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Politics and policy : Bill S-30 in the Canadian Senate.

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POLITICS AND POLICY: BILL S-30 IN THE CANADIAN SENATE

by

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ABSTRACT

The question of Senate performance in the review of legislation, private or public, has rarely been considered in a case-study format. This paper critically analyzes Senate performance in the review of a private bill and seeks to draw therefrom conclusions of a general nature as to the role of the Senate and more particularly of Senate committees.

In so doing the paper considers the function of Senate committees and their historical role, and concludes that as presently constituted they are not equal to the task of objectively reviewing private or public legislation.

TO JANE AND JUNE
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FOREWORD

This paper is a study of the performance of the Canadian Senate and the Standing Senate Committee on Banking, Trade and Commerce in reviewing a particular private bill, Bill S-30. It is not a study of Bill S-30 or of IAC Ltd, nor is the critical analysis in portions of this paper directed to either. The intention in entertaining this project was to examine the Senate and its committees; Bill S-30 was selected as a convenient vehicle. Professional association with IAC Ltd make it imperative to stress that the attention and focus of this paper is the Senate, not Bill S-30 or IAC Ltd.

All of the material presented here is public. Inferences alone are drawn from events of a more private nature. The inferences are identified, the events are not.

I would thank the Department of Political Science, University of Windsor, for the opportunity to submit this paper in partial fulfillment of the degree of Master of Arts, and my Committee, Lloyd Brown-John, Ron Wagenberg, and Dean Ron Ianni for their comments and encouragement.

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INTRODUCTION

The purpose of this paper is to identify and examine the elements of policy and politics inherent in the legislative procedures of the Senate of Canada. The distinction between these two themes is illustrated throughout. To understand it, I concentrate in this study on the manifestations of policy and politics which are present as the Senate and its committees examine private bills. In an effort to further delineate the distinction, I follow in some detail a particular bill, Bill S-30, An Act to Incorporate the Continental Bank of Canada which has certain atypical characteristics making it, perhaps paradoxically, an appropriate vehicle for the purpose of illustrating Senate performance.[1]

1. Politics and Policy

For purposes of this study, the terms 'politics' and 'policy' are understood firstly, as denoting functions that may be ascribed to legislative bodies. Thus the Senate and Senate committees may have the function of interest articulation, a political function, and amendment to public legislation, a policy function. Both of these elements are present whenever the Senate examines private legislation. Yet politics has been described elsewhere as the allocation of scarce resources in political society, and policy as the 'output' of the political system, influenced by the

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1 First Session, Thirtieth Parliament, 23-24 Elizabeth II (1974-75). Passed by the Senate on Thursday, 13 November 1975.

various input pressures placed upon the allocative mechanisms of that system.[2] Indeed, the English political is derived from the French politique, the Latin politicus, and the Greek politikos, and means generally 'proceeding from policy'. In this way, and under this meaning, politics and policy are inextricably linked.

In the review of public or private legislation the Senate and Senate committees make political decisions, e.g. decisions which emanate from established policy. A political decision based upon public policy, or government policy, has as its chief derivative the policy followed. Yet the terms 'politics' and 'political' must be understood as broader than considerations of policy alone. In many instances, policy may be a very minor influence upon the decision reached. Thus common usage of the term 'political decision' encompasses more than the mere following of an established policy. It invokes the presence of non-policy variables, such as ideology and class, which affect the 'choice' open to the decision maker.

In its examination of Bill S-30 the Senate, and more particularly the Standing Senate Committee on Banking, Trade and Commerce, had before it an established government policy

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2 See for example Harold Lasswell, Politics: Who Gets What, When, How (Cleveland: World Publishing Company, 1958), and R. Van Loon and Michael Whittington, The Canadian Political System, Environment, Structure and Process (Toronto: McGraw Hill Company of Canada Limited, 1971).

towards banks and banking in Canada, described in greater detail in Chapter Four below. This policy was generally ignored. The decision of the Senate and of the Committee in accepting Bill S-30 without substantive amendment was not a 'political' decision in the sense that it proceeded from policy. It was influenced by political factors, apart from policy, with the result that the interests of a small private group of supplicants were advanced in the face of an established public policy. Thus the second meaning of politics and policy incorporates, and is distinguished by, the elements of the political process, e.g. the allocation of scarce resources, which prevail in direct conflict to policy prerogatives.[3]

2. Bill S-30

The paradox in selecting Bill S-30 as the subject of an investigation into the deliberative processes of the Senate and Senate committees rests in the nature of the Bill itself. The Senate had never seen a bill like Bill S-30. It was a new experience to Senators and to administrative personnel; a private piece of legislation (and therefore binding upon a very select group of persons) with public consequence. As such, a study of the Bill could not

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3 'Policy' includes both active and passive functions. In following established policy the Senate performs the latter; in amending government bills or conducting studies in areas of concern and reporting thereon, the Senate performs the former.

be expected to occasion the typical Senate reaction to private legislation, and would not serve as an effective means from which to draw general hypotheses. Yet the Senate did react almost indifferently to the Bill, and when the Bill is understood, this fact makes it an excellent and demonstrative subject capable of supporting hypotheses of a general nature.

Bill S-30 was selected as the subject-matter of this study for this reason. It was also selected because it provided an opportunity to observe directly the personnel and processes involved in the passage through the Senate of private legislation. As an articled student in Ottawa with easy access to the Senate and to the political environment of Bill S-30, I was able not only to observe but to participate in its passage.

3. Participation and Observation

Observation has always been, in the words of Bollens and Marshall, 'an invaluable method for the discovery of actual behaviour'.[4] Among the methodology used to observe political behaviour, is the transition of general observation known as 'participant-observation', where the researcher becomes in effect a member of the activity he is observing. Through a process of immersion in the activity being studied

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4 John C. Bollens and Dale Rogers Marshall, A Guide to Participation (Englewood Cliffs: Prentice-Hall, 1973) p.35.

he attempts 'to see the world the way the subjects of his inquiry see it'.[5] The participant observer is concerned with the 'what, when, where and how' of political and social interaction.

The essential characteristic of 'participation-observation' is this factor of actual participation in one or all of the elements which constitute the subject matter of the study. It is the opposite in form, and in substance, to the detached, disinterested observer who sets out to prove or disprove a particular, identifiable hypothesis. As an approach to the study of political behaviour, it does not necessarily exclude contemporary methods of political analysis. The participant-observer may or may not be a behaviouralist, partial to structural-functionalism or systems analysis. But if he is, these contemporary approaches will only <u>supplement</u> the basic element of his own approach to the study of a particular topic of interest, which is the participation in as many elements of an on-going process as is possible.[6]

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5 <u>Ibid.</u>, p.36.

6 As Bollens and Marshall point out, <u>Ibid.</u>, there is no agreement as to how much participation is essential for the participant-observation method. The answer is likely 'as much as possible', provided that the participant-observer does not become so involved as to lose his objectivity.

The participant-observer does not begin with a well defined hypothesis. His conclusions are based upon his experience in not only observing the subject matter of his inquiry but in participating in elements of it. By taking an active part, he hopes to come to terms with a framework for whatever conclusions he may wish to draw. While he may have the advantages of contemporary modes of analysis, his goal is to reach rather than test out a hypothesis through experiencing what he wishes to understand. His conclusions are consequently specific rather than universal, but once reached, they may be measured as general hypotheses through more conventional means.

K.C. Wheare, without intending to do so, has identified through analogy the difference between the generalist and participatory approaches to studying political behaviour.[7] The political scientist can either 'hack his way through the jungle on foot or he can try to get a bird's eye view of the terrain from the air'.[8] The explorer on foot, indeed, is participating in the process, learning as he goes along. Yet he would not enter the jungle without some knowledge of what it was and what he could expect to find. The more detached analyst gets a 'bird's eye view', but does not experience the contact with the elements of what he is studying that the participant experiences.

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7 K.C. Wheare, Government by Committee (Oxford: Oxford University Press, 1955).
8 Ibid., at p.VII.

In the examination of the Senate's performance on Bill S-30, I followed closely every stage of its progression. The result is a set of conclusions which are admittedly restricted to the Bill itself, and may not be universally descriptive of Senate performance. Again, Wheare has unconciously identified and answered this dilemma.

> The explorer on foot will know a part, but he will not understand its relation to the whole; the explorer from the air will see the whole but he is certain to miss or misread or to misunderstand some at least of the parts.[9]

The essence of the participant-observer approach is, therefore, that it amplifies and supplements studies of a more generalist nature. In so doing, it may or may not result in conclusions which verify those of the more broadly defined studies. While the Senate of Canada has not received voluminous treatment, those studies of its performance which do exist are generalist in their approach. Even the more recent studies of committee performance which utilize the descriptive mechanics of statistics seek general conclusions, essentially untested through specific example based upon participation in the committee process itself.[10]

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9 Ibid., at p.ix.

10 A certain argument contra the methodology used in this study is that conclusions reached are restricted to the particular factual circumstance. If this is so, it is not necessarily a bad thing. Politics is circumstantial, and general hypotheses are forever falling prone to specific instances which question their universal application. In support of the participant-observer approach is the need for the case-study descriptions of political events which it promotes.

Practice of participant-observation has its drawbacks. The student of any particular process or phenomenon must be careful to maintain his ability to see the phenomenon from the outside, and must constantly guard against both aversion and over-identification.[11] As part of the methodology he adopts, the participant-observer tries to identify with each of the individual typologies involved in the subject process. In following Bill S-30 as a participant-observer, I had the opportunity to assess the difference in approach of three character typologies; the lawyer, sponsor, and political scientist.

(i) The Lawyer

Following a piece of legislation through the Senate from the vantage point of the practicing lawyer has considerable advantage in the comprehension of the subtleties of the legislative process. The lawyer is trained to rationally assess form and substance, and is concerned with both procedure and performance. Thus the Rules which guide the Senate hold a certain fascination which might not be attractive to the non-legal mind. While the political scientist might find his own interests in the interaction on the Senate floor and Senate corridors, where policy and politics come to terms amid the vagaries of party loyalty

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11 This point is made in Jackman Wiseman and M. Aron, Field Projects for Sociology Students, (San Francisco: Canfield Press, 1970).

and social class, the lawyer looks to practice as represented by the use made of the Senate rules. He is fascinated not with the ends of Senate performance but with the means employed. He studies the rules in the abstract to learn how the Senate should operate, and then looks to see how they are modified in practice: contracted to de-limit and distinguish, expanded to incorporate by reference a particular objective. He is aware of the force majeure in the rulings of Mr. Speaker. By concentrating on the legalisms of Senate performance the lawyer may miss significant measures of Senate practice which reflect upon the relative importance of the Senate in the parliamentary process, and which amplify the imperatives of reform, but he will not fail to comprehend the importance of the rules and their manipulation in analyzing Senate attentions to a particular measure.

Furthermore, the lawyer is in the enviable position of appreciating the complexities of legal draftsmanship, and can more readily come to terms therefore, with the problems inherent in the committee system of the Senate where expertise is not a common commodity and comprehension often sacrificed in the face of the imperatives of schedule.[12]

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12 Schedule is, I am convinced, the prime factor in committee performance. Time consistently intervenes and prevents the generally overworked committee from reaching a good understanding of the matter before it.

He looks at committee performance from a vantage point foreign to the casual observer or political scientist. The lawyer brings to his analysis of committee behaviour a bias toward the intellectual purities of judicial procedure, and finds it difficult to abide with a chairman who is less than impartial, or with a procedure which permits members to vote on a matter before committee despite their absence when the evidence was tendered. In effect, the lawyer tends in his pre-conceptions to sterilize the whole process -- he rejects the politics of Senate and committee behaviour which other observers find so natural.

(ii) The Sponsor

The sponsor of a piece of legislation seeking Senate approval has different objectives in noting its progress from the disinterested observer, be he lawyer or political scientist.[13] He is not particularly interested in form or function of either the Senate chamber or the committee room. Nor is he particularly concerned with the rules, except as they effect the progress of his own Bill. His concern rests not with the performance in the abstract, but with results. He is truly Machievellan in his approach to the legislative body. The end justifies the means, and circumstance, his own, is always a determinative factor.

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13 The term sponsor is used here to identify the extra-parliamentary proponent of a particular bill. Later on it is used to identify the Senator who marshalls the bill through.

Yet to approach a private piece of legislation from the vantage point of sponsor is an educational experience. The sponsor is a back-room man. He sets aside what he considers to be the showpieces of Senate performance, the debates in the chamber and the formal committee hearings, and concentrates on the politics of influence and persuasion. He does not approach groups, but members, and the individual Senator becomes his target. Through the parliamentary agent, or on a personal basis, the sponsor attempts to attain his objective by ignoring the systemic structures and procedures and concentrating on individuals.[14] In most cases he is a businessman, and he brings a businessman's style to the problems before him. I have often been amused, but not necessarily unsympathetic to the frustrations expressed by businessmen in the face of the politics of the legislative process, that not altogether dysfunctional mingling of independent thought, party allegiance and personal ambition. The sponsor is not concerned in the abstract with any of these elements, but he may find that in the concrete terms of his own objectives each has an effect on the strategy which his parliamentary agent and Senate sponsor (the moving Senator) adopt.

