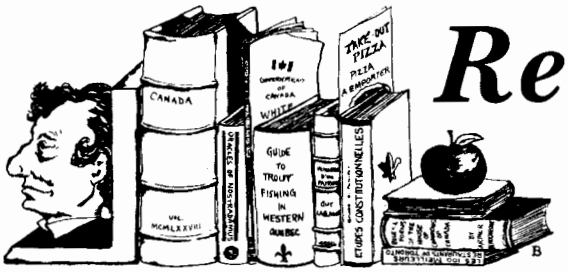

Recent Publications and Documents

PARLIAMENTARY DEMOCRACY IN CANADA: ISSUES FOR REFORM by Thomas D'Aquino, *et al.*, Methuen, Toronto, 1983, 130 p.

As the authors of this volume point out, no issue touches Canadians more fundamentally than how we are governed. It is significant, therefore, that the Business Council on National Issues has published this volume on the parliamentary process.

This book originated in 1978 when the Business Council commissioned an investigation of government in Canada. That initiative by the chief executive officers of some 150 leading companies in Canada led to the 1979 monograph *Parliamentary Government in Canada: A Critical Assessment and Suggestions for Change*. This new volume goes deeper into each of the topics of the earlier book and offers a more thorough and better written treatment of the same issues.

The major thrust of the book is that the process of parliamentary government is out of touch with the realities of politics in Canada. The Business Council, led by their energetic president, Thomas D'Aquino, argues quite correctly that debate on parliamentary reform should not be the sole preserve of politicians. They argue more precisely, (and this goes further than I would), "...that Parliament is an inconsequential centre of national debate and leadership." (p. 110) With such a devastating critique governing their conclusions it is not surprising that the authors recommend thirty-five fundamental changes to the parliamentary process. Some of these proposals are extremely controversial, others less so.

The basic argument is that political parties should adopt a less stringent approach to party discipline. While there is some possibility of reducing or changing the rules governing "confidence" in the standing orders of the House of Commons it is unlikely that this call for a general reduction of party discipline will be successful. As has been pointed out by many practitioners and academic commentators, there will always be some type of cohesive factions in Canada regardless of exhortations about the evils of party discipline. As Lord Salisbury put it about Britain, "Combinations there must be – the only question is, whether they shall be broad parties, based on the comprehensive ideas, and guided by men who have a name to stake on the wisdom of their course, or obscure cliques, with some narrow crotchet for a policy, some paltry yelping shibboleth for a cry."

The authors' recommendations about the House of Commons and its committees are less controversial. Many of them would improve the process. Among the many proposals, they call for the establishment of an investigative committee when a minimum of fifty members agree on a new subject. They propose that standing committees be given the power to select their own subjects for investigation and call for changes in the way committees handle the estimates and budgets. The only problem with these recommendations is that they have essentially been by-passed by proposals of the House of Commons Special Committee on Procedure and Standing Orders in 1983. This is not to say that the ideas are not helpful but only that the ten reports of the parliamentary committee are more detailed, more thoroughly defended and more practical than those put forward in *Parliamentary Democracy in Canada*.

The authors also make major criticisms of the parliamentary schedule, but this idea too comes too late to be helpful. Temporary standing orders which timetable the House have been in effect for 1983. It is, however, to be hoped that the proposals which they put forward concerning the maximum number of days the House should sit, the cycle of regular and committee weeks and other suggestions of this nature can become part of the permanent standing orders in the new future.

The book also makes several recommendations about staffing committees, providing Parliament a better opportunity to study all subordinate lawmaking and for televising some of the committees of the House of Commons. In all, the authors demonstrate that they are serious parliamentary reformers. Their proposals are basically in line with those of most informed commentators on the process and will be well received by politicians and professionals on the Hill.

While the volume is lacking in new research and most of the ideas are familiar to parliamentary specialists, Thomas D'Aquino, *et al* make the issues more readable for the general public and argue a cogent case for urgent reform – now. For that reason, the book should receive wide currency with the general public.

It is to be hoped that the Business Council on National Issues will publish more volumes on Canadian political life. It would be interesting to see how they would deal with issues such as developments in corporate governance, business-government relations, lobbying in Ottawa, conflict of interest and some of the other topics which are at the heart of relations between the public and private sectors in Canada.

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LE CONTRÔLE PARLEMENTAIRE DE LA LÉGISLATION DÉLÉGUÉE, prepared by the Task Force on Subordinate Legislation, National Assembly, Quebec, 1983, 159 p.

Members of the National Assembly want some control over regulations drafted to accompany legislation and are prepared to

go as far as to disallow a proposed regulation, if necessary. This is just one of the recommendations of the Task Force on Subordinate Legislation. Co-chaired by Messrs. Denis Vaugeois and Richard French, the Task Force included eight other MNAs, Jacques Baril, Réjean Doyon, Maurice Dupré, Henri LeMay, Pierre Paradis and Roland Dussault, the latter replacing Mr. Richard Guay who became Speaker of the National Assembly in March 23, 1983. The report was made public on August 24, 1983.

