



# Limiting Parliamentary Debate: The Inception of Closure and Time Allocation

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## I. INTRODUCTION

Since its introduction in the Canadian House of Commons in the early 1900s, the 'closure' motion has been met with fierce opposition and has been branded an anti-democratic tool used by governments to silence minority voices. When 'time allocation' entered the scene over 50 years later, the response was not much better. In both cases, opposition parties decried what they saw as further limits on their right to represent minority views and challenge the government on its policies and legislation.

Over the past few decades, the federal House of Commons has seen almost routine use of both closure and time allocation. Many provincial legislatures have also experienced the use of these procedures, and all provinces have some mechanism for limiting debate in their provincial rules of procedure.

## II. PARLIAMENTARY PROCEDURE AND THE ROLE OF THE OFFICIAL OPPOSITION

According to analysts, "[O]ne of the fundamental principles of parliamentary procedure is that debate in the House of Commons must lead to an unimpeded decision in a reasonable time."<sup>1</sup> On a politically contentious issue, however, an opposition party will want to drag out deliberation as long as possible to increase public awareness, extend the time available for criticism of the government, and

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<sup>1</sup> Robert Marleau & Camille Montpetit, *House of Commons Procedure and Practice* (Montreal: Cheneliere/McGraw-Hill, 2000) at 553 [Marleau & Montpetit].

prevent the government's initiative from proceeding on schedule, or perhaps altogether. The official opposition plays a crucial, fundamental role in any parliamentary system of government, given that "genuine political opposition is a necessary attribute of democracy, tolerance, and trust in the ability of citizens to resolve differences by peaceful means. The existence of an opposition, without which politics ceases and administration takes over, is indispensable to the functioning of parliamentary political systems."<sup>2</sup> It has become well-understood, in fulfillment of this most important function, an opposition's greatest tool is time.

On the other side of the coin is a democratically elected government. As time has progressed, governments at both federal and provincial levels have found it more difficult to enact their legislative initiatives within a desirable or reasonable timeframe. While a reasonable amount of time must be given to hear and consider minority views and criticisms, opposition obstruction can frustrate government business. In some cases, a majority government can be rendered completely powerless, resulting in the conclusion:

...legitimate dissent becomes obstruction when it has no other purpose than to delay, when it is not exposing weakness or moulding opinion, but simply preventing legislation from being passed.<sup>3</sup>

The tactic just described, commonly referred to as a 'filibuster,' is "designed to obstruct and delay legislative action by prolonged and often irrelevant speeches on the floor of the House or Senate."<sup>4</sup> A filibuster could include anything from introducing numerous legislative amendments, repeatedly raising points of order, or merely speaking endlessly on the floor of the House. For example, in 1991, the Conservative Opposition in Ontario introduced a bill that listed, in its title, the names of all the lakes and rivers inhabited by zebra mussels in Ontario.<sup>5</sup> Just reading the title of the bill took an extraordinary length of time. The rules of procedure in Ontario now limit the introduction of a bill to no more than five minutes.<sup>6</sup> Canada's House of Commons has also seen its fair share of filibusters. In December of 1999, the Reform Party used stalling tactics to delay the passage of the Nisga'a land claims legislation by demanding

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<sup>2</sup> Canada, Parliamentary Research Branch, *The Opposition in a Parliamentary System* by Gerald Schmitz, (Ottawa: Library of Parliament, 1988) [Schmitz].

<sup>3</sup> C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987) at 131 [Franks].

<sup>4</sup> *Black's Law Dictionary*, 7<sup>th</sup> ed., s.v. "filibuster".

<sup>5</sup> Mark MacKinnon "Bloc launches delaying tactics over Clarity bill" *Globe and Mail* (14 March 2000) A4 [MacKinnon].

<sup>6</sup> Ontario, *Standing Orders of the Legislative Assembly of Ontario* (November 1999) [Ontario Rules] at Rule 33(g).

roll-call votes on 471 amendments to the legislation. The voting process took almost 45 hours to complete.<sup>7</sup> Increasing procedural limits on debate greatly reduce the opportunity for filibusters, but creative oppositions can always find procedural loopholes to keep the government waiting to get on with its business.

As early as 1868, Canadian governments sought to impose reasonable limits on parliamentary debate.<sup>8</sup> Over the past 135 years, legislative bodies have continued to amend rules of procedure and impose limits on debate while maintaining the balance between government and opposition. Two such limiting devices are closure and time allocation.

### III. PART ONE: THE CLOSURE MOTION AND THE 'PREVIOUS QUESTION'

#### A. Introduction

The term 'closure' is used in different jurisdictions to refer to somewhat different motions. For the purpose of this discussion, 'closure' will be used to refer to the motion 'that debate shall not be further adjourned.' The motion 'that the question be now put' will be referred to as the 'previous question'. In some Canadian jurisdictions, the previous question is separate and distinct from the closure motion and different procedural rules govern the use of both the previous question and the more restrictive closure motion.<sup>9</sup> In other Canadian provinces, the previous question appears in lieu of the closure motion and is often referred to as simply 'closure.'<sup>10</sup> This discussion will be limited to a consideration of the motions used in the federal House of Commons and Manitoba Legislature only.

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<sup>7</sup> MacKinnon, *supra* note 5.

<sup>8</sup> Marleau & Montpetit, *supra* note 1 at 554.

<sup>9</sup> See Canada, *Standing Orders of the House of Commons* at Standing Order 57 (closure) and Standing Order 61 (previous question) [Canada Rules]; Manitoba, *Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba* at Rule 49 (closure) and Rule 74 (previous question) [Manitoba Rules]; Saskatchewan, *Rules and Procedures of the Legislative Assembly* at Rule 37 (closure) and Rule 52 (previous question) [Saskatchewan Rules]; and Newfoundland, *Newfoundland and Labrador House of Assembly Standing Orders* at Rule 43 (previous question) and Rule 47 (closure) [Newfoundland Rules].

<sup>10</sup> See Alberta, *Standing Orders of the Legislative Assembly of Alberta* at Rule 47; British Columbia, *Legislative Assembly, Standing Orders* at Rule 46 [British Columbia Rules]; New Brunswick, *Legislative Assembly of New Brunswick Standing Rules* at Rule 69 [New Brunswick Rules]; Nova Scotia, *Rules and Forms of Procedure of the House of Assembly*; Ontario Rules, *supra* note 6 at Rule 33(g) [Ontario Rules]; and Quebec, *Standing Orders of the National Assembly* at Rules 202-204 and Rule 251.

### 1. *Previous Question*

In the first category, the 'previous question' is moved as follows: 'that the question be now put'. The object of the motion is merely to preclude any further amendment to the main question before the House. No notice is required before the previous question is moved; once moved, the motion is debatable. Therefore, moving the previous question does not bring an immediate end to debate. It merely limits debate by restricting the moving and debate of amendments.<sup>11</sup> If and when the previous question motion is carried, the original question before the House is put forthwith without any further debate.