(iii) The Political Scientist

The interests of the political scientist subsume those of the lawyer and the sponsor. While he is not generally

14 The parliamentary agent is the extra-parliamentary administrator in the progress of a private bill, and is discussed in Chapter Three below.

legally trained, the political scientist is aware of the institutional parameters which define Senate performance. His measure of the rules is not based upon legal niceties, but upon their effect as one of many elements he cares to identify in what he describes as the political process of Senate practice. He seizes upon the very elements which the lawyer rejects. The machinations of debate on the Senate floor, placed against the backdrop of historical insignificance of that body, nonetheless continue to fascinate him, either through recognition of that historical backdrop or in defiance of it. The political scientist accepts the tendency of the committee chairman to step into the fray; indeed, he brings his methodology to pinpoint the extent over time of the influence of the chair in committee deliberation. He does not reject but seeks to understand and monitor this influence. In following the progress of a particular private measure through the Senate and perhaps on to the House, the political scientist wishes to use the bill as a catalyst hopefully capable of demonstrating the interaction of the political elements of the total process. He, unlike the sponsor, is not particularly concerned whether the bill succeeds or not, yet he will find much to study in the manner in which the sponsor endeavours to ensure its success. Unlike the lawyer, the political scientist will not be overly concerned with the drafting style and legal conundrums

posed by the particular measure, but he will be familiar with it in general terms in recognition of its importance as another variable in the legislative process.

I have taken the time to outline in capsule form the interests and attitudes of the lawyer, sponsor and political scientist, because in the progress of this study of a private bill in the Senate I have, through circumstance, had the advantages of following Bill S-30 through the Senate under the guise of all three. Being so closely involved with Bill S-30 had its disadvantages as well, however. As a student articled to the parliamentary agent and thereby assisting in the sponsorship of the Bill, I was brought closer to the Bill and the processes than would have been the case had this relationship not existed. As a political scientist studying the Bill, I have been able to take advantage of background knowledge derived from the literature and relate it to what was in essence developing before my eyes. The combination of these roles (and attendant ideals and philosophies) was, I think, generally salutory to my objective. However, certain disadvantages arose which I could not avoid.

The political scientist was somewhat suppressed. The participant-observer has some difficulty in making independent representations to those involved as to the nature of the subject process because of his identification with the matter at hand. However, the advantages of proximity to the

process far outweigh the attendant disadvantages. The limited restrictions effected by identification with the subject matter are generally small as contrasted with the tremendous access to relevant materials and practice.

This study was conducted in the following manner. The essential first task was to effect a complete familiarization with Bill S-30 itself. This necessitated review not only of the Bill, but of the Canada Bank Act,[15] and banking circumstances in Canada generally. Chapter Four of this paper analyses and describes in some detail Bill S-30, and more importantly places it in perspective through discussion of banking powers as provided in the Bank Act, and through description of the dicennial review and amendment of that Act, a factor of considerable importance to the future success of Bill S-30 in the House.[16]

The second task was to become conversant with the Standing Rules of the Senate, which establish the legal parameters and time frame for the presentation and progression of a private member's bill. In so doing, it was not sufficient to rely on the Rules themselves. The role played by precedent in the Senate made it imperative to review textual sources treating parliamentary practice in general

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15 The Bank Act, S.C. 1966-67, Chapter 87, Section 1.

16 The experience of Bill S-30 in the House will be raised from time to time throughout this paper, and treated in some detail in Chapter Five. It is a most useful foil to discussion of Senate performance.

and Senate practice more specifically. Chapter Two outlines the practice and procedure of the Senate of Canada, and in so doing provides the framework from which the analysis in Chapter Five proceeds.

The third stage to be completed before studying and actively following the progression of Bill S-30 was the interviewing of Senate personnel. Considerable emphasis was placed here on the hitherto neglected committee clerks and parliamentary draftsmen. Their roles are of considerable consequence in the overall legislative process, yet they have never received more than perfunctory treatment. Chapter Three gives them some of the attention they deserve and, insofar as committee clerks are concerned, challenges the assertion of Van Loon and Whittington that committee clerks "are rather junior people with purely clerical responsibilities".[17] The Chapter identifies and details the functions of each and every person who has a role to play in the presentation of private legislation and the functioning of Senate committees.

Many of the interviews in this study were not interviews in the formal sense at all. However, the difference is one of degree rather than kind. While some were formal, others were actually conversations in the course of an activity related to the progress of the Bill. They differed from the formal interviewing only in the absence of structure

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17 Van Loon and Whittington, op.cit., p.475.

inherent to formal interview methodology. They were as highly productive in their informality, if not more so, than were those discussions of a more formal nature.

The fourth and final stage in this study was the actual monitoring of, and participation in, the progression of Bill S-30 through the Senate. The results of this process are presented comprehensively in Chapter Five. As this paper is not intended to be a mere history of the passage by the Senate of Bill S-30, the analysis in Chapter Five does not proceed by means of sequential description of each stage, but rather identifies certain features of its presentation relevant to the purpose of the study.

While not particularly germane to the scope of this study, which centres on the Senate, the fate of the Bill in the House is nonetheless of tangental interest. Chapter Five briefly outlines the differences in the progress of the Bill in the House from its progress in the Senate. In so doing it illustrates the rationale for proceeding in the Senate rather than in the House in the first instance. I am not concerned with the performance of Bill S-30 in the House, but it would be foolish not to take notice of the influence exerted upon Senate deliberations by the ever-present knowledge that the Bill would be presented to the House for further scrutiny.

4. Hypotheses

The Senate is a much maligned institution, yet there is

a relative paucity of material on Senate committees and their respective functions. Only two major texts on the Senate make any effort to treat Senate committees in any detail.[18] A number of articles have been written on legislative committees generally, but none have appeared on examination of Senate committees specifically.[19]

It is a general hypothesis of this study that the Senate could be a viable element of the legislative process in Canada. Yet in order to attain this viability in deed as in word, the work patterns of the Senate committees must be restructured and re-organized. The trend documented in Chapter One toward the use of Senate committees as vehicles of policy determination has made all the more timely a re-evaluation of the role of the Senate in the modification of legislative enactments.

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18 F.A. Kunz, The Modern Senate of Canada 1925-1963: A Re-Appraisal (Toronto: University of Toronto Press, 1965), and Robert A. Mackay; The Unreformed Senate of Canada, revised edition (Toronto: McClelland and Stewart, 1963).

19 Among the better general articles are: H.R. Balls, The Public Accounts Committee", Canadian Public Administration, 6(1963) pp.15-34; Douglas Fisher, "Parliamentary Committees in the 24th Parliament", Waterloo Review, pp.44-58; C.E.S. Franks, "The Committee Clerks and the Canadian House of Commons, The Parliamentarian, 50 (1969), pp.28-35; T.A. Hockin, "The Advance of Standing Committees in Canada's House of Commons: 1965 to 1970", Canadian Public Administration, 13 (1970), and J.R. Mallory, "The Uses of Legislative Committees", Canadian Public Administration, (1962) pp.1-14.

In assessing the work of the Senate in reviewing Bill S-30, three more specific hypotheses are advanced:

(i) The Senate of Canada is not suited to consideration of private or public legislation of any significance.

(ii) The politics of Senate performance interfere with the Senate's responsibility to consider and enforce public policy.

(iii) The homogeneity of Senate membership is dysfunctional to its performance as a 'representative' body capable of assessing and reviewing public and private legislation objectively.

These hypotheses represent the substantive results of the methodology utilized in this study. The fact that they can be legitimately posited and supported through analysis of a specific nature lends credence to future studies based on the participant-observer format.

In summary, the form of this paper is as follows. Chapter One treats briefly the historical and legal background of the Senate, discusses the role of Senate committees and produces new data on the performance of these committees. Chapter Two looks at Senate rules of practice. Chapter Three describes the personnel who are involved with a private member's bill, and applies Wheare's classifications of membership to the Senate Standing Committee on Banking, Trade and Commerce. Chapter Four describes Bill S-30 and places it in the perspective of banking in Canada. The

fifth Chapter looks at seven characteristics of Senate performance in receiving and passing Bill S-30, and then constructively compares each with the performance to date of the House. The paper concludes with a restatement and discussion of the hypotheses noted above.

CHAPTER ONE - THE SENATE AND SENATE COMMITTEES

The design of this first chapter is not to repeat information available elsewhere on the historical background of the Senate and its development to the present. The variance between the intentions of the Fathers of Confederation and the role currently played by the Senate in the parliamentary process has been adequately documented by a relatively small group of commentators, most prominently Mackay and Kunz.[1] I intend to pass briefly over the legal and historical traditions of the Senate, and concentrate in greater detail on the nature and form of Senate committees. In so doing I indicate that the future of the Senate as a meaningful institution rests in the work of the Senate committees.

1. The Senate of Canada

The Senate has its legal foundation in the British North America Act, 1867 (BNA).[2] Section 17 of the BNA provided for the constitution of the Parliament of Canada, which was to consist of the Queen, an Upper House styled the Senate, and a Lower House styled the House of Commons.

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1 F.A. Kunz, The Modern Senate of Canada 1925-1963: a Re-Appraisal (Toronto: University of Toronto Press, 1965), and Robert A. Mackay; The Unreformed Senate of Canada, revised edition (Toronto: McClelland and Stewart, 1963).

2 30-31 Victoria, C.8. For an excellent collection of pertinent statute material see M. Ollivier, British North America Act and Selected Statutes, 1867-1962, (Ottawa: Queens Printer, 1962).

Section 21 of the Act provided for a Senate membership of seventy-two Senators. The number of Senators now stands at one hundred and two.[3]

The BNA Act (1867) created three divisions, Ontario, Québec and the Maritime Provinces (Nova Scotia and New Brunswick) in structuring Senate membership. Ontario and Québec took twenty-four senators, Nova Scotia and New Brunswick took twelve each. By the British North America Act, 1915, to these three divisions was added a fourth, comprised of the western provinces of Manitoba, British Columbia, Saskatchewan and Alberta, each of which was given six Senate seats. Prince Edward Island has four senators, and Newfoundland, by virtue of Section 4 of the Act of Union has six.

Sections 23 to 36 of the BNA Act 1867 provide for the qualifications and appointment process of Senators. Appendix II reproduces the pertinent sections of the BNA 1867 as amended. The privileges, immunities and responsibilities of Senators are described in The Senate and House of Commons Act, RSC 1952, c.249 (as amended). It is under this Act that the Senate takes its power to amend from time to time its rules of procedure.

Mackay reports that six days out of a total of fourteen

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3 The increase was effected by the British North America Act, 1915 (5-6 Geo V, 45) and by the British North America (No.1) Act, 1949 (12-13 Geo.VI,c.22).

spent at Québec in discussing the representational balance in a united Canada were devoted to the constitution of the Senate.[4] The essential features of the proposed upper house were outlined by John A. Macdonald.[5] Upon his resolution the constitution of the Senate crystallized in the form and membership noted above.

Politically, the nature of Senate membership proved to be the essential compromise of the Québec Conference, the essence of the federal compact. Yet despite the practical political considerations formative in the Senate's constitution, its perceived functions were based in theory. The Senate, in the first place, was intended to protect sectional interests in the face of the centralizing tendencies of the Lower House. Second, it was to provide a check on the legislative capacity of the House of Commons, thereby regulating in more substantive form expected encroachments upon democracy.[6] Provisions of the BNA Act (1867) respecting qualifications of Senators indicate that the Senate was also intended to represent the interests of property.

Mackay notes that these intended functions are purely negative. It was never assumed that the Senate would take any part in leading public opinion or influencing in a

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4 Mackay, op.cit., Chapter One.
5 For discussion of Macdonald's role and attitude toward the upper house see Mackay, Ibid., Chapter One.
6 Ibid.

positive manner public policy. It was to control and regulate, not to initiate. The Senate was, in Macdonald's words, to represent "the sober second-thought in legislation".[7] These words have been seized upon often since Macdonald delivered himself of them in the face of the decreasing efficacy of the Senate in the amendment and/or rejection of legislation brought up from the House of Commons.

2. The Role of Senate Committees

It is my impression, after following Bill S-30 in an active way through a Senate committee and attending the hearings of many other Senate committees, that the strength of the Senate depends now and must certainly depend in the future upon the performance of Senate standing and special committees.[8] Even though the capacity for substantive amendment to public bills is greater in Senate Committees than in Committees of the House (given the lesser importance of party politics in the former), statistics do not evidence a high ratio of Senate performance in amendments to government bills.[9] Votes of non-confidence are not made in Senate chambers, and Senate committees tend to be less partisan in

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7 Noted in Mackay, op.cit.

8 Standing committees are permanent with a specialized mandate. Special committees are essentially ad hoc, struck to investigate and treat a particular matter.

9 See Mackay, op.cit., Appendix I. His statistical data indicates the inadequate performance of the Senate in the modification of legislation sent up from the House.

their examination of government bills than House committees, but the Senate continues, in committee and in the chamber itself, to allow government legislation to pass through without substantial amendment.

The role generally ascribed to Senate committees is identical to the role generally given to the Senate itself. Senate committees, in the review of public bills at least, are intended to provide a close and specialised examination to supplement the overview nature of the Senate's function to provide 'sober second thought'. The failure of the Senate to amend or reject more than a small proportion of government bills reflects upon the committees themselves, and has given rise to cries for the abolition of the Senate as an archaic and meaningless institution.[10] Yet this reaction, while attributing failure to the Senate standing committees in their review of government legislation (their political role), overlooks the functions exercised by Senate standing and special committees in their inquiries into general policy areas. It is this role of Senate committees, the policy role, which provides some purpose for their existence and for the Senate itself in the parliamentary process.[11]

To investigate this point I reviewed the operations of

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10 See Kunz, op. cit., C.4.

