

**THE EVOLUTION OF PRIVATE MEMBERS' BUSINESS
IN THE CANADIAN HOUSE OF COMMONS**

**James R. Robertson, Principal
Law and Government Division**

Revised 22 September 2005

The Parliamentary Information and Research Service of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Analysts in the Service are also available for personal consultation in their respective fields of expertise.

**CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PRIOR TO 1984	1
THE McGRATH COMMITTEE	3
DEVELOPMENTS FROM 1988 TO 1994	5
DEVELOPMENTS FROM 1994 TO 2002	8
DEVELOPMENTS SINCE 2002	10
CONCLUSION.....	16



CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

THE EVOLUTION OF PRIVATE MEMBERS' BUSINESS IN THE CANADIAN HOUSE OF COMMONS

INTRODUCTION

Private Members' Business consists of public bills and motions that are sponsored by private Members, rather than by the Government. "Private Members" are essentially those Members of the House of Commons who are not Cabinet ministers or presiding officers (the Speaker and other Chair occupants). While nothing prohibits parliamentary secretaries from sponsoring Private Members' Business, the practice is that they refrain from doing so while holding office.

In June 2002, the House of Commons Standing Committee on Procedure and House Affairs tabled a report proposing significant changes to Private Members' Business: all items of Private Members' Business that are debated in the House would be voted on, and each private Member should have an opportunity to table at least one such bill or motion in the course of a Parliament.

This attempt at reform is only the latest of a long series of changes that have been made over the years. This paper will outline the history and evolution of Private Members' Business in the Canadian House of Commons, with particular reference to developments since 1984. As this brief discussion will illustrate, Private Members' Business is far from static.

PRIOR TO 1984

In order to appreciate the changes that were made in 1984 by the McGrath Committee, it is useful to have an historical perspective. Only the major aspects of the procedures that were in place from 1867 to 1984 will be discussed.

The *Annotated Standing Orders of the House of Commons* notes that from 1867 to 1962, the Standing Orders gave priority to Private Members' Business on particular days in each week. Successive governments, however, found such arrangements inadequate for the passage of their own legislative programs, and regularly proposed special and sessional orders that gave precedence to government business. By 1906, this pattern had established itself to such an extent that in that year, the weekly order of business was officially amended so that four weeks from the start of each session one of the three private Members' days – Thursday – was given over to government business.

Between 1906 and 1955, the use of special and sessional orders to give precedence to government business had appropriated virtually all the time remaining for private Members. In 1955, amendments to the Standing Orders once again formalized the practice of giving precedence to government business: the number of private Members' days was reduced from each Monday, Wednesday and four Thursdays per session to six Mondays and two Thursdays per session. Depending on the length of each session, this change, although on the surface a further reduction of the time for Private Members' Business, at least guaranteed that these eight days would not be further nullified by the suspension of private Members' time through the use of special or sessional orders.

In 1962, the House abandoned the allocation of a certain number of days each session for Private Members' Business and, instead, set aside one hour per day for that purpose. However, after this hour had been used 40 times per session, its use on Mondays, Tuesdays and Wednesdays lapsed. In 1968, Private Members' Business was removed from the order of business on Wednesdays. Thereafter, the rule establishing a maximum 40 considerations per session was retained for Mondays and Tuesdays only.

In 1982, the practice of considering Private Members' Business for one hour on certain days was replaced by a single private Members' day: Wednesday. This meant a reduction of one hour of debating time per week, from four hours to three. In late 1983, however, the House reverted to the consideration of Private Members' Business for one hour per day on Monday, Tuesday, Thursday and Friday, with no maximum number of times for consideration on Mondays and Tuesdays. The omission of this part of the former rule meant that the amount of time provided for private Members actually increased as a result.⁽¹⁾

(1) House of Commons, *Annotated Standing Orders*, 1989, pp. 301-302.

Until the late 1950s, two criteria determined the order in which items of Private Members' Business were considered: their date of notice and, in the case of bills, their stage in the legislative process. Other, secondary criteria, whose purpose was to distinguish the different categories of business from one another, also became important. For instance, in 1910, a higher precedence was accorded to unopposed Private Members' Notices of Motions for the Production of Papers, while opposed motions of this kind continued to be considered with other notices of motions until 1961, when they were given a specific category in the Order of Business and were debated on a designated day. Similarly, in 1927, each Member was limited to one notice of motion on the *Order Paper* at one time, with a provision that notices would be dropped if called twice and not proceeded with.