### 2. *Closure*

The next category is the closure motion. The closure motion, 'that debate shall not be further adjourned', works as follows:

The closure rule provides the government with a procedure to prevent the further adjournment of debate on any matter and to require that the question be put at the end of the sitting in which a motion of closure is adopted.<sup>12</sup>

A Minister must give one day's notice of the intention to move the closure motion. Once moved, the closure motion is not subject to amendment or debate, and once a closure motion has been adopted, any further debate on the question currently before the House is limited and the question will be brought to a definitive conclusion by the end of that day's sitting.<sup>13</sup> At a predetermined time, no additional members will be allowed to rise to speak, and the question will be put by the Speaker. The time allowed for debate after the closure motion, and the time by which the question must be resolved, will vary by jurisdiction.<sup>14</sup>

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<sup>11</sup> Marleau & Montpetit, *supra* note 1 at 556.

<sup>12</sup> *Ibid.* at 558.

<sup>13</sup> Geoffrey H. Stanford, *Bourinot's Rules of Order*, 3<sup>rd</sup> rev. ed. (Toronto: McClelland & Stewart, 1977) at 26.

<sup>14</sup> For instance, in Saskatchewan and Newfoundland, members may speak on the main question for no longer than 20 minutes each, and debate will be cut-off at 1:00am. In Manitoba, members may speak for 30 minutes each, and the question will be put at 2:00am. In the federal House of Commons, members may speak for 20 minutes each, and the question will be put at 8:00pm. See Newfoundland Rules, *supra* note 9 at Rule 47; Saskatchewan Rules, *supra* note 9 at Rule 37; Manitoba Rules, *supra* note 9 at Rule 49(2); and Canada Rules, *supra* note 9 at Standing Order 57.

## B. Closure in the Canadian House of Commons

### 1. Introduction of Closure

In December of 1912, Prime Minister Robert Borden introduced in the House of Commons a bill that would send a \$35 million contribution to Great Britain's Royal Navy.<sup>15</sup> The Opposition Liberals, led by Sir Wilfred Laurier, took issue with the necessity of a Canadian contribution, and instead advocated for the development and strengthening of the Canadian navy.

Four months later, in April 1913, the Naval Aid Bill had still not been passed. The Liberal Opposition had put to use many stalling tactics familiar to any opposition, moving amendment upon amendment and debating each motion to the fullest extent allowed under the rules of procedure. The Borden Government started to consider whether a change to these procedural rules was the only way to secure passage of this contentious legislation. W.F. Dawson recounted the series of events as follows:

The obstruction of the opposition culminated in Committee of the Whole when they kept the House in virtually continuous session for two weeks...Borden offered the Liberals all the time they wished for debate and merely asked Laurier to set a date for third reading. The Liberals rejected the plan, and Borden announced to his Cabinet that closure had become a necessity.<sup>16</sup>

On 9 April 1913, Borden introduced a resolution to change the rules of procedure in the House of Commons. The new rules would allow the government to exercise greater control over bringing debates to timely conclusions. Borden's proposal signalled the insertion of the closure mechanism into the Canadian Parliament's rule book for the first time.<sup>17</sup>

In support of the closure mechanism, Borden stated that:

...[n]o one is more ready than I to acknowledge that liberty of speech and freedom of debate must be preserved, but I venture respectfully to suggest that these privileges must be observed and maintained under such conditions that they shall not be allowed to degenerate into license and obstruction."<sup>18</sup>

He went on to note that for every piece of legislation introduced by the government, there were no less than 19 different stages at which it would be possible for every member of the House to debate, and every amendment

<sup>15</sup> Bill 21, *An Act to authorize measures for increasing the effective naval forces of the Empire*, 2nd Sess., 33<sup>rd</sup> Parl., 1912 [Naval Aid Bill].

<sup>16</sup> W.F. Dawson, *Procedure in the Canadian House of Commons* (Toronto: University of Toronto Press, 1962) at 122 [Dawson].

<sup>17</sup> *House of Commons Debates* (9 April 1913) at col. 7388-9 (Prime Minister Borden).

<sup>18</sup> *Ibid.* at col. 7389.

moved could also be debated by each and every member of the House.<sup>19</sup> Borden concluded:

It is perfectly obvious ... such conditions cannot possibly result in the efficient or satisfactory transaction of public business, particularly if a certain number of honourable gentlemen—even though they may comprise a very small proportion of the members of the House—are disposed to oppose the transaction of that business.<sup>20</sup>

Borden's proposed rule changes in the House of Commons were, nevertheless, met with resistance from the opposition. When Opposition Leader Wilfrid Laurier rose to oppose the Government's proposed closure rule, he recounted the experiences of his government only two years earlier when faced with obstruction by the then Conservative Opposition. Laurier explained:

Two courses were open to me. I could have done as is done to-day by the Prime Minister; I could have introduced the closure and have said that we must carry on the business of the government and that, consistently with our dignity, we could not allow obstruction. But there was another course open to me, and that was an appeal to the people; and I advised my colleagues to give the honourable gentlemen of the opposition the opportunity of appealing to the people. We appealed to the people and we were defeated. Heaven is my witness that I would rather stand here to-day, defeated and in opposition by that appeal to the people than stand over there in office by the power of the gag.<sup>21</sup>

In the early morning hours of 24 April 1913, after two weeks of passionate debate, the government's proposed rule changes introducing the closure mechanism to the Canadian House of Commons were passed.<sup>22</sup>

The amended rules were put to their first test two weeks later when Prime Minister Borden, still witnessing slow progress on his Naval Aid Bill, moved for closure on the consideration of each section of the Bill in committee.<sup>23</sup> To Opposition cries of 'shame', 'don't vote', and 'the nationalist gag', the Bill was reported, and the first use of the closure mechanism in the House of Commons was in the history books. The passage of the Naval Aid Bill, and the \$35 million 'gift' to Britain, was seen by one media commentator as "the free gift of a gagged Parliament ... [passed] as the result of the first reckless application of steamroller methods in Canada's Parliament, born of Nationalist domination and the fear of the government to consult the Canadian people."<sup>24</sup>

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<sup>19</sup> *Ibid.* at col. 7390.

<sup>20</sup> *Ibid.*

<sup>21</sup> *House of Commons Debates* (9 April 1913) at col. 7437 (Sir Wilfrid Laurier).

<sup>22</sup> *House of Commons Debates* (23 April 1913) at col. 8453–6.

<sup>23</sup> *House of Commons Debates* (9 May 1913) at col. 9445 (Prime Minister Borden).

<sup>24</sup> Staff "A Gagged Parliament Offers Free 'Gift': Borden bill goes to third reading by application of closure" *The Globe* (10 May 1913) 1.

## 2. Subsequent Use of Closure

Since its inception in 1913, the closure mechanism has been used by governments of all political stripes when faced with impediments to the passage of controversial legislation. In some of the more contentious cases, closure was not only used to assist in the passage of a government initiative; in these instances, the government invoked the closure mechanism at every stage of a bill's passage.