11 Theoretically, it may appear difficult to justify any role for a non-elected body in a democracy. Yet the Senate committees could perform a useful, non-controversial purpose in investigating and advocating solutions to problems of national significance to Canada.

Senate standing and special committees from 1903 through and including 1974. The Senate special committees deserve particular attention. Standing committees are given a particular generally defined area of responsibility, and review all matters within that defined area which are referred to them.[12] The review of legislation, which in effect is 'defined policy', is their primary function. Special committees, on the other hand, are ad hoc committees which are struck on the recommendation of the Senate to examine a specific and particularized area of concern. While Senate standing committees have, as their primary role, the examination of defined government policy in the form of enabling legislation, special committees have as their primary role the definition of policy itself. The trend which I have observed is towards an expansion of the role of Senate special committees in the advocation of general policy, and an increase in the number of general policy inquiries referred to standing committees.

Between the years 1903 and 1974, a total of 120 special committees were struck to inquire into specific areas of concern. Of these, 25, or 21 percent of the total, were concerned with internal matters, the most common being special committees on rules and orders. A further 32 of these special committees were concerned with particular

12 It is an essential characteristic of Canada's parliamentary committees that they are not self-starting. They may only act when a matter is referred to them.

pieces of legislation. In performing this function, the special committees effectively pre-empted the specialized standing committees to which a particular piece of legislation would normally have been referred. The greater part of these special committees, 63 or 51 percent, were not concerned with defined government policy in the form of legislation, but with the search for a suitable policy in response to an existing problem.

This figure of 51 percent is of considerable importance to an understanding of Senate committee role and performance. It illustrates the particular use and value of special committees and the policy capabilities of the Senate committee system, and of the Senate itself. The review of government legislation is a political function. Inquiries into the Saskatchewan Watershed (1907), Mineral Resources (1909), Promotion of Trade (1916, 1917), Development of Oil Shales (1920), Unemployment in Canada (1921), and Canadian Sealing and Fishing Interests (1934) are policy functions.

The policy function of Senate committees is on the increase. Indeed, since the 4th Session of the 19th Parliament of Canada (1943-44), Senate special committees have been struck only for the purposes of investigating a general policy area.

There has not been a single special committee struck in this period to consider already established policy in the form of government legislation. Up to the 1943-44

session, special committees to examine particular government bills accounted for 37 percent of the total to that date, while general committee inquiries accounted for 33 percent. Of the 63 special committees struck to make general policy inquiries, almost half have appeared since the 4th Session of the 19th Parliament. Of these, half again have appeared since 1965.[13]

A further trend illustrated by consideration of Senate special committees is the increasing co-operation between Senate and House special committees in policy inquiries.

Joint special committees mirror concerns of Government and Parliament in a constantly changing society. They emphasize too the reactive nature of the Canadian policy process. In 1965 the Liberal government was struggling with the administrative complexities of a national Canada Pension Plan. One of four joint special committees not surprisingly was the Special Committee on the Pension Plan. The others considered consumer credit, Indian claims, and penitentiaries. In the 1966-67 session, joint committees considered the administration of justice, consumer credit (cost of living), criminal code (hate propaganda), divorce, immigration, national and royal anthems (a fitting centennial concern), penitentiary and public service. The 1967-68 session continued the above, and added the Special Committee

13 Appendix II comprehensively lists the Senate special committees struck between the years 1903 and 1974.

on the National Capital Commission.

In 1968-69 the major policy concern of the Liberal government was the sweeping reform of the tax system, based in part upon the Carter Commission report.[14] The most active joint committee for this period was the Standing Special Committee on Tax Reform. A recurring theme of the latter part of the sixties and early seventies was constitutional reform influenced by repeated confrontation between the federal and provincial governments over the patriation of the constitution and suggested reforms in the division of legislative powers. In the legislative sessions from 1969 to 1972 chief among the joint special committees was the committee on the Constitution of Canada which delivered up its final report to the Fourth Session of the Twenty-eighth Parliament.

The Special Joint Committee of the Senate and of the House of Commons on the Constitution is a proper illustration of the work of the special joint committees. The committee was struck in resolutions passed in the House of Commons on January 27th and in the Senate on February 17th, 1970. It was reconstituted at the beginning of the Third Session and at the beginning of the Fourth Session of the Twenty-eighth Parliament. The terms of reference provided by joint resolutions are as follows:

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14. Report of the Royal Commission on Taxation, Vol. 3, (Ottawa: Queens Printer, 1970).

> That a Special Joint Committee of the Senate and of the House of Commons be appointed to examine and report upon proposals, made public, or which are from time to time made public by the Government of Canada during the course of the comprehensive review of the Constitution of Canada, which review was agreed upon at the Constitutional Conference of the Prime Minister of Canada and the Premiers and Prime Ministers of the Provinces in February, 1968, and alternative proposals on the same subjects...That the committee have power to adjourn from place to place within Canada.[15]

The Committee studied the monumental issues before it for two years. The joint chairmen at the reporting stage were Senator Gildas L. Molgat and Mark MacGuigan M.P. Senate members numbered ten, House members numbered twenty. The Committee held 145 public meetings, including 72 sessions in 47 cities and towns, and received more than 8,000 pages of evidence. It travelled extensively throughout Canada, visiting all Provinces and Territories. The total attendance at Committee meetings was approximately 13,000 and approximately 1,486 Canadians appeared as witnesses.

Special committees have greater support staff facilities than do standing committees, which rely primarily on their clerks, research staff of the Library of Parliament, and the Committees and Private Legislation Branch. The joint committee on the Constitution enjoyed the services of the Committees and Private Legislation Branch, the Committee

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15 Final Report of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, (Ottawa: Queens Printer, 1972).

Reporting Services Branch, and the Committee Liaison Officer of the House of Commons. It had its own staff for the duration of its work: a Legal Advisor, an Economic Advisor, and an Executive Assistant and a Research Assistant. It also had the temporary services during the summer of 1971 of three law students.

In 1972 the Special Joint Committee on Regulations and Statutory Instruments was struck. As noted above, it now enjoys the status of a joint standing committee. In 1973-74 the independent issues of poverty and science policy resulted in the appointment of joint committees on Poverty in Canada, and Science Policy in Canada.

I conclude this section by emphasizing the dual role of Senate committees. In the first instance, Senate committees are involved with the 'review' of government policy through examination in committee of legislation emanating from the House. This role, historically considered as the primary role of the Senate of Canada, largely has been illusory. Committees generally were never intended to re-construct government policy through amendment. Such amendments as are effected to government legislation are for the most part editorial. They do not challenge the policy precepts, but the manner and form of its presentation.

The second role of Senate committees is investigation into areas of social policy which demand the attention of a legislative body. Here the Senate committees consider,

either independently or jointly with the House committees, both the problems and solutions to those problems without government intervention. And while it could be argued that rarely does the Government take hold of policy defined in this manner, the role of the Senate is to investigate and co-ordinate data, and report. The increase documented above in the number of Senate special committees indicates some appreciation on the part of members (who move to refer matters to committees) and on the part of the government (which through the Government Leader in the Senate expresses its support) that the Senate has facilities and manpower to play a renewed role in the definition and presentation of future government policy.

3. Senate Committees

(i) Standing Committees

Section 67(1) of the Senate Rules[16] enables and describes the nine standing committees, which I now outline briefly. Each committee is comprised of twenty members and has a quorum of five.

(i) The Committee on Standing Rules and Orders is empowered on its own initiative to propose to the Senate amendments to rules as the necessity arises. It was one of seven original Senate committees struck in 1867.

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16 Rules, Senate of Canada, (December 1969, amended to January, 1973, Queens Printer, 1973).

(ii) The Committee on Internal Economy, Budgets and Administration receives upon motion any bills, messages, petitions, inquiries, papers and other matters relating to internal economy, budgetary matters and administration generally. This committee was also one of the original seven. Its work has been supplemented often (25 times since 1903) by special committees struck to consider in greater detail a particular matter affecting internal operations..

(iii) The Senate Committee on Foreign Affairs, struck in 1938, considers bills and other matters relating to foreign and commonwealth relations generally, including treaties and international agreements, external trade, foreign aid, defence, immigration, and territorial and offshore matters. In 1969 this committee travelled extensively throughout Northern Canada and advocated the extension of the territorial waters to 200 miles.

(iv) The Senate Committee on National Finance, struck in 1919, receives all bills and other matters relating to federal estimates generally, including national accounts and the report of the Auditor General.

(v) One of the original Senate committees was the Committee on Railways. In 1945 its responsibilities were expanded to take into account telegraphs and harbours, and it was renamed the Senate Committee on Transport and Communications. Included among matters it receives are

those relating to transport and communications by land, air, water, and space, by whatever form, method or means, tourist traffic, common carriers, pipelines, transmission lines and energy transmission, navigation, shipping and navigable waters.

(vi) The Senate Committee on Legal and Constitutional Affairs has as its general mandate consideration of all matters relating to legal and constitutional concerns, including federal-provincial relations, administration of justice, law reform, the judiciary, and private bills not otherwise specifically assigned to another committee, including those related to marriage and divorce. Despite this mandate, this committee was pre-empted on two important occasions, the investigation of the competence of Justice Leo Landreville,[17] and the inquiry into constitutional reform. Both of these matters were subjects of special Senate committees.

(vii) The Senate Committee on Banking, Trade and Commerce has a wide range of responsibilities, including deliberations on banking, insurance, trust and loan companies, credit societies, caisses populaires and small loans; customs and excise, taxation legislation, patents and royalties, corporate and consumer affairs, bankruptcy, natural resources and mines. It represents an amalgamation

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17 Justice Landreville was the object of an inquiry for improper conduct and subsequently resigned from the Supreme Court of Ontario.

of several Senate committees. In 1867 one of the seven committees struck was the Senate Committee on Banking. In 1918 one of six new committees was the Senate Committee on Commerce, which became Commerce and Trade Relations and in 1945 was renamed Canadian Trade Relations. A further note on this committee follows below. It is, of course, the committee to which Bill S-30 was referred after second reading in the Senate.

(viii) The Senate Committee on Health, Welfare and Science includes in its mandate matters effecting veteran affairs, Indian and Eskimo affairs, health and welfare, social and cultural matters, pensions, labour legislation and aging. Frequently, it too has been pre-empted by special committees.

(ix) Finally, the Senate Committee on Agriculture, which hears generally all matters concerned with agriculture in Canada. This committee first appears in 1918. In 1945 it included forestry and was renamed Natural Resources, but has since reverted back to its original nomenclature.

(ii) Joint Committees

There are currently ~~four~~ joint committees made up of members of the Senate and House of Commons. They are:

(i) the Joint Committee on the Library of Parliament which is comprised in part of seventeen Senators;

(ii) the Joint Committee on the Printing of Parliament which is comprised in part of twenty-one Senators; and

(iii) the Joint Committee on the Restaurant of Parlia-

ment which is comprised in part of the Speaker of the Senate and six other Senators.

(iv) the Joint Committee on Regulations and Other Statutory Instruments.

4. A Short Note on the Senate Committee on Banking, Trade and Commerce

Kunz has described this committee as "the queen of Senate committees".[18] Indeed, its terms of reference are continuously re-interpreted and it handles more than 50 percent of Senate committee work. The chief reason for this is likely that interpreted broadly, its terms of reference could well include almost every conceivable piece of legislation or policy area. A second reason must be its traditional membership strength. The Banking, Trade and Commerce Committee has always had strong and able chairmen and has built up over the years a considerable expertise in general finance matters. Much of the credit for its generally salutory performance over the last twenty-five years must go to Senator Salter Hayden, who has been Chairman or Vice-Chairman of the committee since February 8, 1951.

Table I lists the members of the Banking, Trade and Commerce Committee (BTC) as of October 28, 1975. Senator Hayden is a Liberal appointee, as are 12, or 60 percent of the committee members (7, or 35 percent are Progressive Conservatives, and one Independent). When ranked according to profession, I found the most common professional back-

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18 Kunz, op.cit., p.58.

ground to be the law; 14 or 70 percent of committee members are lawyers. The remaining six places are shared evenly among a chartered accountant, manufacturing agent, businessman, farmer, advertising executive and physician. The committee has a clearly defined representation in the business community.

TABLE I

BANKING, TRADE & COMMERCE COMMITTEE

The Hon. Salter A. Hayden, Chairman

The Hon. Senators	Year of Appointment	Profession
Barrow, A.I.	1974	Chartered Acct.
Beaubien, L.P.	1960	Lawyer
Buckwold, Sidney J.	1971	Businessman
Connolly, J.J. (Ottawa West)	1953	Lawyer
Cook, Eric	1964	Lawyer
Desruisseaux, P.	1966	Lawyer
Everett, Douglas D.	1966	Lawyer
* Flynn, Jacques	1962	Laywer
Gelinas, L.P.	1963	Lawyer
Haig, J. Campbell	1962	Lawyer
Hayden, Salter A.	1940	Lawyer
Hays, Harry	1963	Farmer
Laird, Keith	1967	Lawyer
Lang, D.	1964	Lawyer
MacNaughton, Alan A.	1966	Lawyer
McIlraith, George	1972	Politics, Lawyer
Molson, H. deM.	1955	Lawyer
* Perrault, R.J.	1973	Politics, Ad.Agent
Smith, G.I. (Colchester)	1955	Manufacturer
Sullivan, J.A.	1957	Physician
Walker, David J.	1963	Lawyer

* Ex officio member
20 Members (Quorum 5)

The average BTC member has been in the Senate for 10.9 years. Senator Hayden has been a senator for thirty-six years, over three times the committee average.