As the volume of Private Members' Business increased, a ballot system for notices of motions was introduced by the Speaker in 1958. At the start of a subsequent session, a similar practice was extended to private Members' public bills. In either case, when an item had been considered but not disposed of, it fell to the bottom of the list. Since there was no restriction on the number of bills that could be introduced – unlike motions – Members soon realized that by placing several bills on notice, their chances in the draw improved. To ensure a more equitable distribution, the party Whips limited the number of bills standing in the name of any Member among the first 50 bills drawn.

In 1982, all categories of Private Members' Business (except private bills) were combined into one group, for which a single draw of Members' names was held at the start of each session. A limitation similar to that which had previously applied to bills was retained for the first 50 items drawn, but the limit of one notice of motion per Member was dropped.

In the 1970s, Private Members' Business was organized by the Government House Leader's office. This practice was criticized by some Members as undue government interference, and eventually the Private Members' Business Office was established under the Clerk of the House.

THE McGRATH COMMITTEE

The Special Committee on Reform of the House of Commons – known as the McGrath Committee after its chairman, the Hon. James A. McGrath – was established in December 1984. There had been previous attempts to reform the procedures of the House, including Private Members' Business, most notably the Special Committee on Standing Orders and Procedure (the Lefebvre Committee) in 1982-1984.

In its final report to the House of Commons in June 1985, the McGrath Committee stated: “The purpose of reform of the House of Commons in 1985 is to restore to private members an effective legislative function, to give them a meaningful role in the formation of public policy and, in so doing, to restore the House of Commons to its rightful place in the Canadian political process.”⁽²⁾ This was an overriding theme of the Committee’s report. On the issue of Private Members’ Business, the Committee said:

The House does not attach any great importance to private members’ business as it is now organized. This is evident from the fact that members are seldom greatly concerned to claim the priorities they have drawn in the ballot governing the use of private Members’ time, and this is largely because private members’ bills and motions rarely come to a vote.

Our proposals are designed to achieve a number of improvements in the way private members’ business is dealt with. They would tighten the conditions of the ballot, widen the scope of private members’ legislation, and ensure that some private members’ bills and motions come to a vote.⁽³⁾

The recommendations in the report formed the basis of Standing Order amendments adopted on a provisional basis after lengthy debate in the House in February 1986. The Standing Orders on Private Members’ Business were grouped together in a separate chapter of the Standing Orders for the first time, and fundamental changes were made to the procedures.

Most significantly, it was provided that from all items of Private Members’ Business, 20 would be drawn at the beginning of a session, and others from time to time thereafter, to establish an “order of precedence,” and that only items that were drawn would be considered during Private Members’ Hour. In addition, a Standing Committee on Private Members’ Business was established and empowered to select, from among the items on the order of precedence, a maximum of six. These “votable” items, if not otherwise disposed of when considered a first time, did not drop from the *Order Paper* as did unselected items, but were instead placed at the bottom of the order of precedence and considered again when they reached

(2) Special Committee on Reform of the House of Commons, *Third Report*, 18 June 1985, p. 1.

(3) *Ibid.*, p. 40.

the top. After five hours of consideration, each selected item was required to come to a vote. The Committee's report regarding votable items was deemed adopted when tabled in the House, and was neither debatable nor amendable.⁽⁴⁾

In December 1986, a special order was passed by the House allowing the Speaker to exchange non-votable items in the event that a Member notified the Chair that he or she could not be present in the House when his or her item was due for consideration. The McGrath Committee had made such a recommendation; when it was not adopted, a point of order had been raised to the effect that, since the House continued with prior business – usually Government Orders – when there is no Private Members' Hour due to the absence of the Member whose item was at the top of the order of precedence, private Members could expedite the business of the government by simply giving notice of their inability to be present.

In June 1987, the order in which items of Private Members' Business was considered was altered. Accordingly, from this point, the *Order Paper* contained all types of items, including private bills and private Members' public bills originating in the Senate. No item could be considered before the first item on the order of precedence.