An example of this occurred in 1917 when Borden's government introduced the *War-time Elections Act*.<sup>25</sup> This Bill was aimed at remedying the 'injustice' that would occur if a federal election were to take place while hundreds of thousands of Canadian citizens would be unable to vote due to participation in the First World War. To achieve this end, the Bill extended voting privileges to those women who were wives, widows, mothers, sisters and daughters of military service personnel, past or present, who were part of Canada's overseas force.<sup>26</sup>

Thanks to the consistent use of the closure mechanism, this significant piece of legislation was passed less than nine days after its introduction. The Bill was introduced on 6 September 1917. By 2:30am on 15 September 1917, after having been debated for less than nine days and subject to three closure motions, the *War-time Elections Act* passed its third and final reading.<sup>27</sup>

This particular use of the closure mechanism, invoking the 'gag' at every stage of the bill, was unprecedented. It was met with great disapproval, likely strengthened by the fact the bill in question was of such an extraordinary nature. An article in *The Globe* the following day noted the treatment this significant legislation received:

[It] was steam-rolled through the Commons under the gag rule after practically only three days' discussion. Since Confederation, no legislation of anything approaching similar importance has ever before been rushed through with so little consideration or opportunity for full and fair discussion.<sup>28</sup>

It was not only Conservative governments who were predisposed to use the closure mechanism as a means of pushing through legislation. In 1956, Prime Minister St. Laurent's Liberal Government introduced a bill to establish the Northern Ontario Pipe Line Crown Corporation.<sup>29</sup> The Bill was to enable the construction of a pipeline from Alberta to Ontario, at the cost of \$1 billion,

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<sup>25</sup> 1917, 7–8 George V. c. 39.

<sup>26</sup> *Ibid.*

<sup>27</sup> *House of Commons Debates* (14 September 1917) at 5880.

<sup>28</sup> "Election Act is Passed by the Commons: Goes through under closure at early hour after sharp debate" *The Globe* (15 September 1917) 1.

<sup>29</sup> Bill 298, *Northern Ontario Pipe Line Crown Corporation Act*, 3d Sess., 22<sup>nd</sup> Parl., 1956.

with the assistance of American energy companies. Opposition to the participation of American interests was strong, and the Government used the closure mechanism at every stage of the Bill to ensure its passage in time for construction of the pipeline to begin.<sup>30</sup> The Bill was introduced on 15 May 1956 and passed through second reading, committee, reporting stage and third reading all before the early morning hours of 6 June 1956.

Response to St. Laurent's use of the closure mechanism was extremely negative. Heated opposition to the Government's repeated use of closure resulted in one of the most rancorous, ugly episodes in the Commons' history. On Friday 1 June, a Speaker's ruling, dismissing an opposition protest against use of the closure mechanism, led to chaos in the House. This particular day is now remembered by many parliamentarians as 'Black Friday'. A summary of the day's events was contained in the next day's *Globe and Mail*:

During the taking of nine votes necessary to complete committee study of the pipeline bill, Conservative and CCF members rose again and again to exclaim that the votes were improper because the clauses being voted on had never been before the House...For 15 minutes...the Commons was in what could only be described as a state of riot. All semblance of order vanished. With CCF Leader Coldwell in the lead, a dozen CCF and Progressive Conservative MPs left their seats and stood defiantly in the centre aisle of the Chamber, some of them shaking their fists at Mr. Speaker Beaudoin.<sup>31</sup>

All in all, the Pipeline debate will be remembered as one of the worst episodes in the history of the House of Commons; "it produced the greatest convulsion which the Commons has experienced in decades ... and some moments of the most complete disorder ever seen in the Canadian Parliament."<sup>32</sup>

### 3. Summary

The closure mechanism has been used numerous times since its inclusion in Canada's rules of procedure in 1913. When invoked, it stirs intense reaction from an opposition. However, governments of all political stripes have found use for the closure mechanism when it has appeared impossible to pass contentious legislation through the House of Commons.

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<sup>30</sup> Closure on second reading occurred on May 22; closure on committee stage occurred on June 1; closure on report and third reading stages occurred on June 5. See *House of Commons Debates* (22 May 1956) at 4165; (1 June 1956) at 4498; (5 June 1956) at 4689, respectively.

<sup>31</sup> H. Hickey and R. Haggart "Commons in State of Riot: Fists shaken at Beaudoin amid shouts" *Globe and Mail* (2 June 1956) 1.

<sup>32</sup> G. Bain "Bitter Debate Reaches End: Pass Pipeline Bill" *Globe and Mail* (6 June 1956) 1.



## C. Closure in the Manitoba Legislature

### 1. Introduction of Closure

The closure mechanism was first put into action in Manitoba in 1929. On 22 February 1929, Premier Bracken moved that the House adjourn until 20 March.<sup>33</sup> The Opposition argued that the House had been called into session at the instance of the government, that legislation and the Speech from the Throne had been submitted for consideration, and that it was the duty of the House to proceed with its business until it was disposed of.<sup>34</sup> Debate ensued on the Premier's motion, and on 26 February, the Premier gave notice that at a future sitting of the House, he would move that debate on his adjournment motion not be further adjourned.<sup>35</sup> The Premier moved the closure motion on 1 March, the motion passed, and Premier Bracken secured adjournment of the House until 20 March 1929.<sup>36</sup>

### 2. Subsequent Use of Closure

Aside from another incident in 1929,<sup>37</sup> it would be over half a century until the threat of closure would reappear in the Manitoba Legislature. During the final months of Manitoba's longest legislative session, spanning from 2 December 1982 to 27 February 1984, the House would be the scene of some of the most passionate debate and opposition obstruction in Manitoba's history. One legislative bill, and one constitutional amendment, resulted in literally weeks of obstruction in the form of division bell-ringing, and after an absence of over 50 years, the closure motion would not only reappear, it would be moved no less than seven times.

Section 23 of the *Manitoba Act, 1870*<sup>38</sup>—Manitoba's constitution—guarantees all Manitoba statutes are to be printed in both English and French. However, in 1890 the Manitoba government passed legislation making English Manitoba's only official language, and thereafter, legislation was printed in English only. In 1981, a Manitoba lawyer challenged a speeding ticket on the grounds that the statutes under which he had been charged were invalid because they were printed in English only. A court ruling rendering the 1890 statute unconstitutional would also render invalid every Manitoba statute passed since 1890.

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<sup>33</sup> *Journals of the Legislative Assembly of Manitoba* (22 February 1929) at 33.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Journals of the Legislative Assembly of Manitoba* (26 February 1929) at 34.

<sup>36</sup> *Journals of the Legislative Assembly of Manitoba* (1 March 1929) at 42.

<sup>37</sup> *Journals of the Legislative Assembly of Manitoba* (3 May 1929) at 179.

<sup>38</sup> 1870, 33 Victoria c. 3.

To avoid this outcome, Premier Howard Pawley's NDP Government introduced what ultimately became two initiatives: an amendment to Manitoba's constitution, which would maintain the validity of Manitoba's English-only statutes until major statutes could be translated, and declare both English and French to be Manitoba's official languages; and a new bill, which would provide for the provision of bilingual services at a limited number of government agencies.

