

Interest Groups and Parliamentary Committees: Leveling the Playing Field

Parliamentary committees in Canada are undeniably important resources for interest groups – particularly in terms of gaining information, articulating one’s message on public record, and establishing oneself as a legitimate stakeholder in the eyes of politicians, government and the public. However, one of the intended functions of standing committees – to serve as a venue for non-governmental influence on policy – has largely proved to be a canard in Canada’s House of Commons. The first part of this article prioritizes the challenges facing non-governmental actors who wish to exert policy influence through parliamentary committees. It asserts that standing committees’ function of carrying out studies has more surmountable challenges than the function of legislative reviews. The second part of the article emphasizes that two developments are imperative in order to realize the potential committee studies hold: first, the open-ended nature of studies and the inadequacy of follow-up mechanisms should be addressed (with the scope of questions designed to feed into a pipeline of future legislative activity wherever feasible), and second, long-overdue accountability mechanisms should be introduced to ensure that the government responds to committee reports upon request.

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As the most recent edition of the *House of Commons Procedure and Practice* stipulates, the general mandate of the Parliament of Canada’s standing committees is to review the policy and performance of their corresponding government departments.¹ To fulfill this mandate, committees may call upon non-governmental witnesses to gather information for studies and consult on the merits of proposed or existing policies. With the exception of the Standing Committee on Finance in Canada (which also has pre-budgetary hearings), the official activities of parliamentary committees that involve hearing from non-governmental representatives take two main forms: reviewing draft legislation and producing studies which lead to the creation of committee reports. Both activities provide opportunities for non-governmental policy input. However, among interest groups in Canada, a distinct strategic preference for informal meetings with Cabinet ministers or

other influential politicians over committee meeting presentations has long been observed; the effectiveness of the former strategy has far outshone the latter.² As a result, interest groups without sufficient resources to pour into the burgeoning economy of consultant lobbyists and other costly networking strategies are put at a disadvantage in the realm of policy influence.³

The path to improving the potential for impact of non-governmental policy input through parliamentary committees hinges on the committee function being considered. Of two such functions of the Standing Committees of the House in the Parliament of Canada – legislative reviews and committee studies – the tight grip of party discipline in Canada and the timeline of legislative reviews in committees renders the function of committee studies a more fruitful site of reform than legislative reviews. However, in order to improve the transformative potential of committee studies, two issues must be addressed: the open-ended nature of many such studies (which limits the transferability of such studies to the development of legislation) and the inadequacy of follow-up mechanisms to prompt a formal government response to study reports from committees.

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In this article, interviews with three non-governmental witnesses from the environmental sector who appeared before parliamentary committees in recent years – Christine Wenman of Ecology North, Bill Eggertson of the Canadian Association for Renewable Energies and Martin von Mirbach of WWF Canada – are used to illustrate some of the frustrations that emerged among non-governmental representatives following their participation in hearings for committee studies.⁴ Two conclusions percolate from this analysis: first, mechanisms combining the timeliness of reports with the specificity of legislative reviews should be developed for committees to avoid overly-broad studies, and second, the continued failure to mandate compulsory government responses to committee reports is a needless hindrance to the effectiveness of parliamentary committees in achieving their mandate.

The path that parliamentary committees have taken by way of reforms throughout Canada's history is a subject that has been adeptly chronicled by Jack Stilborn,⁵ with succinct accounts also provided by Christopher Garner in previous editions of this publication.⁶ The storied history that has shaped the current processes and protocols for parliamentary committees is thus largely left to these other accounts and others, except for those changes considered the most pertinent to the dynamics of change being proposed.

Standing Committee Functions and Non-Governmental Actors

The two main functions for non-governmental influence through standing committees are legislative reviews and studies leading to the creation of reports; these have separate institutional frameworks for enacting change. The legislative reviews allow for more focused, specific input toward a clearly delimited policy (as is often not the case for committee reports); however, representatives who are brought in to make presentations at this stage face a more entrenched commitment by government to the details of policy that has in almost all circumstances been reviewed and approved by the executive committees and at least one legislature's chamber (upper, lower, or both). In most cases, bills are referred to committee only after second reading, which further limits the scope for substantive amendments. Legislative consultation in committees also follows decisive caucus meetings on bills; strong party discipline in the Canadian context offers a more significant challenge to influence. This creates a path-dependency that is difficult to re-route and thus precludes more substantive changes that might

otherwise have come about from non-governmental consultation at committees. For example, Wenman admits that she had not anticipated any changes to precipitate as a result of her appearance at committee on behalf of her organization for a bill on devolution of the Northwest Territories, as "it was clear that the government of Canada had an agenda that they were going to pursue in spite of strong protests against that direction from different stakeholders."