DEVELOPMENTS FROM 1988 TO 1994

5 April 1989

The Standing Committee on Private Members' Business was disbanded, and its functions were incorporated into the new Standing Committee on Elections, Privileges, Procedure and Private Members' Business. Part of the new Committee's mandate was "the selection of items of Private Members' Business pursuant to Standing Order 92 and the consideration of business related to Private Bills" (S.O. 108(3)). In February 1990, its name was shortened to the Standing Committee on Privileges and Elections. The Committee began the practice of appointing an all-party subcommittee on Private Members' Business to select the votable items.

(4) A number of recommendations of the McGrath Committee – such as the admissibility of private Members' bills with financial provisions, and the non-suspension of Private Members' Hour on allotted days – were not adopted.

26 October 1989

The House adopted the following motion:

That the Standing Committee on Elections, Privileges, Procedure and Private Members' Business inquire into, consider and report to the House (by December 7, 1989) on whether (and, if so, then by what procedural changes) there should be changes to the manner in which Private Members' items are selected to become items in the Order of Precedence; and

That, if the said Committee is of the opinion that other aspects of the procedures or practices relating to the conduct of Private Members' Business (including procedures on Private Bills) should be reviewed or modified, the Committee include such observations or recommendations to the House in its report.⁽⁵⁾

6 December 1989

The Standing Committee on Elections, Privileges, Procedure and Private Members' Business tabled in the House its Seventh Report, which included recommendations regarding the selection of items for the order of precedence, the selection of votable items, the time limit for debate on votable items, and Private Members' Business on Supply Days. The report was not concurred in.

10 May 1990

The House unanimously adopted a government motion regarding amendments to the Standing Orders regarding Private Members' Business on a provisional basis until the last sitting day in December 1990. The recommendations in the December 1989 Report of the Standing Committee formed the basis for the new provisions, although they had been modified in a number of ways following consultations among the parties.⁽⁶⁾ The amendments provided for Private Members' Hour on Supply Days, and changes to the selection of items for the order of precedence and the selection of votable items. There were three significant changes, as recommended by the Standing Committee. First, Members' names would be drawn rather than individual items, which meant that Members with one motion or bill would be treated equally with those who had several motions or bills. Second, separate lists of bills and motions were established, and the number of votable items was set at three bills and three motions. Third, the time for debate on votable items was reduced from five hours to three.

(5) House of Commons, *Votes and Proceedings*, 26 October 1989, p. 752, *Debates*, p. 5139.

(6) There had been a brief debate on an earlier version of the motion on 3 May 1990, but that motion was withdrawn.

6 December 1990

The Standing Committee on Privileges and Elections tabled its Twenty-first Report. The Committee, after reviewing the success of the Provisional Standing Orders that had been approved on 10 May 1990, recommended that they be made permanent. It went on to propose a number of other changes, including the exchange of votable items, Private Members' Hour on Mondays, and the deferral of any recorded division with respect to Private Members' Business at the request of the Whips.⁽⁷⁾

11 April 1991

The House of Commons passed a motion making extensive changes to the Standing Orders. Although the package as a whole was very contentious, there was unanimous support for the provisions regarding Private Members' Business, which were largely based on the Twenty-first Report of the Standing Committee on Privileges and Elections. The principal changes were:

- the 1990 Provisional Standing Orders regarding Private Members' Business were made permanent;
- Private Members' Hour began on Mondays at 11:00 a.m. (instead of 1:00 p.m.) and on Fridays at 3:00 p.m. (instead of 2:00 p.m.), and an additional hour was added on Wednesdays from 7:00 p.m. to 8:00 p.m.;
- if Private Members' Hour was cancelled on a Monday, the House could use the time to deal with government business instead;
- an exchange of votable as well as non-votable items was permitted, with the notice for such exchanges increased from 24 to 48 hours;
- the Whips could defer recorded divisions on Private Members' Business;
- Private Members' Hour would no longer be suspended on allotted days, except the last allotted day of the supply period ending 23 June, as long as it did not fall on a Monday; and
- the Standing Committee on Privileges and Elections was merged into the Standing Committee on House Management, whose mandate included Private Members' Business (including the selection of votable items).

The changes came into effect on the first sitting day of the Third Session of the 34th Parliament (i.e., 3 April 1989).

(7) An earlier version of this report was tabled on 27 November 1990 as the Committee's Twentieth Report.