The Pawley Government introduced Bill 115 on 6 January 1984. Opposition to the government's French-language services initiatives had been evident for months. The previous summer had been filled with passionate public meetings and debates on the proposed constitutional amendment and the impact of official bilingualism. The previous year had also been the scene of unprecedented delaying tactics in the legislature by the Conservative Opposition, including lengthy ringing of the division bells. Those tactics continued in January of 1984 as the government attempted to steer its constitutional amendment, and Bill 115, through the Legislature. On 24 January, the government moved closure for the first time in 54 years. The closure mechanism was passed and second reading of Bill 115 concluded that same day.<sup>39</sup>

Opposition response to the re-emergence of the closure mechanism after 54 years was intense. One member claimed, "[W]hat we have witnessed today are the actions of a weak, bungling, decaying, leaderless government who has to resort to limiting the freedom of speech in this Legislature."<sup>40</sup> Gary Filmon, then leader of the Opposition, referred to closure as a "gun at the head of the [O]pposition and the people of Manitoba".<sup>41</sup> In response to the Opposition, Premier Pawley noted "the problem that gave rise to the closure motion was the unprecedented bell ringing in this Chamber",<sup>42</sup> and declared:

[I]f there has been contempt in this Chamber it has been contempt on the part of the members of the opposition that have constantly and repeatedly walked out of this Chamber, that they refused to debate, that have permitted the bells to ring, ring, ring,

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<sup>39</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 167A (24 January 1984) at 5677–8 (closure); Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 167B (24 January 1984) at 5738 (passage of second reading).

<sup>40</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 167A (24 January 1984) at 5679 (Mr. R. Banman).

<sup>41</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 171 (30 January 1984) at 5782 (Mr. G. Filmon).

<sup>42</sup> *Ibid* (Hon. H. Pawley).

in a manner that is completely unprecedented in the history of the Province of Manitoba.<sup>43</sup>

Despite six more attempts at invoking the closure mechanism, 24 January would prove to be the only successful invocation of closure by the Pawley Government. On 26 January, the Government moved closure on the constitutional amendment. When the motion was to be voted on, the Opposition left the Chamber and left the division bells ringing. They did not return to the Chamber to vote, and at 10:00pm, the Speaker adjourned the House for the day.<sup>44</sup> This exact scenario would be played out another six times over the next two weeks; each time the Government moved for closure, and each time, the Opposition let the bells ring and refused to return to the Chamber to vote.<sup>45</sup>

The Government soon realized, while passage of a closure motion ensured conclusion of a particular debate by day's end, the motion could not be passed without a vote, and the Opposition was hell-bent on ensuring that the vote on closure would not take place. The only way to force the Opposition back into the Chamber for a vote was to limit the ringing of the division bells. To this end, the Government raised a matter of privilege in the House and subsequently proposed a change in the rules regarding bell-ringing. Government House Leader Andy Anstett moved that the Standing Committee on the Rules of the House meet to discuss the issue of bell-ringing and report to the House in six months, and in the interim, a time limit of two hours be placed on the ringing of the division bells.<sup>46</sup> The significance of the motion was evident: with a limit on bell-ringing, the Opposition would be forced back into the Chamber to vote, and the Government would have the majority necessary to pass its closure motions. Two days later, the Government moved the previous question, denying the Opposition any opportunity to amend Anstett's motion.<sup>47</sup>

The vote on the motion for the previous question was to take place on 16 February. When the Speaker called the question for a vote, the Opposition left

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<sup>43</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 169 (26 January 1984) at 5766 (Hon. H. Pawley).

<sup>44</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 169 (26 January 1984) at 5773.

<sup>45</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 170 (27 January 1984) at 5781; No. 171 (30 January 1984 at 5789; No. 174 (2 February 1984) at 5853; No. 175 (3 February 1984) at 5861; No. 176 (6 February 1984) at 5874; No. 177 (7 February 1984) at 5882.

<sup>46</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 176 (6 February 1984) at 5870 (Hon A. Anstett).

<sup>47</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 178 (8 February 1984) at 5890.

the Chamber for the last time and gave no indication of when they planned to return.<sup>48</sup> Ultimately, the division bells rang for twelve continuous days. On 27 February, seeing no end to the Opposition's bell-ringing, the Government decided to end the session, prorogue the House, and let its French language initiatives die on the Order Paper.<sup>49</sup>

### 3. Summary

The history of the closure motion in the Manitoba Legislature is a relatively short one. Aside from a few instances in 1929, the only use of closure was during the French Language Debate in 1984. The political cost for invoking the closure mechanism is a high one, which likely accounts for why Manitoba governments have hesitated to resort to the ultimate limiting tool.

## D. Conclusion on Closure Motion

The introduction of the closure mechanism was a matter of heated political debate in the House of Commons, and subsequent uses of closure in the House of Commons and in Manitoba have also led to—and have often been the result of—fierce opposition. This may be why many governments have not yet made a habit out of using the closure mechanism to push through legislative initiatives; the political price for doing so is often prohibitive. It would be wrong, however, to conclude:

[T]he closure has ceased to be important as an instrument for control of business. In many cases agreements can be reached only because the Opposition knows that in the absence of a voluntary time limit to a debate, the Government could impose a limit by claiming closure and winning the vote. ... The closure thus remains an instrument of great potential importance even if less frequently applied.<sup>50</sup>

## IV. PART TWO: TIME ALLOCATION

### A. Introduction

After a number of experiences with the closure mechanism, Canadian parliamentarians and procedural commentators started to search for a less draconian method through which to bring debate on contentious legislation to a timely conclusion. In 1962, W.F. Dawson suggested:

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<sup>48</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XXXI, No. 184 (16–27 February 1984) at 6097.

<sup>49</sup> *Ibid.*

<sup>50</sup> J.A.G. Griffith, *Parliament: Functions, Practice and Procedures* (London: Sweet & Maxwell, 1989) at 301–302 [Griffith].

[T]he most satisfactory reform would probably be to establish a minimum time limit for each stage of a bill. After the allotted time had expired, the Government would be free, as now, to apply closure. This at least would remove the danger of abuse by the Government. A generous allowance could be made for each stage and the opposition would be assured of at least that length of time, while the Government would not be relieved of the necessity of answering to the electorate at the next dissolution for its decision to use the rule.<sup>51</sup>

It was merely seven years later that the House of Commons adopted a rule encompassing what Dawson had seen as a positive procedural reform.

'Time allocation' has been defined as "a device for planning the use of time during the various stages of consideration of a bill rather than bringing the debate to an immediate conclusion."<sup>52</sup> Under a time allocation rule, a government may introduce a timetable for the completion of one or more stages of a bill or legislative initiative.<sup>53</sup> This rule has many strings attached however, and the limits on its use vary by jurisdiction. Currently, the House of Commons and the Legislative Assemblies of Ontario, Alberta, and Manitoba are the only Canadian jurisdictions with time allocation procedures in their rule books.<sup>54</sup>

## B. Canada

The most elaborate time allocation procedure is contained in Standing Orders 78(1), 78(2) and 78(3) of the House of Commons. The Standing Orders provide a time allocation mechanism for three different circumstances based on varying levels of agreement among the parties in the House. Standing Order 78(1) is the least contentious of the three and applies when representatives of *all* parties have reached agreement on an allotment of time to one or more stages of a bill. A motion under 78(1) may be made without notice and is to be decided without amendment or debate. Standing Order 78(2) provides for time allocation when a *majority* of the representatives of parties in the House have reached an agreement on such allocation. An allocation of time under 78(2), however, may only be applied to one stage of a bill at a time, with the exception

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<sup>51</sup> Dawson, *supra* note 16 at 132.