Because Bill S-30 is banking legislation, with ramifications beyond its immediate concern (see Chapter Three below) I was interested in ascertaining the relevant directorships held by member Senators in the banking community. While many Senators generally are on bank boards, only two of those who sat on the BTC while it considered Bill S-30 held seats on bank boards, Senator Molson and Senator Desruisseaux. Interestingly, both declared a conflict of interest and did not participate in the vote on the Bill. Of greater concern, discussed in Chapter Five below, are the numerous interlocking directorates shared by members of the BTC and officers of the Industrial Acceptance Corporation, the sponsors of Bill S-30.

This Chapter has not unwittingly stressed the role of Senate special committees rather than standing committees. As Chapter One has indicated, one hypothesis of the study is that Senate standing committees are incapable of a policy role. The examination of special committees and the increase in general policy areas discussed by such committees serves to stress the difference in policy potential between special and standing committees. As Chapters Four and Five below clearly illustrate, standing committees, when restricted to a specific piece of legislation, be it public or private, are restricted in their options. Special committees, on the other hand, may at their own instance define the extent and substance of their recommendations.

CHAPTER TWO - SENATE PROCEDURE

One theory of committee performance is that committees are masters of their own procedure. This is true provided that the procedures established by a committee do not conflict with those set down in the Rules of the Senate. The rules provide for the measure and scope of committee activity either directly, or indirectly, through application of rules of the Senate *mutatis mutandis* to Senate committees. Before analyzing the practice of Senate and Committee in reviewing Bill S-30, it is necessary to have an understanding of the procedural framework within which the Senate, and Senate Committees function.

I do not undertake, however, a comprehensive review of Senate procedure. My primary interest in the Senate rules is in their application to Senate committees, and I shall not provide, therefore, detailed treatment of rules which have no bearing whatsoever on committee performance. That task has been most competently fulfilled by Beauchesne and Bourinot.[1]

In examining the Senate rules, it is important to consider the extent to which they bind Senators and Mr. Speaker. They do not enjoy the irrevocable nature of

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1 Arthur Beauchesne, Rules and Forms of the House of Commons of Canada, 3rd Ed., (Toronto: Canada Law Book, 1943). Sir John George Bourinot, Parliamentary Procedure and Practice in the Dominion of Canada, 4th Ed., (Toronto: Canada Law Book, 1916).

constitutional provisions, but are subject to recurring change and amendment by the Senate on recommendations from the Committee on Standing Rules and Orders. Moreover, the Rules are expressly subject to modification by custom and usage. Rule 1 of the Senate incorporates in matters of doubt past rules, custom and usage:

> In all cases not provided for hereinafter or by sessional or other orders, the standing orders, the rules, usages and forms and proceedings of the Parliament of Canada, in force up to the day on which the present rules go into operation, shall be followed so far as they can be applied to the proceedings of the Senate or any committee thereof.

The rules and orders are not exhaustive therefore of the procedure of the Senate of Canada, which not unlike constitutional practice, is made up of written rules (or laws) usage and custom. Thus, the Speaker is not strictly bound by the rules themselves, but by their interpretation as modified by relevant custom or usage. In cases of doubt, Mr. Speaker (or the chairman of a committee, or his clerk) will refer to the procedure followed in the instant case by English practice. Bourinot, while noting that certain diversities exist, affirms the traditional philosophical links to the imperial parliament inherent in Canadian parliamentary practice. Certain general principles have been directly transferable: the need to protect a minority and restrain the tyranny of the majority; the necessity of securing the transaction of public business in an orderly manner; and the provision to each member of the opportunity

to express his opinions (within the confines of restraints necessary to the decorous advancement of free debate).

The Senate revises the rules of practice by means of special committees appointed for that purpose, (in addition to the Standing Committee). These committees report back to the Senate which either affirms or denies the recommendations. Despite the frequent necessity for modification, the rules and orders have a definite continuity, and may not be suspended unless by unanimous consent. The principle of law which provides that where conflict between two enabling provisions exists the specific overrules the general direction, is not applicable to parliamentary practice as the proceedings of the Senate are regulated both by statute and the rules, and a statutory direction overrules and supercedes any order of the chamber to which it applies.

1. Interpretation

Unless specifically provided for, the rules in no way restrict the mode in which the Senate may exercise and uphold its powers, principles and immunities (Rule 2, hereinafter described as (R)2, (R)3, etc.). The Senate historically has been, and continues to be, sensitive of its privileges. For recent example, I need point only to the Senate uproar over the authorized search of Senator Giguere's Senate offices by the Royal Canadian Mounted Police. The protection of Senate privilege and immunity is merely recognition of the obvious: "no legislative assembly would be able to discharge its

duties with efficiency or to assure its independence and dignity unless it had adequate powers to protect itself and its members and officials in the exercise of their functions".[2]

Any rule or part thereof may be suspended without notice by leave of the Senate, provided that the rule or part thereof which is proposed to be amended, and the reason for the proposed suspension is distinctly stated (R)3. A unanimous vote is required, and as noted above, all rules of the Senate are in force unless specifically repealed. Generally, the publication of Senate rules will repeal those rules expressly in force.

The interpretive section of the Rules defines many terms and bodies pertinent to the scope of this study. A 'bill' is defined as a draft Act of Parliament and includes both a private and a public bill (R)5. 'Committee' includes a committee of the whole, a select committee, whether standing or special, or a joint committee (R)5-b. Each of these is itself defined. Committee of the Whole means naturally enough a committee composed of the whole body of Senators (R)5-c. A select committee is a committee composed of less than the whole body of Senators and includes both a standing committee and a special committee (R)5-p. Standing committee is defined as a select committee appointed to consider and to report thereon

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2 Beauchesne, op.cit., p.48.

to the Senate matters falling within the duties specifically assigned to it, the rules, and on other matters which may from time to time be referred to it by the Senate, (R)5-s; while a special committee is merely a select committee other than a standing committee appointed to consider certain matters and to report thereon to the Senate (R)5-r. A joint committee is one composed of members of the Senate and the House of Commons.

The interpretive sections of Part I of the Rules do not differentiate between public and private bills. A 'Petition', the procedure by which a bill is ushered into the legislative process, is defined as a written prayer presented to the Senate, including all petitions whether relating to public or private matters, matters of general policy, or to the redress of local or personal greivances.

2. Petitions and Bills

The routine business of the Senate begins with the presentation of petitions. Each petition must be written clearly and signed by the petitioner (R)51. Those which emanate from a corporation, either public or private, will not be received into the Senate unless duly authenticated and under the seal of the corporation (R)52. The petition or prayer for relief must without modification follow the prescribed form. It is directed "To the Honourable the Senate of Canada in Parliament Assembled", and must introduce

its prayer with the following words: "The petition of the undersigned.....Humbly Sheweth" followed by separate paragraphs outlining the nature of the desired relief.

The purpose of the petition is the introduction of a specific matter for public consideration by the members of the Senate. The document, in proper form, is tabled by the Government Leader (in the case of public bills) or by a member Senator (in the case of private bills). When a public petition is tabled, no debate is allowed without the consent of the majority of the Senate, however, the Government Leader may without consent give a few words of explanation on any important document he is tabling.

When the petition is referable to a private prayer for relief, the sponsoring Senator rises in his seat, introduces the matter, and reads the heading which appears on the cover of the petition. No action or debate follows at this time, the established practice being that one sitting intervenes between the presentation and the reading of a petition. Once a petition is 'read' (by the Clerk Assistant to the Senate) it is considered officially received. A private bill can be introduced into the Senate only after the reading of the petition.

Before any private bill is presented to the Senate, the petition must be examined for defects in form or subject matter by the examiner of petitions, a public servant, usually the Senate Law Clerk, who is instructed under

Rule 87(2) to make a report to the House. When he reports that the petition is without defect, his report is tabled by the Clerk of the Senate. The bill may then be presented in due course. Where the examiner finds the petition defective in either form or subject matter, he reports to the Senate Committee on Standing Rules and Orders, and the report of this committee regarding the petition is presented to the Senate. The private bill is not introduced until the defect in the petition is corrected and the procedure re-enacted.

Rule 54 provides that all bills introduced in the Senate shall be printed in the English and French languages, and supplies the form which amendments to any bill must follow. Rule 55 provides that a Senator may as of right present a bill to the Senate. Immediately after presentation a bill is given a first and perfunctory reading and printed. The principle of the bill is debated at its second reading, and any Senator may at any time before a bill is passed move for reconsideration of any clause even though previously carried. When read a third time the bill is deemed to have been passed by the Senate and no further amendment or debate follows (R)57.

A private bill which originates in the Senate (e.g. Bill S-30) passes through the legislative processes of both the Senate and House, and is then returned to the Senate. If it receives amendments in the House to which the Senate

cannot agree, a committee of three senators is formed at which the formal message of disagreement is drawn up for presentment back to the House. It is quite possible for a private bill to be forestalled on the amendment merry-go-round running between the Senate and the House.

Rule 61 prohibits a bill which originated in the Senate and ultimately was refused from being re-introduced in the Senate during the same session of Parliament. Neither can a bill whose object is similar to that of a bill which originated in the Senate and was ultimately passed be introduced in the Senate in the same session of Parliament. However, a bill originating in the House may be received in the Senate in the same session, even though similar in object to a Senate bill.

The general and most common practice in the Senate is to refer a bill which has received second reading to a select committee, though it may decide upon motion to refer the bill to the committee of the whole, and so constitute itself. The report of the committee back to the Senate, once accepted, initiates third reading of the bill.

3. Committees

At the commencement of each parliamentary session a committee of selection consisting of nine senators named by the Senate is appointed. It is the express duty of this committee to nominate the senators who may serve for the course of the session on the several standing committees (R)66.

Rule 67 establishes the various committees and their membership.

When the Senate is in Committee of the Whole, each Senator maintains his own normal place, and may rise and address the chair when he wishes to speak to a particular matter (R)64. The procedural rules of the Senate respecting Senate debate apply in Committee of the Whole with the following exceptions:

(a) the rules limiting the number of times a member may speak do not apply. Generally, a Senator shall not speak twice to a question before the Senate except in explanation of a material part of his speech in which he may have been misunderstood, and even then he shall not introduce a new matter (R)28;

(b) a motion for the previous question or for an adjournment will not be received. Generally, a motion to adjourn a debate is deemed to be a motion to postpone that debate to the day specified, and debate is so adjourned. If no date is specified, debate is adjourned until the next sitting day (R)36(2). 'Previous question' refers to a motion 'that the original question be put now'. Rule 36(3) provides that such a motion may be made on a main motion, or on a main motion as amended, but not on a motion for amendment. If the motion for previous question comes, the Speaker must immediately put the original question without further debate. As indicated 'the previous question'

cannot be moved in Committee of the Whole, nor may it be moved in any select committee (R)36;

(c) arguments against the principle of the bill shall not be admitted.

The Leader of the Government and Leader of the Opposition in the Senate are ex officio members of all standing committees. Any Senator, though not a member of a committee, may attend and participate in its deliberations but he may not take part in any vote. Further, Senate committee meetings are open to the public, unless the committee itself orders otherwise.

Rule 74 provides that the Senate may appoint such special committees as it deems advisable, and may set the terms of reference and indicate the powers to be exercised and the duties to be undertaken by any such committee. Interestingly, it is the mover of the motion establishing a special committee who has the right to nominate the senators to serve on such committee. However, this right is not an unlimited one and is forfeited at the request of three senators whereupon each senator has a vote. Those senators who receive the largest number of votes constitute the committee. A quorum of a special committee is one-third its members, unless otherwise decided upon by the Senate in constituting the committee.

Every Senate committee to which a bill has been referred must report on the bill back to the Senate. If

the committee has amended the bill, then the bill as amended must appear in the report (R)79. The Senator presenting the report explains the basis for the effect of each amendment. The Senate receives the report and must pass upon it. If the committee report recommends that the bill should not be continued, and the motion for adoption of that report is carried, the bill will be removed from the order paper.

The committee report is presented to the Senate by the Chairman, who must sign the report and any marginal notes made thereon.[3] The report is tabled and read by the Clerk Assistant. The Speaker of the Senate then requests the pleasure of the Senate as to reception of the report. Where a bill is reported without amendment, the report is adopted pro forma and the Clerk Assistant puts the question whether the bill will be read a third time.

It appears that the Senate may not amend a report from a select committee but may refer the report back to the said committee for further consideration. In the alternative, it may refer the report to the Committee of the Whole for review. Any bill may be referred back to committee at any time before its passage.[4]

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3 The committee report is not official until the Chairman has signed it, thereby attesting to its textual validity. If marginal notes appear on the report, they will invalidate it unless initialled by the Chairman. Appendix IV indicates the form of the Chairman's report.

4 In the House, amendments may be brought at the report stage, thus effectively undermining the work of the committee.

The rules outline the steps necessary for the presentment of a private bill. It has been noted that pursuant to Rule 87 a private bill is introduced on petition and is only presented to the Senate after the petition has been favourably reported on.