To be sure, while essentially barred from changing the core policy objectives of bills that have largely already passed second reading, committees in Canada do often make more technical amendments based on either the convictions of the committee members or on new information brought forward by witnesses. These technical amendments are the primary reason why the clause-by-clause consideration of bills are often scheduled over one or two full committee meetings. However, the ability to make meaningful changes at this stage is dependent upon factors such as whether the party representation on committees is weighted against the executive (in the case of a minority government) and the relative independence of members from the constraints of party discipline.

Thus, opportunities to improve the effectiveness of committees in terms of translating witness testimony heard at committees into policy depend on mechanisms to loosen party discipline in a majority government context. It is possible that electoral reform may precipitate changes in this regard, since a larger number of parties in the legislature (a likely result of proportional representation) could lead to more reform-minded individuals coming to parliament. There is a precedent for this in the aftermath of the 1993 election, where both the Liberals and the Reform Party ran on a reform agenda and a subsequent increase in party dissent was observed: In a study of party dissent under Mulroney and Chrétien, Joseph Wearing found that the percentage of votes which contained any individual votes of party dissent in the 35th parliament was 21.8 per cent – compared to 17.4 per cent for 1988–93, 7.7 per cent for 1984–88, and 6.3 per cent for 1980–84.⁷

Building upon this research (Table 1), I found that party discipline in the 38th parliament was even looser than it had been in the 35th parliament, with 50 per cent of votes containing some form of party dissent.⁸ The ramifications of this were apparent at committees; for example, the Standing Committee on Environment and Sustainable Development under the chairmanship of veteran MP Charles Caccia (LPC) from 1994–2004

managed to enact significant amendments to bills such as the *Canadian Environmental Protection Act* and the *Species At Risk Act*. This was noted to have occurred due to the strong leadership of the Chair and the high level of expertise and consistency of the committee members.⁹ However, by 2011-2012, this number had drastically dropped far below 38th or 35th parliament levels to 16 per cent – even though this sample contained the vote on a bill which made headlines for party dissent (Bill C-19: *An Act to amend the Criminal Code and the Firearms Act*).

The next section explores how these can be remedied in a more immediate fashion than barriers facing non-governmental influence for legislative reviews.

Issues with Committee Studies and Implications for Reform

When asked about the challenges to influence presented by the committee study process, non-governmental witnesses often cite a lack of clear direction in the design and conduct of such studies.

Table 1: Votes Containing Party Dissent (Canada)

	35th Parliament (Jan. 17, 1994 to April 27, 1997)	38th Parliament (Oct. 4, 2004 to November 29, 2005)	41st Parliament, 1st Session (sample from June 2, 2011 to March 28, 2012)
Government Bills	N/A (not calculated by Wearing)	27% (4 votes of 15 – LPC, CPC and Bloc)	7% (1 vote of 15 – NDP)
Private Members' Bills	N/A (not calculated by Wearing)	89% (8 votes of 9 – LPC, CPC and NDP)	33% (3 votes of 9 – CPC)
Total	21.8%	50% (12 votes of 24)	16% (4 votes of 24)

The significance of these findings is that a shift in the outlook of MPs and parties with regard to party discipline that is enshrined by norms alone is vulnerable to backsliding.

By contrast, hearings undertaken in the context of committee studies pre-empt the policymaking process – and thus theoretically allow for more timely contribution of outsider input into its development. Moreover, committees are often able to come to a consensus in their report recommendations, an extremely rare occurrence when considering amendments to legislation. It is for these reasons that reports are considered to hold more promise for policy influence from non-governmental representatives. Reports still come with their own set of problems, including the overly broad scope of many studies and the inadequacy of follow-up mechanisms to the committee reports that are produced from studies.

For example, Martin von Mirbach recalled that when he had received the invitation to appear before committee, he did not have a sense of what the report would feed into or produce. Similarly, Eggertson spoke about the fact that he “was never sure if [the committee members] were looking at renewables as a money-maker or renewables as an enabling adaptation technology in the North” and that while he had hoped to find clear goals for the committee study – perhaps using the questions of committee members as a guide to what specifics they most wanted to explore – he found that the committee had used the study as an opportunity to brainstorm ideas for the North, which proved unhelpful from his perspective.