<sup>52</sup> A. Fraser, W.F. Dawson, and J. Holtby, (eds.), *Beauchesne's Parliamentary Rules and Forms*, (Sixth Edition) (Toronto: Carswell, 1989) at 162.

<sup>53</sup> In Britain, time allocation motions are referred to colloquially as 'guillotine' motions, as the 'knives' fall to cut off debate at a predetermined time. See D. Limon and W.R. McKay (eds.), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, (22<sup>nd</sup> ed.) (London: Butterworths, 1997) at 410.

<sup>54</sup> Quebec's Rules do not provide for a time allocation mechanism similar to other Canadian jurisdictions. However, it does provide for an 'Exceptional Legislative Procedure' that may be introduced with regard to any bill at any stage of consideration. Once passed, the exceptional procedure stipulates the number of hours to be spent at each stage of the bill's consideration. See Quebec Rules, *supra* note 10 at Rule 257.1.

that both the report and third reading stages of a bill may be covered by one time allocation motion. A motion under 78(2) may be made without notice and is to be decided without amendment or debate.

The most contentious time allocation procedure is contained in Standing Order 78(3). This rule is used when agreement between the parties cannot be reached under either of the above-mentioned rules, and the government wishes to propose its own motion for the allotment of time to any stage of a bill. As with 78(2), a motion under 78(3) may only be applied to one stage of a bill at a time—with the exception that both the report and third reading stages may be covered by one motion—and may only be applied to the stage under debate at the time the motion is proposed. The government must give prior notice of any intention to propose a time allocation motion under 78(3), and when giving notice, the government must indicate agreement between the parties could not be reached under either 78(1) or 78(2). Once proposed, a motion under 78(3) is to be decided without amendment or debate.

### *1. Introduction of Time Allocation in the Canadian House of Commons*

On 20 December 1968, the Standing Committee on Procedure and Organization was ordered to consider ways to allocate time to legislative business and to draft proposals to that end for the consideration of the House. Six months later, the Committee presented to the House its report including a recommendation for the inclusion of a time allocation mechanism. The report detailed three time allocation provisions, Standing Orders 75A, 75B and 75C (now Standing Orders 78(1), 78(2) and 78(3), respectively).

On 8 July, D. Gordon Blair, a member of Prime Minister Trudeau's Government, moved the report of the Standing Committee be concurred in. It was agreed the point of contention was the government's ability to impose its own timetable under provision 75C. Blair argued the rule was necessary, however, to enable the House to cope with its increasing volume of business. He noted:

[The rule] does not violate the ancient traditions and procedures of this house. It has been framed with a proper regard for the prerogatives of members, and its full intent and purpose is to enable the House of Commons ... to meet the intense pressures placed on a modern parliament.<sup>55</sup>

The Opposition felt differently about the impact of provision 75C and vowed to do everything it could to ensure the provision was not adopted, and at minimum, to see provision 75C deleted from the proposal.<sup>56</sup> Opposition Leader, Robert Stanfield, accused the government of wanting to:

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<sup>55</sup> *House of Commons Debates* (8 July 1969) at 10959 (Mr. Blair).

<sup>56</sup> *Ibid.* at 10964 (Mr. Knowles).

[M]ake its control of parliament less messy and more automatic. It wants to throttle Parliament in a more genteel way. ... [I]f members of this government were directors of Murder Incorporated they would insist on a silencer, just as today they are insisting on a quiet kind of closure, but we will not let them get away with it.<sup>57</sup>

On 22 July, Donald Macdonald, President of the Privy Council, informed the House that the Government had conceded to a number of amendments to proposed rule 75C, but that these amendments were not enough to entice opposition members to support the new Standing Orders. He concluded the government must therefore "consider what arrangements should be made for completing the business before the house."<sup>58</sup> As the Opposition shouted "shame" across the floor, Macdonald gave notice that the Government would invoke closure in order to permanently enshrine the time allocation mechanism in the procedural rules of the House. Macdonald moved closure on 24 July and the closure motion was carried.<sup>59</sup>

Use of the closure mechanism to enshrine greater restrictions on parliamentary debate immediately invoked the ire of the Opposition. Opposition Leader Stanfield declared "if closure can be resorted to in order to implement these rule changes, and can be used so as to alter fundamentally the very nature and role of the House of Commons, then we are in a very sorry state indeed in so far as democracy and freedom are concerned."<sup>60</sup>

At 1:50am on 25 July 1969, the time allocation provisions contained in Standing Orders 75A, 75B and 75C became permanent rules of procedure in the House of Commons.<sup>61</sup>

## 2. First Use of Time Allocation

The first use of the new Standing Orders on time allocation occurred in 1971 on an income tax bill of biblical proportions. On 30 June 1971, Prime Minister Trudeau's Liberal Government introduced Bill C-259, which contained 707 pages of amendments to the *Income Tax Act*. On 1 December, government Minister Allan MacEachen advised the House that agreement among the parties could not be reached regarding a timetable for Bill C-259, and therefore notice was given of the Government's intention to impose its own timetable under then Standing Order 75C, and to limit completion of the committee stage of the bill to just four more days.

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<sup>57</sup> *House of Commons Debates* (10 July 1969) at 11072–3 (Hon. Robert L. Stanfield).

<sup>58</sup> *House of Commons Debates* (22 July 1969) at 11470 (Mr. Macdonald).

<sup>59</sup> *House of Commons Debates* (24 July 1969) at 11549–50 (Mr. Macdonald).

<sup>60</sup> *Ibid.* at 11557 (Hon. Robert L. Stanfield).

<sup>61</sup> *Ibid.* at 11621.

On 2 December, time allocation was moved and carried for the first time in the House of Commons. Minister MacEachen argued the subject matter of the tax bill had been in the public domain for a long time, and that in the House itself, the bill had had extensive discussion.<sup>62</sup> Opposition Leader Robert Stanfield called the motion for time allocation “an ego trip with the government supporters on the other side of the House foisting on the country a bill they do not understand just to try to save the face of the government.”<sup>63</sup> After two hours of highly charged debate on the time allocation motion, the Speaker interrupted debate, put the question, and the motion was carried.<sup>64</sup>

Less than two weeks later, on 14 December, the Government moved a subsequent time allocation motion to ensure third reading and passage of the income tax bill by 17 December. This second imposition of the time allocation was considered by the opposition to be “nothing but a mockery, a mockery of this institution, a mockery of freedom and a mockery of freedom of speech.”<sup>65</sup> The time allocation motion was carried, and on 17 December 1971, the omnibus income tax bill was passed by the House.