Rule 86 provides that every application to Parliament for a private bill must be advertised by notice published in the Canada Gazette. The notice states the nature and objects of the application and is signed by the applicant(s). It is to be published once a week for a period of four weeks in the English and French language. Proof of compliance with this rule is exhibited by means of a statutory declaration filed with the Clerk of the Senate.

Petitions for private bills, when received by the Senate, are considered by the examiner of petitions. Rule 87 provides that the examiner of petitions for private bills in the Senate is the Director of Committees, who is described more fully in Chapter Four. The rules further provide that if so demanded by two senators a private bill may on first reading be referred to the Standing Committee on Legal and Constitutional Affairs in order to ascertain whether the bill comes within the classes of subjects assigned exclusively to the legislatures of the Provinces.

All private bills are recorded on a Private Bill Register. The entry describes the names, descriptions and residence of the petitioners, and records all proceedings

from the receipt of the petition to the passing of the bill. A daily list of all private bills is prepared by committee clerks and posted in the Senate lobby.

4. Common Practice

This Chapter, which has concentrated primarily on the legal formalities of the Rules, closes with brief comment on the informal practice of Senate committees. Comments presented at this time are necessarily of a general nature, and are subject to the more specific and illustrative examination of variables of Senate procedure presented in Chapter Five.

Senate committees generally restrict their meetings to Tuesdays, Wednesdays and Thursdays, thus giving rise to March's classification of the 'Tuesday to Thursday' club.[5] The exigencies of this phenomenon are not too difficult to discern, nor are they at all surprising. Senators travel on weekends, as do their counterparts in the House, and Monday and Friday become days of arrival and departure respectively. Moreover, Senate committees are most often receiving testimony from expert witnesses and interested parties, and the 'Tuesday to Thursday' schedule is generally a more convenient schedule for them as well.

A second point is the ever-changing structure of committee membership. It is not procedurally difficult to

5 Roman March, The Myth of Parliament (Toronto: Prentice-Hall, 1974).

get on or off a committee, and committees exhibit high turnovers in their membership. What makes this point of greater interest is its relation to the manner in which evidence is received, and the vote taken. It is unusual indeed for all of the members who vote on an issue to have been present throughout when evidence is taken. Here again, the differences noted in the Introduction existing between the conceptual frameworks of the lawyer and political scientist come into play in the analysis of this practice. A lawyer may find it abominable that the persons who hear the evidence may not necessarily be the persons who vote and decide the matter. Such an occurence does not fit within the judicial mold. The political scientist may not share this reaction. It is the essence of parliamentary practice that matters of public interest be decided by the inherent give and take of political realities. In any given issue before any given committee, there will be members who through party identification have determined their stance before a word is spoken; members who are decided on grounds of principle; members who are undecided but interested and open-minded; and members who are bored. Trade-offs are the invariable products of these differing positions. One bill gets through on the promise of support for another member's pet project. Professional backgrounds and connections often are determinative. The Chairman will often play a major role. In law, if the judge symbolically

through over-zealous interest disrobes and steps out of his judicial shoes into the shoes of the advocate, he is subject to being reprimanded and the procedure voided. Yet Parliament and parliamentary practice, with all its inequities in the view of those legally trained, is not law but government. And government is politics and policy.

A further element of general committee practice dysfunctional to committee performance is the tremendous expense in terms of time and deliberative energy caused by the lack of research staff. Time and again witnesses before committees who come to present their case either for or against a particular policy, or to advocate exemption from particular provisions, find it necessary to outline not only their own circumstances but the nature of the legislation and regulating scheme itself. This is especially true where a standing or special committee is considering a general area of policy. During the First Session of the Thirtieth Parliament, the BTC committee opened hearings on the Textile Industry in Canada. Witnesses appearing before this committee found it necessary to outline the full extent of government regulation before making their own case.

The rules of practice noted above define the parameters of committee performance but they neither restrict nor encourage the Senators in their work. They are for the most part unobtrusive, and ineffectual. One problem is the fact that the committees do not have their own body of rules and

principles against which to measure their own individual performance. The framework of express rules within which they operate is determined by the Senate as a whole. To operate in a more competent manner, Senate committees must indeed become 'masters of their own procedure'. In this regard, recent suggestions otherwise, to the effect that Mr. Speaker should exert greater supervisory control over House committees merit close attention, should that attitude, which would bind the committees in their work, be exhibited in the Senate as well.

CHAPTER THREE - PERSONNEL

This Chapter identifies various personnel who are or may become involved in the presentation of a private bill to the Senate, in order to present in some detail the players in the game. Part A looks at the following personnel: parliamentary agent, Senate sponsor, Senate Law Clerks, and the Examiner of Petitions. Part B considers the committee clerk, and expands upon K.C. Wheare's presentation of the seven 'characters' present in any parliamentary committee.

A. Administrative Personnel

1. Parliamentary Agent

The parliamentary agent is an outsider with inside connections.[1] He is not a Senator but generally he will have had considerable contact with members of that body, and will be more than familiar with the way the Senate works.

Discussions with officers of the Parliamentary Law Clerks Office indicated the general opinion that the parliamentary agent is an anachronism, and an unnecessary participant in the passage of private legislation. The

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1 The parliamentary agent will be involved in the presentation of the bill to both the Senate and the House of Commons. In each his duties are somewhat similar, with some modification due to rule differences. As this paper is concerned with the Senate primarily, the description of the duties of the agent is here confined to his duties in relation to presentation to the Senate.

nature of the Agent's role is by these officers misunderstood, and to be properly assessed must be considered in two stages, the organization stage and the legislative stage. In the latter, the agent steps back from the bill and merely monitors its progress. His role has been subtended by the Senate sponsor who more effectively takes charge of the bill. However, in his role as an organization man, and as an information link between the Senate and the corporate sponsors of the bill, the agent's role is of considerable consequence.

The success of a private bill in the Senate may depend as much upon its merit as upon the attention paid by proponents to Senate procedure. It is imperative that Senate rules be absorbed and used to good advantage.[2] Very little time indeed is provided for such bills, and it becomes important to make good use of each opportunity presented to advance the bill a further step. In selecting parliamentary agents, proponents of private legislation will look for persons whose professional background indicates some connection with those processes and persons who will determine the bill's success. Prominent Ottawa lawyers and former Members of Parliament are the usual choices.

It comes as a surprise to some denigrators of the position to learn that the parliamentary agent is an

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2 Chapter Five, post, outlines some of the ways in which the Rules can be used to further the advantage of the applicant and, in certain circumstances, the opposition.

official position.[3] All agents must receive the 'express sanction and authority' of Mr. Speaker and are responsible to him for the observance of the rules, orders and practice of Parliament. In reality, the sanction of the Speaker is accomplished by the payment of a sessional fee of twenty-five dollars to the Receiver General. The Speaker never sees the agent and his authority over him is an empty formality of the Standing Orders. Payment of the fee allows the agent to act for the duration of the session.

The parliamentary agent never appears in the Senate chamber. He may appear in committee as either a witness or as 'chairman' of the presentation to committee by proponents of the bill. Generally, the agent will introduce to committee the witnesses who will speak, and give a brief overview of the purpose and nature of the bill itself.

(i) Organization

The initial function of the agent is to marshall presentation of the bill to the Senate. His first task is to assess the Senate's mood. In so doing he considers the likely duration of the session, the nature of public legislation currently before the Senate, and the political climate, all of which reflect upon the general stability of Parliament and upon the chances of the bill being well received.

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3 Standing Orders 114 and 115 of the House of Commons provide for the appointment and supervision of the parliamentary agent. The position is not provided for in the Senate Rules, but the agent may act as such in both Houses.

The agent, as a matter of courtesy and good politics, will have approached influential members of all parties in the Senate and the House, in order to assess the likely success of the bill. This 'feeling out' process also helps in determining which shall receive the bill in the first instance. The general rule is that the most receptive forum should receive the bill first. Presentation to the Senate or the House, whichever it may be, becomes a dry run for the more difficult times expected when the bill is reported to the other chamber. Invariably, private legislation begins in the Senate, moves from there to the House, and is then reported back to the Senate.

Once the agent has determined the mood of Parliament and decided that the Senate is to receive the bill, he is faced with two administrative problems. He must get clearance from the Law Clerks on draftsmanship of the bill, and he must, if the proponents have not already done so, find a Senate sponsor. The selection of the sponsor is of considerable importance, and is treated below.

In performance of his remaining organizational duties the agent generally will adhere to the following pattern. He will attend upon the Clerks of the Senate to review procedural requirements. He will hold meetings with proponents of the bill to discuss the drafting of the petition and general strategy. He will prepare the necessary advertisements and meet with the sponsors to prepare for second

reading.[4]

Invariably, the initial stages will be complicated through the virtual incessant urges of the Law Clerks to change the drafting form of the bill.[5] This necessitates considerable tact on the part of the agent, for he must satisfy both the Law Clerk and the proponents of the bill without losing position in the process and unnecessary delay in the bill's presentation.

Time is always of the essence in the presentation of private legislation. The length of the initial organization period will depend on the nature of the bill and the difficulties incurred in reaching agreement with the Law Clerks and legislative draftsman as to its form and presentation. The parliamentary agent for Bill S-30 was apparently retained in late September, 1975. The bill received first reading in the Senate on Tuesday, 28 October, 1975. Considering the complex nature of Bill S-30, the passage of

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4 Second reading being the formal presentation of any bill, the sponsor's speech takes on a certain significance. The agent will be responsible for ensuring that the sponsor has all the information which he requires. More than this, the agent must know enough about Senate personalities to anticipate the source and kind of questions which may arise. The sponsoring Senator will turn his mind to the same issue, and it is very often the case that together the sponsor and agent will prepare a comprehensive second reading speech, designed to meet opposition before it arises.

5 The Senate draftsmen are great enthusiasts, and never fail to make changes to changes already made to the original submission.

a month from the time the bill was received by the agent to first reading is a tribute to his organizational skills, and to the important role played by the parliamentary agent in organizing and administering the presentation of private legislation to Parliament.

(ii) Monitoring the Bill

Once the bill has been given first reading and has thereby entered the legislative process, the parliamentary agent has less control over it, and consequently his role is reduced. He monitors its progress and remains the link between the bill's proponents and the parliamentary process, but his opportunities to influence progress of the bill are negligible. That role has now passed to the sponsor, who speaks for it on second and third readings, and who works generally for its quick passage.

2. Parliamentary Sponsor

Selection of a sponsor for a private bill is a delicate and important task. The success of the bill will depend upon the respect which the sponsor holds among his peers, and the skills he enjoys in parliamentary debate. His is the 'political' element and his field is the procedures and politics of persuasion.

Two chief variables in the selection of a sponsor appear to be his position in the Senate, and his professional or regional connection with the subject matter of the bill.

Proponents of private legislation tend to associate

the probable success of their bill with the sponsor who speaks for it. In the case of Bill S-28, an Act to Amend the Charter of the Royal Canadian Legion, the sponsor had exhibited in the past association with and support for that organization.[6] With Bill S-33, an Act to Amend the United Grain Growers Act, the Senate sponsor was a representative of the west, and a staunch supporter of the grain co-operatives.[7] The sponsor for Bill S-30 in the Senate was presumably approached for his reputation and associations; in the House for his skill and knowledge of House procedure.[8] A sponsor's response to a request is generally an expression of his interest, professionally or otherwise, in the matter at hand. It is not a question of monetary advantage.

The sponsor is associated with the bill by name, and it becomes his bill. He speaks on second reading, at which time the bill is fully introduced and described. He may attend committee as an observer if he is not a member, or as a participant if he is. However, tactically it is better for

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6 An Act Respecting the Royal Canadian Legion, passed in the Senate July 18, 1975.

7 Introduced by petition on Wednesday, March 17, 1976, this bill received first reading on Thursday, March 18, 1976, and second reading on Wednesday, March 24, 1976. Its experience in the Senate reflects upon a point raised above regarding the importance of being prepared for questions which may arise on second reading. When Bill S-33 first was spoken to on second reading (March 22, 1976) Senator Grossart raised a question for which the sponsor, Senator Molgat, had no reply. Senator Macdonald, a friend of the bill, moved for adjournment of the matter until the following Wednesday, thus incurring some delay.

8 The sponsor in the Senate was Senator John Connolly. The sponsor in the House was John Reid, M.P.

for sponsor to keep a low profile in committee, and let his fellows deal with the bill. He would, of course, have spoken to them already in private conversations, and have assessed the mood of committee and the probable success or failure of the bill.

The sponsor and agent are always in close communication as the bill progresses. The sponsor can go where the agent cannot, and the agent complements his activities through provision of administrative services. Together, they are the team directly responsible for working the bill through the Senate.

3. Law Clerk

Each private bill presented to the Senate must first pass the inspection of the Senate Law Clerk, who concerns himself with the drafting form of the bill. It is his responsibility to ensure that the bill is in the proper form, and presentable to the Senate. Every private bill will be accompanied, when printed, with explanatory notes. These too are reviewed by the Law Clerk. In fact, while the substance of the bill is the domain of the proponents, the form of the bill and the explanatory notes is the domain of the Law Clerk. His expertise is in legislative drafting, and he is concerned to ensure that the bill is clear and concise.

There is a discernible difference in attitude held by the parliamentary draftsman toward private bills and public bills. Private bills are of immediate concern only to

their proponents, and affect in legislative fashion the rights and obligations of a select group of persons. The influence of a public bill is more expansive. These differences are not unnoticed by the draftsman, who is generally less concerned with the form of the private than of the public bill, the rationale being the difference in application of the measures therein described.

