

SPECIAL COMMITTEE ON RULES AND PROCEDURES



SECOND REPORT

July 4th, 2001

2nd SESSION of the 24th LEGISLATURE

LEGISLATIVE ASSEMBLY OF SASKATCHEWAN

I. INTRODUCTION

Your committee had its initial meeting on April 27th, 2000, when it reviewed the areas of concern that were outlined by the members and contained in position papers presented to the Committee. Those areas relate principally to the reform of the legislative committee system, Private Members' business, the general structure of the Assembly proceedings, and the House's administration.

An interim First Report was made to the Assembly on April 27th, 2000, which recommended some minor adjustments to the rules, principally the authority of the Public Accounts Committee to allow substitutions in membership. This Second Report addresses the more substantive issues.

After review of the proposals and comments of its members, your committee agreed that as a matter of priority the areas of Committee reform and Private Members' business should be pursued in tandem, with the expectation that major changes in these areas would have significant consequences for the general structure of Assembly proceedings.

Your Committee was particularly interested in New Zealand and the states of Australia. Most of those jurisdictions have well-developed and advanced committee systems. In particular the Special Committee was impressed with the committee structures in the New Zealand parliament, federal parliament of Australia, and the committee systems in South Australia, Western Australia, and New South Wales. In Canada, the Special Committee found Ontario and British Columbia to be most relevant.

As a result of these investigations, your committee decided that the initial priority of business for the Special Committee on Rules and Procedures should be the reform of the legislative committee system and Private Members' business. In particular, your committee was interested in creating procedures that would increase the importance of committees, enhance the role of private members, create more effective ways of dealing with public policy issues and increase public participation in the parliamentary process.

II. BACKGROUND

On January 17th, 2001, the Special Committee on Rules and Procedures adopted the recommendation of its Sub-committee on Agenda and Procedure (Steering Committee) that the reform of the legislative committee system and Private Members' business be a matter of priority. The report also recommended that members of the Special Committee visit jurisdictions that might serve as a model for reform. The jurisdictions selected as possible models are as follows: Ontario, British Columbia, New Zealand, the federal parliament of Australia, New South Wales, Western Australia and South Australia.

It was agreed that a study delegation should be established and a member of the committee from each caucus selected to represent the committee. Speaker Osika (chair), Mr. Thomson and Mr. D'Autremont were appointed to comprise the study delegation. Later, Mr. Osika resigned as Speaker and consequently did not participate in the study trip. The study delegation was accompanied by Mr. Gregory Putz, who served as clerk to the committee.

Between March 5th and March 17th the study delegation visited New Zealand and the noted Australian parliaments. In total the study delegation interviewed members and officers of 9 houses (all but the New Zealand parliament were bicameral). On May 10th and 11th the study delegation visited Ontario, bringing the total number of houses visited to 10. The following observations and recommendations are the result of the information gathered during the study visits.

General Observations of Committees in New Zealand and Australia.

The study trip confirmed that if a committee system is to be progressive and effective it should be based on the policy field model (sometimes described in Australia as the portfolio model or general purpose committees). This model is in place at all the parliaments visited. In general, the committees of these parliaments are organized so that they deal with most of the executive government's activity, with each committee covering a particular number of public policy fields, and accordingly the related government departments and agencies.

An important aspect of the study tour was to learn not so much of the theory behind the committee systems (this was done by a survey of information prior to the visits), but to find how in practice the committees worked and the impact committees had on members and other House proceedings. In particular the study delegation was interested in the viewpoints of members from both sides of the house (government, opposition, independents) and from house and committee officers.

What the study delegation learned from that the members of the visited parliaments was a nearly universal pride in their committee systems (the New Zealand members touted their committees as the best in the Commonwealth) and praise for the committee work and the benefit to members, individually and collectively. In many cases members made a career and reputation serving on committee, and this helped develop an expertise that was observed on many occasions. As one member in Western Australia told the study delegation, “every member wants a career path in parliament and initially that is to get into cabinet, but what about everyone else who won’t be a minister – committees offer a career path for members.” The comments of a federal M.P. in Canberra was that Members on both sides of the House find considerable gratification and value in committee work, and most are proud of their that work because in many areas they can make a difference. At Canberra, committee work is held in such high esteem that there is competition to get positions on committees of interest. These sentiments were echoed throughout Australia and in New Zealand.