An additional aspect of committee reports that is less than encouraging for would-be influencers of policy is that while there is a necessary response from the legislature and usually the government

in response to amendments made in committee in the process of legislative review, neither Parliament nor the government are compelled to respond to recommendations in committee reports, or any other part of reports. In Canada, this has been a source of tension for some time; a 1979 study showed that legislators took issue with the frequent lack of responses from government with regard to their report recommendations. In total, 70 per cent of MP respondents to the study agreed that the Government should have to reply to all committee reports containing “substantive” recommendations, and a substantial minority (41 per cent) thought that these should have to be debated as well.¹⁰

The view of this majority of MPs in the 1979 study is reflected in interviews as well; for example, Von Mirbach opined that parliamentary reports such as the one he appeared before tend to simply “float around in the system” without addressing “who is asking for this report and how it will go into policy, legislation or regulation.” Similarly, Eggertson acknowledged that parliamentary committees “come up with beautiful reports [. . .] but the proof is in the pudding. Do they actually do anything with it? In my opinion, the answer is no.”

This lack of mandatory government response to reports results in a considerable waste of resources. To illustrate the full extent of this, Eggertson had been joined by 68 other witnesses over a span of two years’ worth of meetings at the Standing Committee on Aboriginal Affairs and Northern Development for the study in which he participated. Following these hearings, a number of recommendations were articulated by the committee members in their report; however, despite the direct request for a government response to the report in 2010, none followed.

The paradox of legislative reviews coming too late in the policy-making process and studies not focusing enough on specific issues that could feed into legislation is not an insurmountable one; in fact, there have been a few mechanisms already developed for the purpose of solving this conundrum. For example, in 1994 the government enabled the Standing Committee on Finance to hold hearings in anticipation of the annual budget each year; this new capability was extended to FINA alone. Éric Montpetit, Francesca Scala and Isabelle Fortier also documented a case where ongoing public dissent over a policy bill on Assisted Reproductive Technologies (ART) in the late-1990s resulted in the government letting the controversial bill die on the order paper without re-introducing

it – instead sending a new “draft bill” on ART to the relevant committee.¹¹ The draft bill is different from a regular bill in that it provides more opportunities for MPs to shape the content of a bill that is prepared by a government department – allowing members (who can be influenced directly by non-governmental actors through committee hearings) propose matters for the ministers to consider before a minister initiates a bill. Moreover, bills can be referred to committee before second reading for more substantive input from members, although this is seldom done.

The existence of these institutional conditions suggests another avenue for opening up the process to more influence. As previously noted, the FINA committee is the only committee that is permitted to engage in preliminary hearings. It also has separate working groups for specific upcoming legislation. Both of these innovations could potentially be an option provided to other committees in Canada. Similarly, the use of “draft bills” of the type brought in for policy-making on ART at the Standing Committee on Health in the late 1990s could be expanded through multi-partisan discussions about the role of such bills in the legislative process. Reluctance on the part of the executive to surrender a degree of control can be expected to arise in such discussions; on the other hand, it would have more trouble denying a high public demand for the use of such bills and might even consider instances where it would be politically expedient to give the committees more control over potentially controversial legislation.

On the question of making government responses to reports mandatory when requested by the committee issuing the report, the remedy is simple: such a response should no longer continue to be an option for the government but instead be a requirement. While the existing polling numbers for this issue among parliamentarians is fairly dated, the majority approval ratings among parliamentarians signals a certain receptiveness to this from the side of legislators. Indeed, there are seldom occasions where a majority of MPs are found to be receptive to a particular reform mechanism without great political capital already being devoted to amassing support for it. As such, making government responses to committee reports and recommendations mandatory is here identified as one of most fruitful sites for improving the capacity for influence in the Canadian context. Failure to ensure an appropriate method of government response would perpetuate a long-standing tradition of waste and cynicism about the effectiveness of committees in Canada.

Conclusions

Overall, a desire to build on nascent potential for influence is discernable in the interviewees' responses; for example, it is telling that witnesses who were interviewed replied that they would return to a committee hearing again despite their frustrations with the process. Thus, the committee system is ripe for further reforms that do not necessarily need to shake up the entire system. Both legislative reviews and studies conducted in committees have potential to be reformed; in the former case, this necessarily involves a more holistic approach – reforming the practices limiting MP voting behaviour in the form of party discipline in the entirety of parliament. Conversely, in the case of committee studies it is clear that much can be changed by channelling pre-legislative committee work through the expansion of legislative pre-study to committees besides FINA and the increased prevalence of draft bills. The lack of executive accountability vis-à-vis committee reports can be quickly remedied by making government responses mandatory. Just like the very policies that are periodically studied in parliamentary committees, a few substantive amendments can be transformative for a political process that has potential to level the playing field for non-governmental influence on policy.