### 3. Subsequent Use of Time Allocation

Since its initial use in 1971, use of the time allocation procedure has been anything but rare. A study published in November 2000 indicated that from December 1971 to October 2000, 163 time allocation motions were presented in the House and, of these, 150 motions were passed, and 87 percent of these were imposed by the government under Standing Order 78(3).<sup>66</sup> The report noted, “over the past thirty years, federal governments have each used this order for bills involving a social issue or a contentious national debate.”<sup>67</sup>

All governments at the federal level have made use of the time allocation procedure. Most recently, the Governments of Conservative Prime Minister Brian Mulroney and Liberal Prime Minister Jean Chrétien both made use of time allocation to usher controversial legislation through the House of Commons, and in some cases, used both closure and time allocation on the same bill in order to ensure its speedy passage.

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<sup>62</sup> *House of Commons Debates* (2 December 1971) at 10077 (Mr. MacEachen).

<sup>63</sup> *Ibid.* at 10079 (Hon. Robert L. Stanfield).

<sup>64</sup> *Ibid.* at 10093.

<sup>65</sup> *House of Commons Debates* (14 December 1971) at 10444 (Mr. Woolliams).

<sup>66</sup> Y. Pelletier, “Time Allocation in the House of Commons: Silencing Parliamentary Democracy or Effective Time Management” (Paper written for the Institute on Governance’s 2000 Alf Hales Research award, November 2000) at 4 [Pelletier].

<sup>67</sup> *Ibid.* at 7.



Two of the most controversial initiatives of the Mulroney Government were the implementation of the North American Free Trade Agreement (NAFTA), and the introduction of the Goods and Services Tax (GST). Both of these Acts were passed with the assistance of the powers of time allocation.

While in opposition, Liberal members of the House reacted with strong opposition to the Conservative Government's use of closure and time allocation on controversial bills. However, the Liberal Government of Jean Chrétien has made use of these procedural tools to ensure passage of its own contentious initiatives.

An ongoing controversial issue for the Chrétien Government is that of gun control. In February of 1995, the Government introduced Bill C-68, the *Firearms Act*,<sup>68</sup> and ultimately needed to impose time allocation at every stage of passage, except committee stage, to get it through the House.

A more recent example of the contentious use of the time allocation mechanism occurred in 2000. As a result of the Supreme Court of Canada's decision in the Quebec Secession Reference, the federal government attempted to clarify "the circumstances in which [the] House would declare whether the Government of Canada would be obliged to enter into negotiations on the separation of a province from Canada."<sup>69</sup> To this end, the Government introduced Bill C-20, known as the *Clarity Act*<sup>70</sup>, in December of 1999. Passage of the *Clarity Act* would ultimately require the Government to impose its own timetable under Standing Order 78(3) at every stage of passage, including committee consideration of the Bill.

#### 4. Summary

Since its introduction, the time allocation mechanism has allowed governments to navigate contentious legislation through the House of Commons and restrict opposition delay without resorting to closure. In fact, since 1971, there has been a gradual increase in the use of time allocation when compared with the number of government bills passed. Statistics show "the highest frequency of bills introduced and passed with the use of time allocation is to be found in the second mandate of the Chrétien Government where time allocation was imposed in the case of 30.5 percent of bills passed."<sup>71</sup> This means nearly one-third of all legislation passed by the Chrétien Government from 1997 until October of 2000 was passed with the assistance of Standing Order 78. The use

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<sup>68</sup> 1995, c. 39.

<sup>69</sup> *House of Commons Debates* (14 December 1999) at 2925 (Hon. Stéphane Dion).

<sup>70</sup> 2000, c. 26.

<sup>71</sup> Pelletier, *supra* note 66 at 11.

of time allocation has thus become a popular government tool in the House of Commons:

In the absence of government desire to change this Standing Order, which serves it exceedingly well, time allocation will remain the government's preferred time management method ... [and] will continue to be a most effective way to silence the opposition.<sup>72</sup>

## C. Time Allocation in the Manitoba Legislature

### 1. Introduction of Time Allocation

On 4 December 2002, the Manitoba Legislative Assembly adopted a motion that provided for a number of amendments to Manitoba's rules of procedure. Significant among them was the addition of what is now section 48—"Time Allocation for Bills and Motions." The inclusion of this new section in Manitoba's rules became effective on 1 January 2003, and marked the first official appearance of the time allocation mechanism in this province.

Manitoba's new time allocation procedure allows the Government House leader or another Minister, after one day's notice,<sup>73</sup> to propose a motion for time allocation which would allot "a specified number of hours to consider and dispose of the proceedings on a government bill or government motion."<sup>74</sup> The motion for time allocation may cover one or more stages of a bill's consideration and must specify the time allocated to each stage.<sup>75</sup> Once proposed, the motion for time allocation cannot be amended or debated, aside from a statement of ten minutes from one member of each recognized party.<sup>76</sup>

The new rules also contain a number of explicit requirements and exceptions from the time allocation procedure. First, notice of a motion for time allocation cannot be given until debate on the original motion has already begun.<sup>77</sup> If time allocation is to be moved for the proceedings on a bill, notice of the time allocation motion cannot be given "until two weeks have elapsed since the Bill was distributed in the House, and the Speaker has called the Bill for debate at least three times".<sup>78</sup> These protections were likely included to provide assurance a government will not impose a time allocated procedure without first

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<sup>72</sup> *Ibid.* at 14.

<sup>73</sup> Manitoba Rules, *supra* note 9 at Rule 63(1).

<sup>74</sup> *Ibid.* at Rule 48(1).

<sup>75</sup> *Ibid.* at Rule 48(7).

<sup>76</sup> *Ibid.* at Rules 48(2) and (3).

<sup>77</sup> *Ibid.* at Rule 48(5)(b).

<sup>78</sup> *Ibid.* at Rule 48(5)(a).

considering the pace of debate on the motion or bill. Another important exception stipulated in the rules is that a motion for time allocation cannot be made for a bill that "(a) provides for privatizing a Crown corporation; or (b) amends, repeals or overrides" the referendum requirements of the province's balanced budget legislation, the Manitoba Hydro Act, or any other Act requiring a referendum before the privatization of a Crown corporation.<sup>79</sup>

The specific exemptions from the time allocation procedure were hardly chosen at random. The repeated references to the privatization of Crown corporations stem directly from one of the most intense legislative battles in Manitoba's recent history, the 1996 privatization of the Manitoba Telephone System (MTS). In fact, the MTS debate may very well be considered the first unofficial use of time allocation in Manitoba's history. It was undoubtedly with vivid memories of the MTS debate that the drafters of the new time allocation rule carefully crafted the 'Crown privatization' exemption. When asked about the exemption, Government House Leader Gord Mackintosh admitted "the decision to exclude the privatization of Crown corporations ... was included at our insistence. The clause is indeed there as a result of our experiences with the MTS debate."<sup>80</sup>

## 2. The MTS Debate

On 22 December 1995, representatives of all three parties in the Manitoba Legislature signed a Memorandum of Understanding regarding a temporary change in the rules of procedure. The rule change was to be imposed on a trial basis until the end of the 1996 session. Under the new rules, the Conservative Government was committed to introducing all of its legislative bills during the spring session. In return, the NDP Opposition and members of the Liberal Party were obliged to co-operate in order to ensure all government bills reached a final vote on third reading by the last day of the fall session, which was to be concluded by the last Thursday in November.<sup>81</sup> These temporary rules were not unusual ones, but unfortunately the 1996 session combined the temporary rules with one of the most controversial bills in Manitoba's recent history. The result was a disaster in terms of opposition rights, the rules of debate, and the role of the Speaker.