Another indication of the importance of committees and committee work was the amount of time members spend in committee. It was reported that the Australian Senate committees have taken on such a high importance that on average a member will spend twice as much time in committees than in the House. It was also reported that committees are a better use of time for members. The various parliaments visited have shifted a great deal of the work to committees because the House can only do one thing at a time, while many committees can meet at once. More members are more involved because there is more activity.

In Australia and New Zealand, the policy field committees of the various parliaments are, although similar in nature and purpose, not uniformly structured. Not all of the policy field committees concerned themselves with legislation, or estimates. However, the common thread for all is the ability to conduct investigations either by reference from the House, a Minister, or by majority decision on the committee. According to many members, the “self-referencing” aspect is a fundamental part of the success of the committees. This was noted by nearly every member interviewed. Many members thought this is what gave the committee’s their independence, authority and status.

It was through this avenue that committees received public input, which the study delegation heard was of very high importance. The study delegations was also told that committee inquiries do much to bring parliament to the people and this is important because that helps promote public awareness on public policy issues, and is a means for members to be better informed about community issues and attitudes. It was stressed time and again by Members that committees often do contribute to better administration and policy making, and this is a source of accomplishment for members.

Finally, on the subject of independence of committees (i.e. self referencing aspect) it was noted that executive government should not fear the independence of committees because they can be a tool for better administration. One Member of Parliament in New Zealand stated that when he was a minister he saw committees as an obstacle but soon stopped worrying because the government had a majority in the House and could override a committee report. As a parliamentarian, he thought of committees as a way to take back some of the power lost to the executive over the decades. A member in South Australia said that the face of government is not the executive but the member, who has regular contact with the public. Committees are a way for the executive, through government members, to stay in touch with the public. A member in Western Australia said “a smart minister will want to get good ideas out of everyone, and know where the fires are.” This sentiment was echoed by members at nearly every parliament visited.

Most committees carry-out one or two studies a year. These investigations are made with the co-operation of most members even though the topics of the studies are subject to the decision of the committee majority. Sometimes, but not often, partisanship enters into the decisions on whether or not to make an enquiry. But most of the criticism heard with respect to the committee process was based more on the consequences of proportional representation. The ratio of committee membership in these jurisdictions, as elsewhere, reflects the standings in the parliament. Therefore, despite each committee having a government chair, the control of a committee is sometimes in the hands of a coalition of opposition and independent members. Nonetheless, the study delegation did not hear any serious complaints about abuse of process.

In most of the Australian parliaments the policy field committees do not focus on budgetary estimates. This work is often handled by a dedicated estimates committee, which meets for concentrated periods of about two weeks at a time. In one of these jurisdictions, the study delegation heard that the “membrane between financial policy and public policy is becoming thinner.” It was suggested that the estimates review should be perhaps accomplished in context of public policy committees.

Many jurisdictions do, however, deal with legislation in committee and perhaps the parliament with the most experience in this regard is New Zealand, where bills are referred to committees after first reading. The federal parliament of Australia also sends legislation off to committees. In some cases, where there is cross-committee interest in a bill, then different parts of the bill are sent to different committees for hearings. It was also noted that in those parliaments where bills are sent to committee, there are time limits to cap the amount of time before the bill must be reported back to the house. At Canberra the average is 3 to 6 weeks and governments have not been overly concerned about its legislative programme being “lost in the pile.” Committees of the Australian Senate, for example, in total dealt with approximately 200 bills and 5000 regulations last year. Some parliaments, for instance New South Wales, continue to deal with bills in committee of the Whole.