- 14 February 1992** The Standing Committee on House Management tabled its Twenty-fourth Report regarding divisions on Private Members' Business. It was recommended that during recorded divisions on private Members' bills or motions, the vote of the sponsoring Member be recorded first, and then the rest of the votes on that side of the aisle be recorded before proceeding to the other side. The report was concurred in by the House on 29 April 1992.
- 11 March 1992** The Standing Committee on House Management, in its Twenty-seventh Report, recommended that the order of precedence be increased from 20 to 30 items, that draws be held before the list dropped below 15 items instead of 10, and that the maximum number of votable items be increased from three bills and three motions to five of each. This report was concurred in by the House on 29 April 1992.
- 1 April 1993** The Standing Committee on House Management tabled a major report on parliamentary reform, which included three recommendations regarding Private Members' Business: sanctions for failure to move a bill when scheduled; extension of Private Members' Hour where the start is delayed or the Hour is interrupted; and divisions on Private Members' Business. These recommendations had not been adopted when the 34th Parliament was dissolved.

DEVELOPMENTS FROM 1994 TO 2002

At the beginning of the first session of the 35th Parliament, the new Liberal government proposed a package of amendments to the Standing Orders. The motion was adopted by the House on 7 February 1994, and came into effect on 14 February 1994. The sitting times of the House were changed slightly, with the result that Private Members' Hour was rescheduled: it is now held from 11:00 a.m. to 12:00 p.m. on Mondays, from 5:30 p.m. to 6:30 p.m. on Tuesdays, Wednesdays and Thursdays, and from 1:30 p.m. to 2:30 p.m. on Fridays. Provision was also made for the rescheduling of Private Members' Hour in certain circumstances.

On 1 June 1994, the Standing Committee on Procedure and House Affairs recommended, as part of an overhaul of publications of the House of Commons, the elimination of the printing in the *Order Paper* of the list of Private Members' Business items outside the order of precedence. The Committee's Twenty-fourth Report was concurred in by the House on 3 June 1994.

On 10 June 1994, in its Twenty-seventh Report, the Committee made a number of recommendations regarding the Standing Orders of the House, including (1) provisions regarding a delay or interruption in Private Members' Hour and (2) the removal of the requirement for a Royal Recommendation when a bill is introduced, thereby removing one of the major constraints on private Members' bills. The report was concurred in by the House on the same day.

On 9 December 1994, the Committee tabled its Fifty-third Report, which, among other things, dealt with deferred divisions, including divisions in connection with Private Members' Business. The Report was concurred in by the House on 6 February 1995.

On 4 June 1995, in its Eighty-first Report, the Committee recommended changes to the procedure regarding report stage and third reading of private Members' bills. Under the existing Standing Orders, the second sitting day for report stage and third reading of private Members' bills could not be scheduled for a Monday or Friday, and the Committee recommended the deletion of this prohibition. The Report was concurred in by the House on 8 June 1995.

In November 1998, the House of Commons adopted the Thirteenth Report of the Standing Committee on Procedure and House Affairs, which dealt with various amendments to the procedures respecting Private Members' Business. Originally tabled by the Sub-committee on Private Members' Business shortly before the dissolution of the 35th Parliament, it had been re-adopted by the Sub-committee after the election, and tabled in the House of Commons by the Committee in November 1997. The necessary amendments to the Standing Orders became effective on the first sitting day in 1999. The amendments included:

- provision for the reinstatement at the beginning of a new session of private Members' bills in the same form as they were at prorogation;
- provision for items with the support of at least 100 Members (including at least 10 from each of a majority of the recognized parties) to be placed on the order of precedence;
- provision for the 10 items from the order of precedence that can be made votable to consist of any combination of bills and motions; and
- a requirement for committees to which private Members' public bills are referred to report the bill back to the House within 60 sitting days, with a possible extension of 30 sitting days and the option of reporting that the bill not be proceeded with further.

Subsequently, in June 2000, the House of Commons Standing Committee recommended the abolition of the 100-signature procedure for Private Members' Business. After approximately one year, problems had become apparent and there was a general perception that the procedure had not functioned as originally intended. The Committee's report, however, had not been adopted when the 36th Parliament was dissolved in October 2000. Following further study of the issue at the beginning of the 37th Parliament, on 13 June 2001, the House adopted the Thirty-sixth Report of the Standing Committee on Procedure and House Affairs, which repealed the 100-signature procedure for Private Members' Business.