4. Examiner of Petitions

The Examiner of Petitions is a member of the Committees Branch and is responsible for the introduction of private legislation. His function is to review the petition and ascertain whether the subject bill is one which the Senate can rightfully receive. If the bill conflicts with existing public legislation in a dramatic way, or is beyond the constitutional prerogatives of Parliament, then he will recommend to the Committee on Petitions that it not be received. His recommendation is generally decisive, as the Rules so provide.

B. 'Characters' of Committee Membership

This section chiefly relates the 'characters' of committee membership identified by K.C. Wheare to the membership of the Senate Banking, Trade and Commerce Committee described above in Chapter Two.[9] Wheare identifies seven personality types present in each and every parliamentary

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9 K.C. Wheare, Government by Committee, (Oxford: Oxford University Press, 1955).

committee: the official, expert, layman, party man, interested party, chairman and secretary.

1. Official

The committee official according to Wheare may be a member, secretary, clerk, officer of a government department, or an expert witness appearing before the committee. I identify the Senate Banking, Trade and Commerce Committee (BTC) official as the 'administrative manager' of committee performance, the committee clerk.

In discussions with the clerk of the BTC committee I introduced the assertion of Van Loon and Whittington that committee clerks are 'rather junior people with purely clerical responsibilities'.[10] The reaction which this comment provoked was decidedly unfavourable, but rightfully based upon more than a mere rationalisation of the position of clerk to a Senate committee. Committee clerks have no direct policy role, yet their role is of crucial importance to the smooth functioning of their committees.

The Clerk to the BTC committee works closely with the chairman to monitor committee performance and schedule committee hearings. He is the chairman's right hand man, making all necessary arrangements respecting materials, witnesses, and so on. The clerk prepares the introductory material to committee reports and the daily minutes of

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10 Richard J. Van Loon and Michael S. Whittington, The Canadian Political System: Environment, Structure and Process, (Toronto: McGraw-Hill Company of Canada Limited, 1971).

committee proceedings, and accepts and organizes amendments, forwarding them to the legislative draftsman and ensuring that they are entertained by the committee in the correct legislative form. There is nothing in these important duties which challenges Van Loon and Whittington's classification, yet the clerk is responsible for more than this.

It is the nature of the Clerk's duties that he know the rules of the Senate, in which case Beauchesne and Bourinot become required reading, in effect the 'bible' to the committee clerk.[11] He is often called upon in the course of a committee meeting to advise the chairman of a procedural ruling which may determine an issue before committee. Clerks do not make official comments in committee, but they do whisper. In this regard the committee clerk may well be compared to the Speaker of The Senate as both speak del soto.

The clerk may advise the chairman outside committee on anticipated procedural difficulties and possible solutions. Whether the ratio of 'chairman refusals' to draft opinions and rulings advanced by the clerk is high or low depends in good measure upon the character of the chairman. If a chairman and clerk can work together closely, it is of considerable benefit to the committee. The clerk to the BTC committee has held that position for many years,

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11 Arthur Beauchesne, Rules and Forms of the House of Commons of Canada, 3rd Ed., (Toronto: Canada Law Book, 1943). Sir John George Bourinot, Parliamentary Procedure and Practice in the Dominion of Canada, 4th Ed., (Toronto: Canada Law Book, 1916).

a factor which has influenced his own working relationship with the chairman.[12]

2. Expert

According to Wheare, every parliamentary committee has at least one expert. The term is, of course, relative. An individual who is an expert in one field is a layman in another. However, Wheare finds it essential to the efficiency of a committee that it include at least one expert in its appointed field. Most committees will have more than one expert member, since a chief determinant in selection by the member of his committee responsibilities is his interest in the subject matter.[13] However, in some committees, the expert function may be performed by a non-member, e.g. an official of a government department called upon to 'lecture' the committee on its attendant responsibilities. However, while every committee needs an expert, it may be dysfunctional to committee performance if the ratio of experts is too high. Wheare stressed the importance of the layman, and the need for the layman and the expert to work together.

In the case of the BTC committee, one clear expert of the committee is the chairman himself. Indeed, this is the trend in Senate committees, where 'selective breeding' is

12 The clerk to the BTC, Frank Jackson, appears to have a good relationship with the chairman, Senator Hayden, and the committee is administratively efficient.

13 A Selection Committee distributes the seats in each committee, but the member may request a placement where his interests and knowledge would be of advantage.

more noticeable than in the House. Yet Senator Hayden is not the only member of the committee who may claim expertise in financial affairs. Senators Desruisseaux, Everett, Flynn, Haig, Laird (who like Hayden is a tax expert), Lang, McIlraith, Molsen and others have considerable legal and business experience. Wheare's opinion that too many experts spoil the legislative broth has some merit where the BTC is concerned, not because of expertise in the abstract but in the concrete sense of shared loyalties established through active participation in the world of big business and high finance.[14]

3. Layman

According to Wheare, the function of the layman is to counter the influence of the expert, to modify the expert approach purportedly mired in the cause and effect of the particular subject matter with that of common sense and reason. Senate committees, the BTC included, generally provide a mixture of specialist and non-specialist elements. However, that mixture in the BTC committee is somewhat one-sided. As noted in Chapter One above, seventy percent of members are lawyers and businessmen, accounting for all but six places on the committee.

In the Senate, as contrasted with the House of Commons, it is not uncommon for the layman to develop into an expert

14 This point will be developed more fully with the use of supportive data in Chapter Five below.

as appointment to Senate committees are deemed to be for life (although a custom has grown making failure to attend committee in two consecutive sessions of Parliament good cause for dismissal from the committee). Committee turnover is effected generally through retirement or death, and longevity is the rule. The BTC, with its membership concentrated in the legal and business professions, is an expert committee.

4. Party Man

The party man performs his committee role clearly influenced by his political affiliation. In the House, the party man is a more common fixation of committee performance than in the Senate.[15] In the Senate, the presence of the party man is circumstantial. It may depend upon the nature of the bill before committee, and it most certainly depends on the political climate. It is important therefore to be aware of political affiliation in committee. Again, Chapter One introduced the ratio of Liberals, Progressive Conservatives, New Democrats, Creditistes and Independents in the Senate BTC committee. Sixty percent of the committee members who heard Bill S-30 were Liberals, all potentially government men, collectively capable of controlling the committee. However, neither the political

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15 The chief reason for the distinction being the elected and non-elected characteristics of House and Senate membership, and the nature of tenure in both.

climate nor the nature of the Bill instigated such a party division. Indeed, the controlling factor in the reception which the committee gave Bill S-30 was the shared philosophical belief in the role of banks in the capitalist system of economic organization.[16]

5. Interested Party

Interested parties are those persons who find the performance of their own interests influenced by the outcome of a committee's deliberations. The extent of the influence is reflected in the extent of the reaction. Those parties who find themselves adversely affected in a serious and unwelcome manner may decide to appear as intervenors and make counter representations to the committee itself.

Theoretically, interested parties who challenge a matter before committee improve the chances of a 'good' decision by ensuring that the committee receives more than one point of view, even if that view is based solely in self interest. The failure of interested parties to intervene has the opposite affect.

The silence of commercial bodies, primarily banks, in the face of IAC Limited's application to the Senate was deafening. As a matter of considerable importance, its treatment is left to Chapter Five.

6. Chairman

The chairman has the potential to be the most influential

16 See Chapter Five below.

member of the committee. Certainly he has the power to control the procedural aspects of committee performance. He may restrict participation of members, speed a bill through or slow it down. Senate committee chairmen once appointed, are removed through death or retirement. This continuity in the Chair allows the Chairman to mold the committee in his own image.

In the BTC committee, the combination of Senator Hayden's longevity and his acknowledged expertise in the field of finance and tax has allowed him to become the spokesman and moving force of that committee. No other member shares his prestige or power. In a way, after 25 years at the controls, he is the committee. Chapter Five measures the effect of his role on the committee's review of Bill S-30.

7. Secretary

The Secretary performs much the same function as the clerk. Most often the Secretary is a lawyer and included in his obligations to the chairman is the provision of advice on precedural matters. However, the Secretary to the committee differs from the clerk in his approach to the substantive elements of the measure before committee. He treats not only committee procedure, but the legislation itself, and is prepared to advise the chairman as to possible conflicts with other legislative measure. In the Senate, the position of committee Secretary is not a standing

position, but depends upon the nature of the committee's investigation. Special committees are more likely to have secretaries than are standing committees.

The purpose of this Chapter was to introduce the concept of the 'political' or 'human' element in the presentation of a private bill to the Senate and Senate committee. The rules alone do not determine success or failure. In fact, the Senate rules determine access; Senators, agents, sponsors and administrative personnel influence the substance of a bill's progress. A further variable in the process is the substantive nature of the legislation itself, and the following Chapter examines Bill S-30 and considers the elements which led to its quick and eager reception in the Senate.

CHAPTER FOUR - BILL S-30 AND BANKING IN CANADA

The Introduction to this study indicates that one of the reasons for choosing Bill S-30 as a subject was its atypical nature, the rationale being that it could thereby prove a receptive vehicle for the analysis of politics and the potential for policy in the Canadian Senate. Chapter One has reviewed the role of the Senate and Senate committees. In Chapter Two this framework was further developed through description of the Senate rules and procedural framework. This Chapter introduces and describes in more detail this very complicated Bill.

It is of great importance that Bill S-30 be dealt with comprehensively or else the ramifications of its reception will not be understood fully. The Bill is by far the most complicated private bill ever placed before the Senate and Senate committee, yet the Senate passed it in four days, and the committee in two (substantively in one). For full appreciation of what under the circumstances remains an amazing record, I find it imperative to give close attention to the Bill itself.

However, in order to understand the force of the Bill, it is necessary to have a general understanding of the central banking scheme in Canada. Bill S-30 challenged the existing framework as defined by the Bank Act; to explain how I must refer briefly to that Act.

1. The Bank Act

The British North America Act vested authority over money and banking in the Federal Government. In addition, it necessitated a new Canada Bank Act to replace the Dominion Notes Act which was enacted just after Confederation.[1] The Dominion Notes Act had succeeded the Provincial Notes Act, and was designed to centralize control over monetary supply, but it did little more than maintain the government's share of the total note circulation then established.[2]

The first Bank Act was passed in 1870, but was ill-received by the banking community. It was replaced in 1871 by the first Bank Act of the Dominion, which was meant to embody not only the provisions of the previous Act, but also general provisions regarding the internal regulation of banks.[3] For purposes here, the important provisions of this first Act are those which dealt with existing bank charters, and future banks.

The Act of 1870[4] had provided for the extension of existing bank charters by letters patent,[5] which would be issued by the Governor in Council upon a favourable report from the Minister of Justice and the Treasury Board. Further, it was suggested by the Minister of Finance at the time,

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1 Statutes of Canada, 1870, Chapter 10.
2 Statutes of Canada, 1868, Chapter 46.
3 Statutes of Canada, 1871, Chapter 5.
4 Statutes of Canada, 1870, Chapter 11.
5 Thereby avoiding the necessity of having to seek Parliament's approval.

Sir Francis Hincks, that new banks come into existence in the same manner. This threatened to erode Parliament's jurisdiction, and Parliament refused to agree. The Act of 1871 excluded the practice of letters patent not only with reference to new banks, but with reference as well to those banks existing at that time. Under its provisions, new banks were required to seek the sanction of Parliament, and existing banks had their charters extended for ten years.

A similar situation exists under the current Bank Act, which was passed into law after the decennial revision of 1966-67.[6] The Bank Act applies only to those banks named in Schedule A to the Act, and each bank named in Schedule A is a body politic and corporate and has as its charter the Act itself. The significance of the Act of 1870 is that it became the 'charter' of existing banks for a ten year period, thus inaugurating the decennial review and revision of the Act. The significance of the Act serving as the charter of the banks named in Schedule A to the Act is simply that only those banks are chartered banks capable of exercising the rights which the Act provides.

Therefore, under the existing system, a new bank must receive the sanction of Parliament and must abide faithfully by the Bank Act, which upon proclamation becomes its charter. The Act provides for the capital structure, organization and operations of chartered banks. Exceptions to the Bank

6 Statutes of Canada, 1966-67, Chapter 87.

Act are in effect exceptions to a bank's own charter, and therefore require further parliamentary sanction. Exceptions are not the rule. Bill S-30 sought numerous exceptions to the Act. The Senate agreed to every one.

The Bank Act remains unchanged during each ten year period. The current Act has not been amended since 1966, and is being re-assessed and revised in 1976. This revision could well take up to three years. The charters of those banks currently under the Bank Act will expire with the Act, however the practice has been established of renewing the Act for one year periods until the decennial revision has been completed. It is of some consequence that the revision to the Bank Act was so near to the introduction of Bill S-30 to Parliament. As Chapter Five will indicate, the chief resistance which Bill S-30 faced in the House was its proximity and possible prejudicial effect upon the process of revision. The Senate BTC committee was not overly concerned with this fact, for reasons outlined in that Chapter.

2. Bill S-30

(i) I.A.C. Ltd.