The scrutiny of regulations was a particular interest to the study delegation. All the Australian parliaments have a dedicated regulation committee (sometimes called delegated legislation or statutory instruments committee). Like the regulations committee in Saskatchewan, these committees do not look at the policy issue but whether the regulation is ultra vires. In all cases a regulation must be tabled in the house, or with the committee, after proclamation and then there is a period of 14 (or 15 days) when a regulations committee can decide to make a formal review. If the House is in session, or when the House reconvenes, the same period of time is available to any member to move a motion to strike down a regulation on the basis of a policy issue. Finally, in Southern Australia, the regulation committee can also look into Supreme Court rulings in order to make regulations on law reform.

General Observations of Committees in Ontario

Ontario is one of the few Canadian jurisdictions with policy field committees combined with the authority to initiate enquiries. Therefore the study delegation took a great deal of interest in the mechanics of how Ontario's committees are able to self-reference, and the work they do. The terms of Standing Order 124 were reviewed in some detail; in summary, once each session, any members of a policy field committee may propose in the form of a motion, that a specific matter relating to that policy field may be studied and reported on (debate on such a motion is limited to 30 minutes). Should the motion be adopted, the committee may ultimately produce a report, draft legislation, or a combination of the two. If draft legislation is agreed to by the Committee, it is considered to be an instruction to the Chair to introduce the legislation in his or her name as the primary sponsor (other members of the committee may have their names printed on the bill as secondary sponsors) becomes first reading of that bill). For the committee to undertake matters under S.O. 124, it must be agreed to by at least 2/3 of the Committee members. Such business does not take precedence over government bills. The members were advised that two bills have been initiated in this manner since the process was began in late 1999.

In addition, the study delegation learned about the Ontario concept of bills being referred to a committee after first reading. The study delegation heard from all three parties that the process had worked quite well with the 3 or 4 bills handled in this way. It was pointed out to them that it allowed members a better opportunity to amend and rework the legislation if necessary since the principle of the bill was not "etched in stone" at this stage. They felt it allowed for more meaningful input on the part of both members and witnesses alike. However, far more bills are referred after second reading. Through this avenue, each of the committees might look at as many as 15 bills per session with the balance remaining in the Assembly for Committee of the Whole review.

Other issues noted to the study delegation are as follows:

- Ontario members felt it was necessary to maintain members' per diems as an encouragement to take on the large volume of work involved in serving committees;

- Ontario members promoted the ability of members to substitute for one another on all committees – this allows more flexibility but admittedly does reduce the continuity;
- for the purposes of budgeting, Ontario has adopted a global budget plan for all committees, the result being that instead of budgeting for a worst-case scenario for all the committees, a more realistic amount is budgeted in the form of a pool of money for all committees to use, the result has been a 50% decrease in the amount budgeted each year for committees (approx. \$750,000 as opposed to \$1.5 million);
- committees' ability to advertise and accommodate a wide cross-section of witnesses who want to appear, as opposed to specifically inviting individuals already known to Committee members.

Another point of interest for the Rules Committee was the support infrastructure for committees in those jurisdictions with active committees. In particular, the operations of legislative research bureau were of great interest. Each Committee has a researcher assigned to it, and the researchers rotate between committees depending on their own expertise and the issue the committee might be considering. Researchers provide a variety of services, including the preparation of background information prior to the committee commencing its business, responses to questions raised by members during the course of public hearings, and also the preparation of a summary of the testimony heard. The study delegation did address the concern about the impartiality of researchers but it was stressed that the researchers were employees of the Assembly (specifically the library), and not Ministry staff. The Rules Committee is however, more comfortable with the idea that researchers were under the umbrella of the Clerk's office and not the library (as was the case in the Australian and New Zealand parliaments).

III. RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON RULES AND PROCEDURES

The following recommendations are made as a result of the observations made of the study delegation visit to parliaments in Australia, New Zealand and Ontario. Recommendations are made as a matter of principle only. Procedural and administrative mechanics of how the principles would work in practice would have to be devised if the Rules Committee adopts this report. If adopted, a detailed set of draft rules and procedures would be prepared for presentation to the Assembly as a follow-up report.