The question of subordinate legislation has been the focus of considerable attention recently. In 1982, the National Assembly passed seventeen new laws and thirty-seven pieces of amending legislation, whereas the government administration adopted 350 new regulations and 450 amending regulations. Unlike laws, these regulations, which are the exclusive fiefdom of the administration, are adopted without public input or knowledge. Yet, they spell out the methods, terms, rules, standards, qualities and conditions according to which laws are implemented. In 1981, Mr. Raoul Barbe compiled all existing regulations into ten volumes each containing 950 pages. More regulations have since been adopted. On this subject, the Task Force notes that the impact of such a considerable number of regulations is obvious. Some people are protected, and even overprotected by these regulations. Others find their actions hindered and sometimes even paralyzed as a result of them.

In a bid to resolve this dilemma, the Task Force unanimously endorsed two main recommendations, namely that a *Regulations Act* be adopted to establish a framework within which regulatory authority could be exercised and that a specific system for exercising parliamentary control over subordinate legislation be implemented.

Proposed legislation should provide for the monitoring of the regulation-making process by the Ministry of Justice, their publication at least ninety days before adoption, and an analysis of the impact of the regulations. The main component of this legislation would be the creation of a specialized forum, namely a committee of the National Assembly to deal exclusively with the control of subordinate legislation. The committee could, if necessary, delegate responsibility for this matter to a subcommittee. Members would be appointed to the committee for the duration of the legislature and would be supported in their duties by a staff of experts in the field.

Members of this committee or subcommittee could select which draft regulations they would examine in depth to ascertain their legality and/or advisability. Where necessary, the committee could initiate a debate on the timeliness, effectiveness, merit and even necessity of the proposed regulation. Parliamentarians would be free to hold public hearings and to call the authors of the draft regulations to testify before the committee.

To make the committee more than a mere formality, the legislation would authorize it to report to the National Assembly and eventually to report on its negotiations with the administration about a draft regulation, to denounce practices and to initiate discussions and debates. If negotiations to have a draft regulation amended proved fruitless, the committee could even go as far as to request that the draft regulation be disallowed.

The power to disallow regulations is based on a measure in use in the Australian Parliament. A minimum of five MNAs representing at least two political parties could table a motion of disallowance which would be debated in the National Assembly. Unless it is put to a vote within a reasonable period of time, the motion of disallowance would come into effect and the draft regulation would be withdrawn. Of course a motion of disallowance should not be viewed as a vote of non-confidence in the government. Otherwise, it would be impossible to break party ranks and this would prevent the control system from functioning effectively. According to Messrs. Vaugeois and French, where regulations are concerned, many MNAs would not hesitate to take advantage of the freedom to vote according to their conscience.

While this committee would be responsible for exercising some control over draft regulations, each committee of the National Assembly could assume some control over regulations already in force. Any committee could decide to review an entire area, such as all regulations governing construction. Their task would be to verify the timeliness, effectiveness and merit of the regulations under review and to table a report to the National Assembly.

The document concludes with an annotated bibliography listing seventy-six documents on subordinate legislation from various countries.

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REPORT OF THE SECOND COMMONWEALTH CONFERENCE ON DELEGATED LEGISLATION, Ottawa, 1983, 3 vol.

Delegated legislation consists of orders-in-council and other regulations having legal effect because Parliament has, by statute, delegated its law-making authority to the cabinet, a minister or some public agency. The doctrine of parliamentary sovereignty makes it impossible for the executive to make such regulations in its own right. They must have their basis in a law passed by Parliament. Similarly Parliament has an ongoing duty to scrutinize the government's use of delegated legislation. That is a practice which for a number of reasons is more honoured in the breech than in the observance. If all Commonwealth parliamentarians deeply committed to the scrutiny of delegated legislation were gathered together they could fit easily into a medium size room. In fact they do — every three years at the Commonwealth Conference on Delegated Legislation.

These three volumes contain the report, background documents and transcript of proceedings of the second such conference which brought representatives of some twenty-seven jurisdictions as well as many non-parliamentary experts to Ottawa in April 1983. Volume One contains the agenda of the four day conference along with a concise summary of the matters discussed and the conclusions. Volume Two contains background papers divided into four sections: documents from seven jurisdictions (British Virgin Islands, Newfoundland, Northwest Territories, Tamil Nadu, Maharashtra, Sarawak and Zimbabwe) that were not represented at the first conference; updating of material from five jurisdictions (Australia, Canada, Ontario, Zambia and the United Kingdom) that were present at the first conference; papers delivered to the conference; and some miscellaneous statements relating to the need for a Commonwealth Study on Statutory Instruments. Volume Three contains the transcript of the proceedings. Few parliamentarians are likely to read it from cover to cover. Those who do will not be disappointed. It is surprising how seemingly complex issues can be clarified in the cut and thrust of debate. One example is the exchange reprinted elsewhere in this issue, between Professor David Mullen and Richard French of the Quebec National Assembly on the question of scrutinizing delegated legislation on its merits.