Bill S-30 is an Act to Incorporate the Continental Bank of Canada. It was designed to convert a major Canadian financial institution, the Industrial Acceptance Corporation Ltd. (IAC) into a chartered bank entitled to operate with all the rights granted under the Bank Act. As such, it was in the Senate and remains in the House without

precedent in Canadian legislative or financial history. While other Acts have sought to incorporate chartered banks, Bill S-30 was the first to take an existing financial institution and seek Parliament's approval to turn it into a bank.

As presented in the Senate, Bill S-30 had three chief purposes: to establish a bank under the provisions of The Canada Bank Act, to provide for the amalgamation of that new bank with IAC within ten years, and to grant certain exemptions from the Bank Act necessary to such a complex amalgamation.

IAC Limited, with consolidated assets exceeding $2 billion, remains Canada's largest sales finance and consumer loan company and the eleventh largest financial institution (if insurance companies are excluded) in the country. If IAC were a chartered bank at the point it sought Parliamentary sanction for that transformation, it would stand as Canada's largest chartered bank in terms of equity and eighth largest in terms of assets.[7] The company was founded in Windsor in 1925 and is now 96% owned by Canadians and has approximately 12,000 shareholders. In the brief presented to committee members in the Senate, the national character of IAC was stressed. IAC carries on

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7 This information and that which follows is taken from the Company's annual report for 1975, and from the brief presented to the Senate Banking, Trade and Commerce committee.

business at 270 locations in all ten Provinces and the Yukon and employs over 2,800 people in these locations and in four divisional headquarters in Halifax, Montreal, Toronto and Vancouver.

Another fact stressed in the brief was the similarity of IAC's business to that carried on by chartered banks. Approximately 70 percent of the assets of IAC result from financing activities of a type that are carried on by chartered banks. The balance, lease receivables and uninsured high-ratio mortgages, are areas from which chartered banks are excluded. In contrast to the chartered banks which finance their activities through deposits, IAC raises its funds through the issuance of short, medium and long-term notes and debentures at a higher interest cost than banks pay for deposits.

The conversion of IAC Limited into a Canadian chartered bank was intended to make it more competitive with other major financial institutions carrying on business in Canada, "to benefit not only IAC but also its customers and indirectly the Canadian economy".[8]

It is of interest to consider the reasons advanced by IAC in its prayer for incorporation. The brief stressed the long history of service to Canada's national economy, and recognized IAC's responsibility to its shareholders to employ its capital as effectively as possible. The conversion

8 Brief presented by IAC Ltd to the standing Senate committee on Banking, Trade and Commerce, p.18.

of IAC to a chartered bank was expected to enable the Company to:

- improve its ability to serve its established market of individuals and small and medium size businesses, a service "that will be of particular importance during the coming decade when the demands of major resource and industry ventures will place severe strains on Canadian capital markets".[9]
- attract additional funds from institutional investors and individuals in order to more effectively use its Canadian-owned equity of more than 200 million dollars.
- broaden the range of its financial services.
- contribute to the Canadian economy and be of sufficient size to compete effectively with existing chartered banks.[10]

IAC Ltd has a colourful history. It was incorporated federally in 1925, fifty years ago. At that time it was known as The Industrial Acceptance Corporation Limited. The acronym IAC Ltd was adopted by way of letters patent in 1970. The Company was originally American-owned, but soon passed into Canadian hands.

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9 Ibid., p.21.

10 This point of competition with existing chartered banks is an interesting one because none of the chartered banks intervened in IAC's application to incorporate, nor did the Canadian Banking Association.

IAC Ltd has since its earliest days had connections with prominent government and business personnel. The Honourable Norman McLarty, who was a member of the wartime government of Mackenzie King, was the first solicitor to the company. The Right Honourable Louis St. Laurent was a Director of IAC before joining King's government. He returned to the Board when he retired from public life.

The company first had its headquarters in Walkerville (now Windsor), Ontario. Its Head Office is now in Toronto. It is essentially (96 percent) Canadian-owned. Each of the sixteen Directors are Canadian.

When IAC first began, it financed motorcars in the Windsor area for both dealers and purchasers. It presently offers a wide range of financial services, carrying on wholesale and retail sales financing, inventory financing and making dealer loans and business loans. It deals in mortgages, for both homes and businesses. It leases capital equipment and makes extensive consumer loans. Its commercial activities extend into the fields of transportation, construction, logging and the financing of machinery used in the resource industries.

The chief reasons advanced by IAC witnesses for seeking to incorporate a bank with which it would eventually amalgamate, concerned its own growth and competition in its field. Sixty-five percent of IAC's business is done in the field of business financing, 16 percent in sales financing,

10 percent in consumer loans, and 9 percent in residential mortgages. In 1960, IAC had its charter amended by supplementary letters patent to enable it to deal in business financing and leasing of capital equipment. In 1974 it had outstanding receivables on its books in this field of over $432 million.

However, IAC had advanced, according to submissions made to Senate committee, as far as it could in this primary field of operations given its own rapid growth and the competition exerted by subsidiaries of American banks in the money marketplace. Investment banks in the U.S. get into the field of leasing through subsidiaries in Canada. In June 1975 subsidiaries of 100 American banks had business on their books of over $310 million, an increase of 40 percent over the volume of the year before.[11]

IAC felt that its competitive position would be improved were it to be incorporated as a chartered bank. Its figures showed that in the past ten years Canadian banks grew at an average of 19.8 percent per annum, credit unions at the rate of 14.6 percent per annum. Sales finance companies grew at the rate of only 4.5 percent per annum.[12] IAC, as a bank, would be able to borrow more cheaply than could the chartered banks, and would be able therefore to

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11 Debates of the Senate, First Session, Thirteenth Parliament, Volume 123, Number 123, p.1342.

12 Debates, ibid., p.1343.

service its customers better and presumably more cheaply and more competitively.

(ii) Bill S-30 and the Canada Bank Act

In this section I examine the chief substantive provisions of Bill S-30 and their relation to the Bank Act, keeping in mind that the Bill seeks not to create a bank but to transform an existing institution into a bank. The latter is by far the more difficult procedure. For creation of the former, Schedule A to the Bank Act provides a standard bill which is to be followed. IAC could not accomplish its desired goal through adherence to the normal format but sought exemption from certain key provisions of that Act.

The Bill provides for the incorporation of a bank to be known in English as the Continental Bank of Canada, and in French, Banque Continentale du Canada. In accordance with the Bank Act, it provides for provisional directors in the early stages of the bank's development. The provisional directors of the Continental Bank would be the 16 Directors of IAC Ltd; the bank and IAC would, in other words, share a common board. To qualify as a Director, one has to own 500 shares of IAC, which would currently require an investment of about $9,000.00

Upon creation of the Bank, all of the issuable stock would be issued to IAC. The bank, in other words, would be a wholly-owned subsidiary of IAC. The Bill provides for a

capital stock of $100 million divided into 10 million shares with a value of $10 each. IAC would subscribe for $50 million of that capital and would own all of the issued shares in the first instance.

The chief exemptions to the Bank Act arise in the projected amalgamation of IAC Ltd with the Continental Bank of Canada. To bring IAC Ltd into conformity with the Bank Act, the Bill provides for a transitional period of up to ten years, starting on the date Royal Assent is given and ending when the two companies (IAC and the Bank) and the subsidiaries of IAC are amalgamated into one entity. After the transitional period the Continental Bank would emerge and IAC and its seven subsidiaries would disappear.

The Bill as presented on first reading in the Senate, provided that the Directors of IAC would, as noted above, be the Directors of the Continental Bank of Canada. Many of the Directors of IAC were at that point, and continue to be, Directors of other deposit-taking institutions, such as, for example, banks and trust companies. Section 18(b) of the Bank Act provides as follows:

> 18(b). A person is not eligible to be elected or appointed a Director if
>
> (a) he is a director of a bank to which the Quebec Savings Bank Act applies or of a company incorporated under the laws of Canada or a Province that carries on the business of a trust company within the meaning of the Trust Companies Act, or the business of a loan company within the meaning of the Loan Companies Act, and that accepts deposits from the public.

The overlap in directorates would have to be eliminated, yet IAC, as its submission indicated, wished to accomplish the transition from one board to another in as orderly a fashion as possible. The Bill therefore initially provided for an exemption from Section 18(b) for a period of two years from the date of Royal Assent. This exemption was not unduly pressed by the Senate, but it met serious opposition in House committee and was amended considerably.[13]

Under the Bank Act, a bank cannot own insurance companies, or for that matter more than 10 percent of any kind of company. IAC at the time of its application owned two insurance companies, Sovereign Life Assurance of Canada with assets of approximately $78 million, and Sovereign General Insurance Company with assets of $18 million. The Bill provides that IAC, to which the Bank Act would become generally applicable, would have two years to reduce these holdings to the permissible 10 percent.

The Bank Act further provides that no individual shareholder is entitled to hold more than 10 percent of the issued shares of any bank. IAC has one shareholder, Carena Bancorp, which holds more than 10 percent (19.8%) of IAC's outstanding shares. The Bill allows this shareholder four years to comply (e.g. to divest itself of 9.6% of its

13 The Bill as amended and passed by the House provides that the interlocks can be maintained until the Continental Bank of Canada begins to carry on business as a bank.

shares in IAC).

During the transition period, the Bill would allow IAC and its subsidiaries (among whom the Continental Bank would be numbered) to carry on leasing activities which IAC has been engaged in for some years. The Bank Act does not permit chartered banks to engage in leasing. In recognition of this restriction, but equally in recognition of the fact that IAC's portfolio in the leasing field in 1974 was worth over $432 million, the Bill allows it to continue in the field but places limits for such business. The maximum allowable under the Bill is the total value of outstanding business at the date of Royal Assent, plus any commitment for new business which IAC might have at that date.

The Bill, while providing exemptions from the Bank Act, provides certain sanctions as well. The Bank Act generally is applicable to IAC the moment Royal Assent is given. If the projected amalgamation does not occur within the ten year period, Continental Bank would cease to exist. Further, a failure to secure an Order in Council to begin business as a bank within one year of Royal Assent means that all provisions of the Bill have no further force and effect, and all the power conferred under the Bank Act upon IAC and Continental Bank would be lost.

(iii) Rationale for Manner and Form of IAC's Application

I conclude this Chapter with some reference, taken from

the transcripts, to the problems which IAC faced in seeking to expand its business capabilities. When IAC first approached federal authorities with the possibility of enacting legislation, the entire objective was apparently to convert IAC into a bank and not merely to add a bank to the existing IAC complex. Yet this raised many questions, especially with respect to the market stability of IAC before, during and after the transitional period. To conform 100 percent with the Bank Act from the outset would have been suicide both for IAC as a viable institution, and for the rationale of the Bill itself. I will explain this point further.

A good example is the provision in the Bank Act respecting Directors. Ten out of eighteen members of the IAC Board were ineligible under Section 18(b) to remain. Yet it would cause a considerable upheaval were those ten members required to divest themselves of their other memberships, or leave the IAC Board. A mass replacement of Board members at a time when the company was seeking to transfer its operations and assets into a bank would not be likely to instill confidence in IAC's customers and personnel.

Another example is the proscription in the Bank Act against holdings of more than 10 percent in other companies. For IAC to comply with such a provision upon Royal Assent would permit a grave injustice to its shareholders, and again cause it difficulties in the marketplace.

The transitional period and exemptions therein became

very quickly the focal point of the Company's objective, and central to the rationale of the Bill itself. It, and they, were apparently intended to overcome the following disadvantages which IAC faced in the conduct of its business:

(a) In only two areas (leasing and high ratio mortgage lending) was IAC active to the exclusion of the chartered banks. Accordingly, its competition in other areas included the banks, which were able to obtain funds at lower interest cost than IAC. In leasing and in high-ratio mortgage lending its principal competitors were affiliates of foreign financial institutions, which also had financial advantages over an independent Canadian company.

(b) Testimony before the Senate committee indicated that the Company felt its available customer services were restricted. It could not accept deposits nor provide overdraft and chequing privileges. Availability of these services enabled the banks to provide customers with a full range of services thus meeting all their financing needs. IAC clearly felt that the quality of its service and competitive position would be improved if it were able to compete equally with the banks in the range of services it provided.

(c) IAC's competitors outside the sales finance industry were not limited to the chartered banks. Subsidiaries of foreign banks and of foreign manufacturers, which

operated free of a number of the constraints that applied to IAC, were also absorbing an increasing share of funds available from investors in Canada, and of available opportunities for financing business.

(d) In consequence to some extent the competition from affiliates of foreign financial institutions for funds in the Canadian market, IAC found itself unable to meet its borrowing needs in Canada and subsequently effected substantial borrowings in the United States, subject to the standard that the marketplace there had developed for independent sales finance companies. So judged, it was not only required to pay a higher interest rate than were the native banks, but was more limited in the all-important debt-equity ratio which it could attain. IAC's debt-equity ratio was, at point of application to the Senate, approximately 7:1, by comparison with ratios for its competitors which ranged to 20:1, or even higher in the case of banks. Accordingly, if IAC were to become a bank, it felt it could increase the range of services it provided and reduce the cost to its customers of those services by making more effective use of Canadian equity capital.

Bill S-30 was therefore not an ordinary private bill. Indeed, it was the most complex private bill ever placed before a Senate committee. As such, it engendered elements of both politics and policy. The political nature of the

Bill was evident in Senate committee in the manner in which the Bill was ram-rodded through by the Chairman, Senator Hayden. Members were too quiet and acquiescent. One reason considered below is the extent of business and commercial connections between Senators and banking, and Senators and Directors of IAC Limited.