Recommendation 1

The Legislative Assembly of Saskatchewan should reorganize its present system of standing committees to include four (4) policy field committees, one (1) scrutiny committee, one (1) for private bills and two (2) house issues committees. The policy field committees would be organized so that they deal with most of the executive government's activity, with each committee covering a particular number of public policy fields, and accordingly the related government departments and agencies. The Standing Committee on Public Accounts would be retained and serve as the Assembly's primary

scrutiny committee. Most of the house committees would be reorganized into a single committee. Separate committees would be retained for Private Bills and Privileges and Elections.

Select committees would continue to be appointed by the Assembly as required (the intersessional appointment process would be absorbed by the house services committee – see below).

Specifically, the following framework for committees is recommended.

Policy Field Committees

Standing Committee on Human Services – portfolio would include Health, Social Services, Education (K to 12), Culture and Youth, Justice, Women’s Secretariat, etc.

Standing Committee on the Economy – Finance, Economic and Co-operative Development, Labour, Agriculture and Food, Environment, Energy and Mines, SOCO, SGGF, Post Secondary Education and Skills Training, Rural Re-vitalization, etc.

Standing Committee on Crown and Executive Agencies – CIC Crown corporations, SPMC, Public Service Commission, Executive Council, Saskatchewan Liquor and Gaming Authority, (and all other revenue related agencies) etc.

Standing Committee on Intergovernmental Affairs and Infrastructure – Municipal Affairs, Municipal Board, Intergovernmental and Aboriginal Affairs, Highways, Northern Affairs, etc.

House Committees

Standing Committee on House Services -- the various house committees –Estimates, Nominating, Continuing Select and Communications – would be combined into a single house services committee. The Speaker would continue to serve as ex officio chair, and membership would include the house leaders, deputy house leaders, and whips. This committee would in future deal with rules and procedures reform.

The committee would have authority to alter the membership of committees during intersession periods. The committee could also alter the size of the committees (see below for comments on committee size) in cases of third parties or independent members. It would be convenient, if possible, for the House Services Committee to be established with authority to meet in advance of an opening of a new Legislature, in order to strike the committees so that committee work could commence. This idea will take some further investigation.

Standing Committee on Privileges and Elections – remain as is.

Standing Committee on Private Bills – remain as is.

Scrutiny Committees

Standing Committee on Public Accounts – this committee would continue in its present form (subject to reforms contemplated by the committee's first report and amendments to the Provincial Auditor's Act recently passed by the Assembly). The practice of electing an opposition chair should be fixed by the standing orders of the Assembly.

The new committee structure should be phased in so that a support infrastructure can be put into place, and should be reviewed after the experience of the next session.

It is recommended that the Clerk of the Committee draft standing orders to reflect this recommendation, and that revised standing orders be presented to the Assembly for adoption at the commencement of the next session of the present Legislature.

Recommendation 2 – Work of the Policy Field Committees

The policy field committees would have the following functions.

Annual Reports – should be referred automatically to the appropriate policy field committee to be used as reference tools. The committees would decide which of the reports they receive will be reviewed, in similar fashion to the present practice in the Standing Committee on Crown Corporations.

Legislation – After first reading bills could be referred by motion to a policy field committee for the purpose of a hearing (the Ontario model would be used). After second reading, all bills should be automatically referred to the appropriate four policy field committees for clause by clause consideration. This referral processes for both situations should be incorporated in the standing orders. Provision also should be made, as an option, for a bill to remain in the Assembly for Committee of the Whole consideration.

The procedure for a bill reviewed by a policy field committee after second reading would be as follows: The policy field committee could hold public hearings on a bill in advance of clause by clause consideration, if that bill had not been subject to a hearing after first reading. Amendments could be made to the bill in a policy field committee during clause consideration. Upon conclusion of policy field committee consideration, the bill must be reported back to the Assembly whereupon it would be set for Committee of the Whole consideration in the Assembly. Time limits would apply to Committee of the Whole for consideration of bills reported from policy field committees. The limits would be as follows. Participation by individual members would be limited to twenty (20) minutes each; and the time for consideration of the bill in Committee of the Whole would be set to a maximum of four (4) hours total time.

