs. As a result, the influence of party leadership in this matter would be reduced to the benefit of the caucus. This reform could ultimately relieve the tensions attending the election of parliamentary committee chairs.

Mr. Chong believes that such reform is appropriate and could be included in a broader effort to rebalance the legislative and executive branches. Other action could also be considered for the purpose of transferring power from the leadership to caucus. In Mr. Chong's view, the British example warrants more attention in this regard. Mr. Dusseault also agrees that such reform could be promising, provided its actual implications are determined.

The issue of committee chairs' attendance at pre-committee meetings is more problematic to address for numerous reasons. First, since pre-committee meetings are informal items on the parliamentary agenda (unlike national caucus meetings, which are held on Wednesday mornings when House of Commons is sitting), how could they be prohibited? Second, since the government party cannot forgo the services of 20 of its committee chairs in its caucus, contrary to what is done for the Speakership of the House, how is it possible to have fair Standing Orders that do not penalize the necessary interactions between the chair of the committee and its members?

The development of the procedure and practice of the House of Commons can be of assistance in this regard. In the first editions of the procedural works by Arthur Beauchesne (1922, 1927, 1943, 1965), no mention is made of the customs and usages of the Speaker of the House in interactions with caucus. Reference is made instead to the impartiality of the chair in more general terms, in the recurring expression, "...many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized." Starting with the fifth edition (1978), section 117(3) states for the first time, with respect to the Speaker of the House of Commons, that "he does not attend the party caucus nor any outside partisan political activity." Thus, the hitherto implicit convention became explicit as a result of Speaker Lamoureux, who, considering the challenges of minority parliaments in the 1960s, sought more independence for the office. By the practice and conduct of one player, these practices were adopted by successive speakers of the House and subsequently codified. Their validity is no longer contested.

This approach should be considered for the purposes of committee chairs. Committee chairs must withdraw voluntarily from pre-committee meetings if this practice is to be maintained over time. The reasons given by Mr. Chong are logical but based solely on the good faith of committee chairs. If tensions were to rise in the House, in the event of a return to a minority Parliament, for example, there would be enormous pressure for committee chairs to play a more active role, and their impartiality could be greatly tested. Considering the influence of the executive branch and the parliamentary secretary at pre-committee meetings and in the planning of partisan strategy, committee chairs would gain greater legitimacy, if some restraint was observed. Mr. Dusseault validates this statement by his conduct, inspired by that of his predecessor, Ms. Crowder. The imperatives of impartiality are understood, assimilated and respected even by the less numerous Official Opposition members. Chairs such as Mr. Rajotte and Mr. Chong, whose competence as chairs is acknowledged, and others from both the government and Official Opposition, could draw on these practices to work in an even fairer manner for all concerned.

Conclusion

Canada's parliamentary institutions face a blurring of powers whereby the legislative branch is subordinated to the executive. The reforms suggested in this paper should be included in a broader institutional review, as Mr. Chong has suggested. The limits of the impartiality of parliamentary committee chairs, as outlined above, are only one aspect that these reforms should address. Legislators will be unable to do their work in an entirely independent manner as long as power remains in the hands of party leadership and the executive branch.