On 12 June 2001, the House of Commons adopted the following motion:

That the Standing Committee on Procedure and House Affairs be instructed to draft, and report to this House no later than November 1, 2001, changes to the Standing Orders improving procedures for the consideration of Private Members' Business, including a workable proposal allowing for all items to be votable.

The Committee, having received an extension of the deadline to April 2002, tabled its Forty-third Report on 14 December 2001, in which it reported that changes to the Standing Orders for the consideration of Private Members' Business, including a workable proposal allowing all items to be votable, could not be achieved at that time.

DEVELOPMENTS SINCE 2002

On 12 June 2002, the Standing Committee on Procedure and House Affairs tabled its Sixty-sixth Report in the House of Commons. This report proposed major reform of Private Members' Business. The proposal reflected concerns and suggestions that Members had expressed in a number of different forums, including discussions in the Committee, debates in the House of Commons, and a round-table discussion hosted by the Committee on 2 May 2002, to which all Members of the House were invited, and which attracted 31 MPs (including members of the Committee).

The basic principles of the proposal were as follows:

- Each eligible Member should have at least one opportunity per Parliament to have an item of Private Members' Business debated in the House of Commons.
- Unless deemed "non-admissible," each item on the order of precedence would be votable, unless the sponsor opted to make it non-votable.

- Eligible Members would retain the right to present as many motions and introduce as many bills as they wished, as is currently the case.
- Members would be called upon to participate in the first round of Private Members' Business at the beginning of the period. Members must have at least one item on the *Order Paper* to qualify for the draw. Draws for names would be held as required and would continue until all eligible Members wishing to participate had the opportunity to do so. Subsequent rounds would follow if time permitted.
- This new procedure would be adopted on a pilot project (provisional) basis from the fall of 2002 to the end of the 37th Parliament, provided that it was subject to a review by the Standing Committee on Procedure and House Affairs after one year.

Under the proposal, the order of precedence would consist of 40 items; subsequent draws would be held when the number of items on the order of precedence falls below 20. The order of precedence would continue from session to session within a Parliament, and, therefore, be unaffected by any prorogation.

Unlike the existing procedure – whereby a committee selects only a limited number of votable items from those selected in a draw – under the new procedure all items would be votable unless they are found to be “non-admissible.” It was proposed that this decision be made by a panel consisting of one Member from each recognized party in the House. The Panel would be able to report directly to the House, and would no longer be a subcommittee of the Standing Committee on Procedure and House Affairs.

Within seven sitting days of the draw, if there was an objection involving an item that had been drawn and which was votable, any Member could advise his or her party's representative on the Panel. If the member of the Panel agreed, he or she would provide written notice to the clerk of the Panel. Members who did not belong to a recognized party in the House would send their objections to the chair of the Panel. The objection would have to allege non-compliance with certain pre-established criteria. The Panel would be expected to develop criteria that are as objective as possible, and these would be tabled for information in the House. The criteria could include such matters as: limits of federal jurisdiction; clear violation of the *Canadian Charter of Rights and Freedoms*; similarity with items previously voted on by the House in that Parliament; and the government's legislative agenda. Upon receiving an objection, the clerk would convene a meeting of the Panel at the earliest opportunity, and, in any event, no later than 12 sitting days after the draw, to consider the objection. The objection would be assessed on the basis of the pre-established criteria. If the Panel found that the item that was the

subject of the objection was non-admissible in accordance with the criteria, the sponsor would have two options: (1) within two sitting days, he or she could select another item in his or her name on the *Order Paper* (whereupon there would be five sitting days for objection and a further five sitting days for the Panel to deal with any such objection), and retain his or her place in the order of precedence; or (2) the name of the sponsor could be dropped to the bottom of the order of precedence to allow him or her additional time to remedy the defect and reintroduce the item in an admissible form. If the sponsor did not reintroduce or reselect within 48 hours of the item being due for debate, his or her name would be removed from the order of precedence, and he or she would be eligible for another draw in the same round.

Non-votable items would be entitled to a maximum of one hour of debate, while votable items would be allotted a maximum of two hours of debate. Unless the matter was disposed of within the first hour of debate, there would be a minimum of 10 sitting days between the first and second hours of debate. The provisions for report stage and third reading would remain as at present. No dilatory motions would be allowed during Private Members' Business. If a recorded division was demanded on an item of Private Members' Business, it would be deemed to be deferred to the next Wednesday that the House sits.