Legislation would be a matter of priority during sessional periods.

Estimates – departmental estimates would be divided into four groupings through the standing orders, so that each Budgetary Vote would be subject to committee review by the appropriate policy field committee. Estimates adopted in the policy field committees would be reported back to the Assembly for inclusion in an Appropriation Bill.

Estimates would rank with legislation as a sessional priority.

Regulations – The work of the Special Committee on Regulations should be absorbed by the policy field committees. Regulations and by-laws should be referred automatically by standing order to the appropriated policy field committee. The committees should be informed of new or amended regulations or by-laws by a parallel process to that used by the Standing Committee on Crown Corporations for significant transactions.

The committee could make recommendations to the Assembly with respect to regulations and by-laws reported to be ultra vires (present law clerk function would remain the same) or on the basis of a public policy issue. The policy field committees could hold public hearings on any regulation or by-law.

Enquiries – the policy field committees should have power to initiate enquiries. A self-referencing ability would be subject to a majority decision of the committee. Funding available for investigations would be capped (a global budget would be approved at the beginning of each fiscal year for each committee), and all requests for additional funding would be made to the Board of Internal Economy. There should be time limits on enquiries and extension to these limits would be made by appeal to the Assembly (or, if the house is not in session, to the House Services Committee – see above). References to conduct reviews could be received from Ministers. The committee could, by majority decision, overturn a ministerial order of reference. The Assembly could also issue an order of reference to a policy field committee. Enquiries would not be a matter of priority during sessional periods, but would be the main focus of activity during periods when the Assembly is adjourned.

Reports – the government should be required to respond to policy field committee reports within 120 calendar days.

Priority of Business for Policy Field Committees – the order of priority for policy field committees should be as follows: estimates; bills; regulations; annual reports; enquiries.

Recommendation 3 – Membership and size of committees

Membership of committees should continue to reflect the ratio of standings in the Assembly. All committees should be limited to seven (7) members.

The following terms would apply to the **policy field committees**. Membership could be expanded by majority decision of the committee to include a “non-voting” member. A non-voting member would be added to the committee membership for the purpose of participating in hearings on a particular subject. The non-voting member would be eligible to receive a committee per diem and re-imbursement for expenses. A government member should serve as chair and opposition member to serve as vice-chair for the policy field committees. The chair would not have a casting vote, but a deliberative vote (New Zealand model). All ties in votes would be considered the same as a defeat of the motion.

Scrutiny and house committees should be limited in size to seven members but otherwise remain as is with respect to voting and allocation of chairs.

Substitutions would be permitted, except for that of the Chair, on all committees.

It is recommended that the Clerk of the Committee draft standing orders to reflect this recommendation, and that revised standing orders be presented to the Assembly for adoption at the commencement of the next session of the present Legislature.

Recommendation 4 – Members Remuneration

Those members who serve committees should continue to receive a per diem and re-imbursement for living expenses (present formula). Extra duties remuneration of Chairs and Vice-Chairs would be set in Board of Internal Economy directives.

It is Recommended that the Clerk of the Legislative Assembly draft Directives to reflect this recommendation and that the directive should be adopted by the Board of Internal Economy.

Recommendation 5—Committee Support

A constant remark heard by the study delegation was that in order for committees to properly function, they must be adequately supported. Therefore it is recommended that generalist researchers be employed by the Office of the Clerk to serve committees. Other staffing needed will be assessed over the course of the next year, as the new committee structure is established and exact requirements identified.

It is Recommended that the Clerk of the Legislative Assembly employ generalist researchers and other staff as required to support the operations of committees, as outlined in this report.