Notes

- 1 O'Brien, Audrey and Marc Bosc (Eds.). *House of Commons Procedure and Practice*, Second Edition, 2009: "Chapter 20: Committees>Types of Committees and Mandates>Standing Committees> General Mandate." Cowansville, Québec: Co-published by Éditions Yvon Blais. (Retrieved from <http://www.parl.gc.ca/procedure-book-livre/Document.aspx?Language=E&Mode=1&sbdid=DC42FA65-ADAA-426C-8763-C9B4F52A1277&sbpid=085013AB-4B16-4B34-8E4C-A5B5C98818C9#157B7C7B-B15D-4B55-9738-382F3DA1BAF4> on February 1, 2016).
- 2 Canadian Study of Parliament Group. *Interest Groups and Parliament*. Ottawa and Quebec City: 1989. p. 3.
- 3 Savoie, Donald J. *What is Government Good At? Canada*: McGill-Queens University Press, 2015.
- 4 Interviews conducted in person or over telephone with Christine Wenman on October 13, 2015, with Bill Eggertson on July 28, 2015 and with Martin von Mirbach on November 19, 2015. For details on committees of interest attended by interviewees Christine Wenman, Bill Eggertson, and Martin Von Mirbach (respectively) see AANO (Canada's Standing Committee on Aboriginal Affairs and Northern Development). 2014. Evidence of meeting #10 (January 27, 2014), 41st Parliament, 2nd Session. Topic: "Bill C-15, An Act to replace the Northwest Territories Act

to implement certain provisions", AANO (Canada's Standing Committee on Aboriginal Affairs and Northern Development). 2010. Evidence of meeting #16 (May 11, 2010), 40th Parliament, 3rd Session. Topic: "Northern Territories Economic Development: Barriers and Solutions." (2010), and RNNR (Canada's Standing Committee on Natural Resources). 2012. Evidence of meeting #40 (May 15, 2012), 41st Parliament, 1st Session. Topic: "Resource Development in Northern Canada."

- 5 Jack Stilborn. *Parliamentary Reform and the House of Commons* (Ottawa: Library of Parliament, 2007); Jack Stilborn. "The Investigative Study Role of Canada's House Committees: Expectations Met?" *The Journal of Legislative Studies*, 20(3) 2014. pp. 342-359.
- 6 Christopher Garner. "Reforming the House of Commons: Lessons from the Past and Abroad." *Canadian Parliamentary Review*, 21(4) 1998.
- 7 Joseph Wearing. "Guns, Gays, and Gadflies: Party Dissent in the House of Commons under Mulroney and Chrétien," paper presented at the Annual Meeting of the Canadian Political Science Association, (Ottawa, June 1998).
- 8 Table 1 shows the results of my own compiling of party dissent frequencies for votes on legislation in the 38th parliament (2004-2005) and first session of the 41st parliament (2011-2012). As the 38th parliament contained fewer votes than the first session of the 41st parliament, all non-motion votes in the former parliament are included but votes on the first 15 government bills and the first 9 private members' bills (24 votes overall) are sampled in the latter parliament. To avoid collinearity, 2nd and 3rd Reading votes that did not pass the 2nd or 3rd Reading stage were included, but only 3rd Reading votes for those which passed were included. In this way, the calculations accounted for the most common stage at which bills do not pass, but tabulating votes on the same bill twice was avoided. In rare instances where there appeared to be a free vote in a given party, the lower number between the yes and no votes for the party in question were incorporated into the statistics as votes against a party position – as the implications are the same in terms of measuring levels of party discipline.
- 9 Mark S. Winfield. "Role of parliamentary committees in Canadian environmental policy formulation and evaluation: the case of the Standing Committee on Environment and Sustainable Development 1994-2004." *Journal of Environmental Law and Practice*, 10/2010, Volume 22, Issue 1: p. 59
- 10 Michael Rush. "Committees in the Canadian House of Commons." In Lees, John D. and Malcolm Shaw *Committees in Legislatures: A Comparative Analysis*. Durham, N.C.: Duke UP, 1979. pp. 191-241.
- 11 Éric Montpetit, Francesca Scala and Isabelle Fortier "The Paradox of Deliberative Democracy: The National Action Committee on the Status of Women and Canada's Policy on Reproductive Technology." *Policy Sciences* 7 (2) 2004. pp. 137-157.