Upon receipt of a Message from the Senate regarding the adoption by the Senate of a Senate Private Member's Bill, and with the name of a Member of the House being identified as the sponsor, the bill would automatically be added to the order of precedence, as at present. A Member of Parliament sponsoring a Senate bill would use his or her spot in any round. Bills originating in the Senate would not be added to the order of precedence if they had been previously disposed of in the House in the same Parliament. It should be noted that serious concerns were expressed by Senators regarding these proposed changes.

The report contained a number of other provisions. It recommended that amendments to motions for the second or third reading of private Members' bills and private Members' motions would be moved only with the consent of the sponsor of the item. It also proposed that the principles of Standing Order 97.1 be retained, provided that there was a clarification in the Standing Orders regarding a report requesting an extension of 30 sitting days for the consideration of such bills. It also contained recommendations for transitional provisions from the old system to the new. The Committee indicated that it would consider the feasibility of a procedure for "legislative proposals" prior to the end of the pilot project.

The Committee noted that, in designing the proposed new procedures for Private Members' Business, it had tried to accommodate differing priorities and interests. It believed that these changes strike an appropriate balance. They were to be considered as a package of amendments, all of which carefully fit together. The Committee also emphasized that it was recommending that the package of changes be implemented on a provisional basis. As with any new system, it would have to be carefully monitored; the Committee undertook to review the pilot project, and to propose changes if they were necessary.

The first session of the 37th Parliament was prorogued on 16 September 2002, before the Sixty-sixth Report of the Standing Committee on Procedure and House Affairs had been concurred in. The Committee re-tabled it as its Fourth Report at the beginning of the second session, on 30 October 2002. In the introduction to the new report, the Committee noted: "The 66th Report was the culmination of considerable work and deliberation on the part of members of the Committee, and was the result of a high degree of good will and compromise. We understand that some Members of the House, and some Senators, may have concerns with respect to a few of the recommendations contained in that report, and these should be addressed prior to the changes being adopted and implemented." The Fourth Report was adopted by the House of Commons on 6 November 2002. This represented adoption of the proposed changes in principle, and it therefore became necessary to draft the necessary changes to the Standing Orders to implement them.

The Standing Committee on Procedure and House Affairs began consideration of the draft amendments to the Standing Orders, but, on 11 December 2002, in its Fourteenth Report, it recommended that the House continue with the current system and the existing Standing Orders governing Private Members' Business – especially votability – until such time as the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons had completed its business and reported to the House of Commons.

The Special Committee, consisting of the Deputy Speaker of the House and the House Leaders and Caucus Chairs of the five recognized parties in the House, had been established on 28 November 2002. The issue of reforms to Private Members' Business was, therefore, the first item of business when the Special Committee began its work in February 2003. The matter had taken on some urgency as the opposition parties were engaged in various delaying tactics in the House to pressure the Government into addressing these changes.

The Special Committee's First Report, which was presented in the House on 20 February 2003 and adopted the same day, proposed a new regime for Private Members' Business, whereby all items on the order of precedence would be votable, and all private Members would have an opportunity to present an item during the life of a Parliament. As such, the proposal was similar to the Sixty-sixth Report of the Standing Committee on Procedure and House Affairs, although it differed on a number of points.

The essential components of the new regime were that all Members of the House should have at least one opportunity during the course of a Parliament to have a private Members' bill or motion voted upon by the House. A list of all eligible Members was to be established at the beginning of a new Parliament, from which an order of precedence of 30 items would be created from time to time. All items on the order of precedence would be debated for up to two hours, at the end of which they would come to a vote. All recorded divisions would be held on the next sitting Wednesday. A slightly reconstituted Subcommittee on Private Members' Business would consider whether any of the items on the order of precedence should not be votable in accordance with specified, limited criteria; any such negative decision could be appealed to the Standing Committee on Procedure and House Affairs, or, ultimately, to the House of Commons, where a secret ballot would be held on the appeal.

On 28 February 2003, the Special Committee presented another report, which contained the actual amendments to the Standing Orders in order to implement its First Report. This report was adopted by the House of Commons on 17 March 2003. The Report also contained various transitional measures.