Recommendation 6 -- Facilities

Given the increase in committee activity, it is recommended that one properly equipped and appointed committee room for hearings be established with television, audio visual presentation equipment, and seating for the public. Another smaller deliberation committee rooms should be established. All committee rooms must be capable of Hansard and television broadcast.

No more than two (2) committees requiring Hansard or television broadcasting would meet simultaneously so the main committee rooms would have to be time-shared.

It is Recommended that the Clerk of the Legislative Assembly make recommendations to the Speaker with respect to accommodation and facilities for committees, including the establishment of a second committee room.

Recommendation 7 – Private Members Day

Every private members' day should include one 75-minute debate, with the choice of subject to rotate between the government and opposition caucuses (present rules but every week). An item of business from the caucus that did not pick the subject 75-minute debate would follow.

For the items of business after the 75-minute debate, the precedence of the business would rotate as described above and each caucus could designate two items. The designation of business would be as follows. On a sitting day chosen for notice of private members' day business (i.e. Wednesday of each week), the caucuses would submit a notice of motion, and/or designate a private members' item of business already on the order paper (i.e. bills or adjourned debates) for priority consideration. Those items would then be placed on the private members' day order paper in the proper order of precedence following the 75-minute debate.

Items of business (other than 75-minute debate) could be adjourned but no more than three (3) times. After an item had been adjourned the third time then the designation "Item to be Voted" would be applied on the Order Paper.

Private Members' public bills that pass second reading would go to the appropriate policy field committee.

It is recommended that the Clerk of the Committee draft standing orders to reflect this recommendation, and that revised standing orders be presented to the Assembly for adoption at the commencement of the next session of the present Legislature.

Recommendation 8 – Integration of Committee work with House sittings

It is recommended that on any sitting day the House could recess, as required, to facilitate the work of committees. The House would then reconvene to receive reports from committees (i.e. bills, estimates etc.) before adjourning each day.

Because four committees would be working on business previously dealt with by the house, the need for as many weekly house hours will be reduced. Tuesday would be a government day and Private Members' Day would be moved to Friday (with notice of business to be on Wednesday).

It is recommended that the Clerk of the Committee draft standing orders to reflect this recommendation, and that revised standing orders be presented to the Assembly for adoption at the commencement of the next session of the present Legislature.

Recommendation 9 – Implementation of Rules Committee Recommendations

If this report is adopted the Assembly, it is recommended that the proposed changes be staged-in beginning with the next session. The new rules would be phased in as follows:

Standing Orders will be drafted by the Clerk of the Committee to reflect the changes recommended in this report, and the new standing orders presented to the Assembly for adoption at the commencement of the next session of the present Legislature. This would be accomplished through a third report of this committee. However, the standing orders would be adopted on a provisional basis, with the exception of the creation of the Standing Committee on House Services.

The provisional basis of these rules would be for two reasons. The first reason is so the Assembly has time to adjust to the new committee system. The second reason is that a stage-in period will better enable the Assembly to evaluate and build the infrastructure required to support the new committee system. At the end of the next session, your committee will evaluate the experience of the policy field committee and make recommendations with respect to the provisional rules. Therefore, your Committee makes the following recommendation:

That the Clerk of the Committee draft the standing orders to reflect the intent of this recommendation.

IV. CONCLUSIONS

It is your Committee's conclusion that the changes recommended in this report will serve to enhance the influence of individual Members' during the Legislative Session. More activity will increase opportunities for participation. And if the experience of other parliaments is any indication the changes will also promote co-operation between Members and caucuses. Much of this will be accomplished through a revitalized committee system.

It is your Committee's observation that the activities of the committees do help to promote awareness on public policy issues. The new approach to committee work advocated in this report is meant to provide a greater opportunity for the public to participate in the legislative process. The changes will also give Members of the Legislative Assembly more opportunity to be informed about community issues and problems. It is your Committee's conclusion that the recommendations in this report will strengthen the Legislative Assembly.

Respectfully submitted

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Speaker and Chair, Special Committee on Rules and Procedures