On 27 May 1996, the Conservative Government, under Premier Gary Filmon, introduced Bill 67, a Bill to privatize MTS, which at that time was one of Manitoba's Crown corporations. The Bill was met with immediate

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<sup>79</sup> *Ibid.* at Rule 48(8).

<sup>80</sup> Letter (E-mail) of Hon. Gord Mackintosh (7 March 2003) [Mackintosh].

<sup>81</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XLVI, No. 10 (2 April 1996) at 433.

opposition, not only from the Opposition in the House, but by much of the public as well.

In accordance with the new rules, the House adjourned its spring session on 4 June 1996, and all government bills were before the House for consideration. The fall session began on 16 September 1996, and Bill 67 was hotly debated. While the Opposition NDP loudly and forcefully opposed the privatization Bill, their opposition remained within the accepted rules of debate. The trouble arose on 18 November when Speaker Louise Dacquay was asked by the Conservative Government to set a timetable for the passage of Bill 67—a time allocation of sorts—in order to ensure its passage by the end of session which, according to the new rules, was to be 28 November 1996.<sup>82</sup>

On 21 November, Speaker Dacquay responded to the Government's request, and laid out the timeline she had developed to ensure passage of Bill 67 by the following Thursday, now only seven days away. The Opposition immediately responded to the Speaker's ruling, calling it 'unprecedented' and 'unacceptable'. Opposition House Leader, Steve Ashton, rose on a matter of privilege and ultimately moved that the House no longer had confidence in the Speaker. Debating his motion, Ashton chastised the Government for forcing the Speaker to do the Government's dirty work, stating:

"[t]he government has used you as the Speaker of this House to enforce closure on the sale of the Manitoba Telephone System. What is particularly cowardly about what the government has done is that they did not even use the motion that is in our rules to bring in closure."<sup>83</sup>

Speaking to the media, Premier Filmon denied that his Government's request for a timetable was a form of closure, adding "[i]t is simply asking the Speaker to enforce the rules, which is her duty and responsibility."<sup>84</sup>

On 27 November, Speaker Dacquay cut off debate at 2:45pm in order to call a vote on the amendment to Bill 67 under debate. The vote had the effect of precluding all further amendments to the Bill. Opposition House Leader Steve Ashton rose on a matter of privilege prior to the Speaker calling for the vote, but Speaker Dacquay refused to hear Ashton until after the vote had taken place. Immediately after the vote, Ashton rose again on his matter of privilege, and again he was ignored by the Speaker. The Opposition viewed the Speaker's continued denial to recognize Ashton's matter of privilege as a blatant

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<sup>82</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XLVI, No. 82 (18 November 1996) at 5061–2.

<sup>83</sup> *Ibid.* at 5190 (Mr. Steve Ashton).

<sup>84</sup> Paul Samyn "Speaker limits debate on MTS privatization: NDP MLAs brand Dacquay's ruling 'cowardly closure'" *Winnipeg Free Press* (22 November 1996) A8.

abuse of the House rules. At 4:00pm, Speaker Dacquay halted proceedings to call the final vote on report stage of Bill 67.

On the final day of debate on Bill 67, in accordance with the Speaker's timetable, proceedings were halted and the final vote on the Bill was taken. In defiance of the procedure that led to the Bill's passage, members of the Opposition lined up along the wall of the Chamber behind their seats refusing to vote and shouted "shame" as each government member voted to pass Bill 67.<sup>85</sup>

In many respects, Speaker Dacquay's timetable for Bill 67 was Manitoba's first, unofficial, experience with a time allocation procedure. The use of a timetable in 1996 was controversial because the procedure was not included in Manitoba's rules of the House, and because it was believed an impartial Speaker should not create rules of procedure at the government's insistence. Outside of the context of the MTS debate, however, the timetabling procedure closely resembles the time allocation mechanism now included in Manitoba's procedural rule book. A formal time allocation procedure would have undoubtedly resulted in a more satisfactory and legitimate transaction of business in 1996, and would have allowed the Filmon Government and Speaker Dacquay to avoid the stigma of 'Speaker-invoked closure'.

### 3. Summary

On the introduction of a formal time allocation mechanism in Manitoba's procedural rules, Government House Leader, Gord Mackintosh, has noted:

[T]he introduction of a formal time allocation mechanism [in Manitoba] was necessary so that a government would be able to ensure its legislation was considered in all stages prior to the expiration of a sitting period. A government must be able to ensure that its legislative and budgetary agenda is considered by the house. Time allocation is distinct from the heavy hammer of closure, and is designed to ensure that reasonable amounts of time are devoted to considering a bill, while preventing the intentional filibustering of bills to prevent their passage.<sup>86</sup>

It will be interesting to see how Manitoba's Legislative Assembly deals with the introduction of a time allocation mechanism. Only time will tell whether the rule will be used as an exceptional tool to defeat opposition obstruction on controversial bills, or whether its use will become more commonplace, as has occurred in the House of Commons.

## D. Conclusion on Time Allocation

Only four jurisdictions in Canada currently provide for a time allocation mechanism in their procedural rules. It would not be surprising to see more

<sup>85</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. XLVI, No. 89 (28 November 1996) at 5387.

<sup>86</sup> Mackintosh, *supra* note 80.

provinces amend their rules to include a time allocation provision. Time allocation may not evoke the same negative response as the closure motion has traditionally received, and it may be seen as a kinder, gentler closure mechanism. At the same time, it benefits the government in the same way the closure mechanism would, by limiting the time for opposition debate and delay and ensuring a timely conclusion on a government bill or initiative. Time allocation has become another significant tool in any government's parliamentary arsenal.

## V. PART THREE: SUGGESTIONS FOR REFORM

There is no question that the closure and time allocation mechanisms in various Canadian rules of procedure are significant rules in favour of a government. While a majority government, due simply to its numbers, can almost always be assured of passage of its initiatives, closure and time allocation restrict an opposition's best opportunity by limiting time for debate and prohibiting—or rendering of no utility—attempts to delay. With procedural tools like the previous question, closure, and time allocation, and limits on time for speeches and debates, has the delicate balance between a government's right to govern and an opposition's right to oppose been unduly upset and slanted heavily in government's favour?

At first glance, it would appear as though it has; however, this does not have to be the case if both governments and oppositions adhere to principles of 'fair play' during parliamentary debate. Fair play would require an opposition to genuinely debate legitimate issues and refrain from filibustering. Filibusters often do not further an opposition's cause or bring to light an opposition's serious concerns with a government initiative. If opposition debate was limited to legitimate questions and concerns, there would undoubtedly be more willingness on behalf of the government to grant additional time for debate and refrain from using limiting devices like closure or time allocation. Fair play would also dictate that a government not use the closure and time allocation mechanisms routinely or without significant consideration of the importance of the initiative in question and the amount of time already provided for legitimate debate. Closure and time allocation have been used (sometimes together) to pass significant pieces of legislation in mere weeks. In other cases, while a bill has been before the House for months, debate on the bill has not been significant before the imposition of a limiting device. If an opposition has raised legitimate concerns and has shown a willingness to focus on relevant debate, a government should be very reluctant to limit that debate, especially when the initiative in question is of a serious nature and requires significant public, and parliamentary, debate.