The new rules were adopted on a provisional basis, for the remainder of the session or to 17 March 2004, and were to be reviewed by the Standing Committee on Procedure and House Affairs. The Provisional Standing Orders were subsequently extended until the earlier of the end of June 2004 or the dissolution of the 37th Parliament, and, later, for the first sitting 60 days of the 38th Parliament. This was designed to allow the Committee to undertake a review of the new rules, and how they were operating in practice, and to recommend changes, if required.

On 16 February 2004, the House agreed to a wording change in one of the Provisional Standing Orders to reflect the fact that, following the merger of the Canadian Alliance and Progressive Conservative parties, there were only four recognized parties in the House.

At the beginning of the first session of the 38th Parliament, the Standing Committee on Procedure and House Affairs made a minor change to the composition of the Subcommittee on Private Members' Business (Standing Order 91.1(1)): under the revised rule, the Subcommittee consisted of one Member from each of the parties recognized in the House and a chair from the government party. This report was presented to the House on 20 October 2004.

In its Twelfth Report, the Committee recommended the extension of the Provisional Standing Orders until the last sitting day of June 2005, on the basis that additional experience with the Provisional Standing Orders would be desirable before decisions were made about making the new procedures permanent, or considering changes. This report was presented and concurred in by the House of Commons on 29 October 2004.

The review of the Provisional Standing Orders was undertaken by the Subcommittee on Private Members' Business. It received a briefing from Table Officers of the House of Commons, sent a survey to all Members (to which it received responses from 103 MPs), and convened a round-table meeting of Members to discuss the Provisional Standing Orders and proposals for change. Of the respondents to the survey, 48% thought that the Provisional Standing Orders should be made permanent, while 27% thought that they should be continued on a provisional basis. The Subcommittee concluded that the vast majority of Members were in favour of the new regime. This finding was consistent with the Subcommittee members' own experiences, and anecdotal evidence that the new Standing Orders, while not perfect, were an improvement over the old ones and had been generally successful. The Subcommittee felt that the new rules had addressed many of the concerns and complaints that had been voiced previously by Members. Given that there appeared to be a significant degree of satisfaction with the Provisional Standing Orders, and no major problems had been identified, the Subcommittee concluded that making the Provisional Standing Orders permanent would allow for certainty, and avoid the need to continue reviewing and extending the Provisional Standing Orders, with the consequent risk that a gap or confusion could arise. The Subcommittee also noted that any Standing Orders can be amended by the House of Commons at any time. The Subcommittee proposed a number of minor and technical amendments to the Provisional Standing Orders, as recommended by the procedural staff of the House of Commons. Most of these were designed to ensure that the English and French texts were consistent and to enhance clarity.

The Standing Committee on Procedure and House Affairs agreed with the Subcommittee's recommendation that the amended Provisional Standing Orders be made permanent, effective 30 June 2005. This report, the Committee's Thirty-seventh, was presented to the House on 11 May 2005, and concurred in by the House.

On 26 March 2003, in accordance with the 28 February 2003 report of the Special Committee on the Improvement and Modernization of the Procedure of the House of Commons, the Standing Committee on Procedure and House Affairs had tabled in the House of Commons a list of criteria for making items of Private Members' Business non-votable under Standing Order 91.1 of the Provisional Standing Orders. The criteria were as follows:

- Bills and motions must not concern questions that are outside federal jurisdiction.
- Bills and motions must not clearly violate the *Constitution Acts, 1867 to 1982*, including the *Canadian Charter of Rights and Freedoms*.
- Bills and motions must not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session of Parliament.
- Bills and motions must not concern questions that are currently on the *Order Paper* or *Notice Paper* as items of government business.

It should be noted that in October 2003 and February 2004, the Committee agreed with reports from the Subcommittee on Private Members' Business that two items be designated as non-votable, pursuant to Standing Order 92(3). Neither decision was appealed to the House of Commons. A similar decision was made in November 2004, at the beginning of the 38th Parliament, and again there was no appeal to the House.

CONCLUSION

The regime for Private Members' Business is the culmination of many changes – major and minor – over the years. Many Members view Private Members' Business as an important opportunity. It remains to be seen whether the new rules will revitalize the system and alleviate the concerns and frustrations that have been expressed by Members, or whether they will create new and unforeseen problems.