When one player in the game refuses to respect the principles of fair play, however, all bets are off. In the face of unwarranted opposition tactics—delay

for the sake of delay and not for the betterment or debate of the issue at hand—a government has every right to use legitimate procedural rules to put an end to the delay and pass its initiatives. Besides, governments are elected to govern, and our democratic system functions on the principle of majority rule. Unfortunately for oppositions, there is little recourse when confronted with an ‘unreasonable’ majority government which places limits on debate to force through initiatives on its own timetable with little regard for opposition or minority views. Short of media attention and fodder for the next election campaign, oppositions can do little to limit the actions of a heavy-handed government. It is to this end that reform of some of the rules of procedure may be in order.

### 1. Suggestions for Reform

One suggestion for ensuring that the closure and time allocation mechanisms are not used unreasonably by a government is to introduce some form of Speaker’s discretion. In some jurisdictions, the previous question or closure motions contain a safety valve in the form of Speaker’s discretion. In these jurisdictions, the rules stipulate the motion will be put “unless it appears to the Speaker [or Chair] that such motion is an abuse of the Standing Orders of the House or an infringement of the rights of the minority.”<sup>87</sup> In exercising this discretion, the Speaker may consider a number of factors:

First, it will take account of the Members who have spoken and how many still wish to speak; in particular, regard will be had to whether the Government and Opposition spokesmen have been heard and whether minority opinion has been expressed. Secondly, it will consider the length of debate and how much longer it could last. ... A lot depends on the occasion, the mood of the House, and no doubt, the patience of the Chair.<sup>88</sup>

An element of Speaker’s discretion may be a helpful addition to the closure rule in the House of Commons and the Manitoba Legislature to ensure a government is not unreasonably invoking closure on an initiative before significant debate has taken place. If an initiative is being unreasonably delayed by an opposition, the Speaker would have the ability to rule that resort to the closure motion is reasonable. At the same time, the Speaker’s discretion would provide an opposition with some assurance that an unreasonable stifling of debate would not always be at the government’s sole discretion. Of course, in order for the idea of Speaker’s discretion to be of any benefit, the House must

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<sup>87</sup> See, for example, Ontario Rules, *supra* note 6 at Rule 47 and almost identical wording in New Brunswick Rules, *supra* note 10 at Rule 69, British Columbia Rules, *supra* note 10 at Rule 46, and United Kingdom, *Standing Orders of the House of Commons – Public Business* 2003 at Rule 36.

<sup>88</sup> Griffith, *supra* note 50 at 222.

be assured of an impartial Speaker. If the Speaker's chair is used as merely a tool of the government, the will of the majority, reasonable or not, will always prevail.

Another suggestion is to provide for a minimum period (a number of hours, days, etc.) before the government can impose either closure or time allocation. In the provincial legislative assemblies with time allocation procedures (Ontario, Alberta, and now Manitoba), the rules provide for some minimum time before a time allocation motion can be made. Manitoba's new time allocation rule states that a motion cannot be made for proceedings on a bill "until two weeks have elapsed since the bill was distributed in the House, and the Speaker has called the bill for debate at least three times".<sup>89</sup> While such rules ensure that the government cannot move for the allocation of time on a bill before it has even been debated, there is no assurance that significant debate will take place before a motion for time allocation can be made. As well, none of the closure rules in Canadian jurisdictions restrict the use of closure by requiring some minimum time for debate before closure is invoked. A stipulated number of hours of debate before a motion for closure or time allocation can be made would ensure that the government is resorting to a limiting device only when there has been some indication that passage of a bill or initiative would otherwise be unduly delayed.

A final suggestion, and perhaps the most contentious of all, is for the abolition of the closure mechanism altogether. When it was introduced, the closure mechanism was intended to provide the government with some tool to put an end to unreasonable obstruction by the Opposition and ensure passage of its initiatives. Since that time, oppositions have been further restricted by time limits and rules of relevancy in debate, and by the introduction of time allocation. Time allocation completely precludes any need for the closure mechanism. Want debate on a particular measure to end tomorrow? Move a time allocation motion and restrict debate to one sitting day. Want to ensure passage of a bill by a particular date? Negotiate an agreement with opposition parties, or allocate time to various stages of the bill. Have a contentious bill to bring to the House? Introduce the bill at the beginning of the session to provide as much time as possible for debate before the bill has to be passed. If the session is nearing a close and debate is still dragging, allocate time. Contentious legislation should not be introduced in the House with the intent to pass it with record-setting speed. This is not only unfair to the opposition, but also to the electorate. Controversial initiatives demand significant public information and debate.

The time allocation mechanism brings a particular stage of debate to an end in the same way the closure mechanism does, only with time allocation, the opposition is given more notice. In the end, there is nothing the closure

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<sup>89</sup> Manitoba Rules, *supra* note 9 at Rule 48(5)(a).



mechanism can achieve that cannot be achieved more reasonably by negotiation, careful planning, and the time allocation procedure.

## VI. CONCLUSION

The Honourable John Diefenbaker once noted, "[I]f Parliament is to be preserved as a living institution, His Majesty's Loyal Opposition must fearlessly perform its functions. When it properly discharges them the preservation of our freedom is assured. The reading of history proves that freedom always dies when criticism ends."<sup>90</sup> The importance of an effective opposition in a parliamentary democracy cannot be denied. Neither can the principle of majority rule on which our democracy is based. These two fundamental principles come into conflict when a majority government wishes to enact initiatives that are fiercely opposed by the opposition. Which principle takes precedence when majority rule and the voice of the minority are at odds?

Reforms to the rules of parliamentary procedure have been aimed at answering this very question. Over time, rules of procedure have been amended to gradually tip the balance in favour of majority governments. A number of suggestions for reforming the current rules were provided in this discussion. Speaker's discretion and minimum time periods for debate would each maintain the government's ability to cut off lengthy debate while protecting an opposition's right to be heard. Abolition of the closure motion was also suggested, simply because it appears to be redundant in jurisdictions which also provide for a time allocation procedure.

Any significant reforms aimed at restoring the ability of the opposition to delay government business are unlikely. It is the majority that has the power to amend the rules. Naturally, a majority government would not change the rules of the game in order to give its opponents a greater advantage. However, the presence of closure and time allocation procedures does not necessitate their use. Governments are free to let debate continue on initiatives until coming to a natural or negotiated conclusion, and in the absence of opposition obstruction, negotiated conclusions are actually quite frequent. It will be the controversial issues, the contentious bills, which will evoke the greatest response from an opposition. It will be in reaction to this response that a government will make the greatest use of the procedural limits on debate. This is an unfortunate reality. Surely, it is on these most important and controversial issues that free and full debate are most essential.

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<sup>90</sup> Hon. J. Diefenbaker, "The Role of the Opposition in Parliament", Address to the Empire Club of Canada, Toronto, 27 October 1949, as cited in Schmitz, *supra* note 2 at 10.