The policy element of Bill S-30 comes out of its place in the development of banking legislation in Canada. Private bills normally do not have an effect wider than their particular goal, yet Bill S-30 was decidedly different. Given the role of the Senate Banking, Trade and Commerce committee and its expertise in the field, its almost hesitant and uninspired treatment of Bill S-30 came as some surprise. Here was an opportunity for the Senate to consider the policy imperatives of banking in Canada. Here was the chance for it to play the role which I have ascribed to it in Chapter One above.

In Chapter Five below, several variables of Senate and committee performance are discussed with emphasis upon the politics-policy dichotomy. Each reflects upon the nature of the committee and the nature of the Bill itself.

CHAPTER FIVE - POLITICS AND POLICY IN THE CANADIAN SENATE

Bill S-30 received first reading in the Senate Tuesday, October 28, 1975. It was read a second time on Thursday, October 30, 1975 at which time Senator Connolly spoke on the Bill for fifty minutes. From there it went to the Standing Committee on Banking, Trade and Commerce where it remained before the committee for two separate days of hearing. On the 13th November, 1975 the Bill received third reading. The whole process took 16 days overall, 4 days of actual deliberation.

It is not the intention of this Chapter to follow the path of the Bill through the Senate sequentially from the first to third reading. This paper is not a history of Bill S-30. Rather, it reflects upon the progress of the Bill and draws therefrom characteristics of Senate performance. These characteristics are isolated here and receive separate treatment and while they relate in the first instance to Bill S-30 alone, they purport to be representative of general problems to which Senate performance is subject. Each reflects upon the politics and policy of the legislative process in the Senate and the inherent strengths and weaknesses of that process as reflected by the passage of Bill S-30.

The first half of this Chapter identifies eight characteristics of Senate performance illustrated by the

quick passage of Bill S-30. The second half of the Chapter makes good use of the performance of the Standing House Committee on Finance, Trade and Economic Affairs as a foil, further highlighting the Senate committees performance. The brief conclusion to the Chapter summarizes the theme overall and leads into the statement of conclusion in Chapter Six.

A. Characteristics of Senate Performance

1. The 'Committee Bill'

There appear to be two types of private legislation; those which can reasonably be dealt with in the Senate alone, and those which are more complex in their substantative terms and are necessarily referred to Senate committee.

In the first-mentioned instance, the legislative procedure is straightforward and uncomplicated. The petition is received one day, first reading effected the next. On common and unanimous approval, second and third reading can be accomplished on the same day as first. Between second and third, the Senate, again with common and unanimous consent, will revert to Committee of the Whole, and consider therein the Bill through clause by clause analysis. The Committee of the Whole will report back to the reconstituted Senate, the report will be reviewed, and third reading given.

The procedure requires, of course, unanimous approval of the object and substance of the Bill. Essentially the

bill must be simple and straightforward. Further, it must in essence be an apolitical piece of legislation, something to which every member can give his consent without political consequence.

Bill S-30 was not such a bill. Indeed, the Senate sponsor, Senator John Connolly, expressly put it to the Senate that that body should not debate it overlong, that the proper place for consideration of the substance of the Bill was in committee.

> Honourable Senators know very well that an application to Parliament for the incorporation of a bank is made according to the proscriptions of Schedule B to the Bank Act, and such bills are essentially committee bills. In such a case the committee looks at the bona fides and the financial capacity of the applicant. This Bill is certainly a committee bill.
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> .....
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> There is very little more to be said. Perhaps I have said too much already, but I do want the committee to understand as much as I understand of this rather complicated bill.[1]

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1 Senate Debates, op.cit., pp.1340, 1344. In commending the Bill to the Senate, Connolly went on:

> Honourable Senators, if the Bill is given second reading, I will move that it be referred to the Standing Senate Committee on Banking, Trade and Commerce. Senior officials of IAC will be available to the committee, and they will submit a brief which will be helpful to the members of the committee. Although I do not speak for the committee, it will probably want to call officials from the Department of Finance and, more particularly, from the Office of the Inspector General of Banks, with whom IAC and their representatives had lengthy discussions over a long period of time about this complicated matter. I am sure that counsel for the Senate will be in attendance as well.

As a matter of interest and a further means of illustrating this point, the House sponsor, John Reid, M.P. emphasized too the 'committee' nature of Bill S-30.

> The Bill before us is a complicated one, one that I believe the House and its committee will want to look at very closely. In fact, as sponsor of the Bill I would advise members of that committee to examine it under a very powerful microscope.[2]

The argument that certain bills are committee bills while certain others are not must certainly have as a corollary the notion that those bills to which the Senate cannot deliver its full attention must receive such inspection in committee. The notion of the 'committee bill' must certainly impart to the committee to which the bill is referred the overriding responsibility for due consideration of the bill. Yet Bill S-30, referred to by Senator Connolly as a 'committee bill', received only one substantive hearing before the Banking, Trade and Commerce committee, which hearing lasted a brief two hours.[3] The second hearing concerned the name of the bank only, and did not treat other substantive matters of the Bill. The net result of treatment of Bill S-30 in the Senate, a 'committee bill', was fifty minutes in the Senate chamber, and two hours in committee itself. The difference then, between a Senate bill, and a committee bill, was seventy minutes of consideration by twelve Senators, one of whom

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2 House of Commons Debates, First Session, Thirtieth Parliament, Volume 119, Number 224, p. 9989.

3 Thursday, November 6, 1975.

was Chairman of the committee, and two of whom indicated a conflict of interest and unwillingness to treat the Bill or vote upon its substantive provisions.

The conclusion drawn from this is that Senator Connolly, not unused to the stratagems of Senate procedure, expressly and quite pointedly chose to refer to the Bill as a committee bill, in a bid to discourage extensive debate at second reading, knowing at the same time that the Bill was unlikely to receive critical analysis in committee. If this interpretation is correct, the stratagem worked.

At second reading Connolly gave a review of the Bill and its objective similar to that of Chapter Three above.[4] He pointed out the essence of the exceptions to the Bank Act, remarking with each one that the committee should have a close look at attendant difficulties thereby caused. Only four Senators spoke in debate on second reading, for a total of ten minutes. Senator Deschatelets inquired as to what officials of the Department of Finance had had opportunity to examine provisions of the Bill. Senator Everett was concerned over the claims made by Senator Connolly that the borrowing cost of the finance subsidiaries of large automobile manufacturers was less than that of IAC, but was ever conscious of raising this niggling point

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4 Similar because his materials were the same. The sponsor of private legislation can only repeat what the proponents feed him.

after such a superb presentation by the Honourable Senator'.[5] Only one Senator, Senator Macdonald, concerned himself with the numerous exemptions from the Bank Act which Bill S-30 would grant to the Continental Bank. He wanted them examined more closely, preferably however, at the committee stage.[6]

It is true that only at committee can those connected with a particular bill give evidence in justification of its provisions. I do not quarrel with the practice of passing a complicated bill through second reading into committee. What I do find questionable is the combination of a passive second reading with an all but passive committee review which is then followed by third reading which accepts in their entirety the slight amendments made to the bill at the committee stage.[7]

In total, Bill S-30 was actively assessed by sixteen Senators. Considering the complexity of the Bill, and in light of the general banking policy to which Bill S-30 was, to a certain extent anathema, this performance by the Senate

5 Senate Debates, op.cit., p.1345.

6 Thus indicating the inadequacy of the general perfunctory second reading given to private legislation in the Senate. The matter for which Senator Macdonald was pleased to send Bill S-30 to committee was never directly dealt with by committee.

7 The whole system of approval creates an interesting cycle. A complex private bill is labeled a 'committee bill' and sent to committee where close scrutiny is more conveniently carried out. Committee merely passes over it once lightly and sends it back to the Senate, which accepts it on the understanding that the committee met its mandate.

and its committee was not a salutory one. If ever there was a 'committee bill', surely Bill S-30 was one. Yet the meaning of 'committee bill' was relegated in the case of Bill S-30 to the level of legislative strategy. Indeed, there may not be any difference between a 'committee bill' and any other private bill before the Senate of Canada. Policy imperatives notwithstanding, it is the politics of the Senate which prevail insofar as private bills are concerned. The practice of the Senate with respect to private bills is so ingrained, that Bill S-30 passed through as if it were the ordinary piece of private legislation. Senators on the whole did not rise to the greater challenge which its substantive measures presented. Lip service was given to it as a serious, complex bill which the Senate committee must examine thoroughly. On the strength of that lip service it passed second reading. Once in committee the expectation of those Senators who encouraged the committee to meet its responsibilities, Senator Connally among them, was not met. And the Senate failed on third reading to properly assess what in the circumstances was the cursory treatment of the Bill by the Banking, Trade and Commerce committee.

2. <u>System Bias</u>

One very real reason for the success of Bill S-30 in the Senate of Canada is the composition of that body. Bill S-30, in creating a new privately-owned bank, was not

a threat to the systemic values shared by the majority, if not by all, of the Senators.[8] Indeed, its success would reinforce shared beliefs in free enterprise and the capitalist, free economy system. While Senators might express concern over the monopoly of financial services by the eleven existing chartered banks, this viewpoint was not in conflict with Bill S-30, which as passed allowed the new Continental Bank of Canada to do more than the chartered banks are currently allowed to do under the Bank Act.[9]

Not one Senator challenged the Bill at either second or third reading in terms of his own philosophical beliefs. When this is contrasted with problems which plagued the Bill in the House, the relative social composite which the Senate presents is further emphasized. Members in the House, primarily those of Raillement Creditiste, chose to challenge the Bill through philosophical argument directed to the viability of the economic system which the new bank would join. The New Democrats at times placed their

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8 There are no NDP or Social Credit members of the Senate, and very few Progressive Conservatives. Most members are Liberals. Thus the Senate was a welcome forum in which to place Bill S-30 in the first instance. Opposition on philosophical ground was unexpected and none was delivered.

9 The eleven existing chartered banks in Canada are: Royal Bank of Canada, Bank of Commerce, Bank of Montreal, Bank of Nova Scotia, Toronto Dominion Bank, Banque Canadienne Nationale, Banque Provinciale du Canada, Mercantile Bank of Canada, Bank of British Columbia, Unity Bank of Canada and The Northlands Bank.

opposition in policy. And the Progressive Conservatives and Liberals indicated their own beliefs in the free enterprise system by giving a consistent support to the Bill.

Bill S-30 was able to take advantage of a trend in Canada's banking policy with which Canadian Senators, who have notorious connections with chartered banks, could readily identify. Up to the 1966-67 revision of the Bank Act, Canada's banking community was small and closely regulated under the Act. That revision removed the 6. percent ceiling on lending rates then currently enforced by the Act, cut back reserve requirements and allowed banks to invest heavily in other companies. Further, IAC was not alone in its bid. The precedent was established by the Unity Bank, which received its charter in 1974, with little trouble from the Senate Banking, Trade and Commerce committee. In 1975 Parliament chartered the Canadian Commercial and Industrial Bank. The new Northland Bank received third reading in the House concurrent with the first attempt by Bill S-30 for second reading. The Financial Times in December, 1975 anticipated Bill S-30 when it reported that 'IAC...is more akin to a near-bank than a finance company, and as such we should not be surprised to see IAC take on a banking role'[10] and the September issue of The Times reported that at least one

10 The Financial Times of Canada, December 2, 1975. p.3.

other non-bank financial institution was monitoring the progress of Bill S-30 and waiting in the wings to make its own move.[11]

The banking industry has become a consolidated one, with power centred in perhaps five chartered banks. In 1874 there were 51 banks in Canada. By 1900 this figure had dwindled to 36. In 1925 there were 11 banks, and there remain 11 chartered banks in 1976. In 1895, only the Bank of Montreal, with 19 percent of total bank resources, and the Bank of Commerce, with 9 percent, were exceptionally large. By 1927 this concentration had increased with the addition of the Royal Bank. In that year the Bank of Montreal had 26 percent of total assets, the Royal Bank 26 percent, and the Bank of Commerce 17 percent. These three, in a field of eleven, accounted for nearly 70 percent of total Canadian banking resources. By 1969, control of 93 percent of total banking assets had shifted to the 'big five' in Canadian banking, the Royal Bank, Bank of Commerce, Bank of Montreal, Bank of Nova Scotia and the Toronto Dominion Bank. Clement places the percentage which these five controlled in Spring 1975 at 90 percent, with the Royal Bank accounting for almost one-quarter of the total wealth of the system.[12]

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11 Ibid., September 29, 1975, p.3.

12 The information in this paragraph is taken from Wallace Clement, The Canadian Corporate Elite, (Toronto: McClelland and Stewart Limited, 1975), Chapter Four.

Canadian banks have never remained satisfied with being just banks but have participated in industry and corporate growth in capacities of control. Bank interlocks indicate the nature of the integration in the economic system, with the banks the central and motivating forces. In 1961 Porter found that the 9 largest banks had 55 directorate interlocks with the 10 largest insurance companies.[13] In 1972 Clement found that the 5 largest banks (those mentioned above), when interlocked with the 8 independent Canadian controlled dominion insurance companies produced a total of 51 interlocks. In 1972 more than one-quarter of bank directorships were held by members of the economic elite who also held directorships in one of the eleven dominant insurance companies.[14]

The five dominant banks are at the centre of indigenous capitalism in Canada. Chartered banks are among the oldest and most powerful of Canada's corporate institutions. The stability of the system is reflected in the fact that a Canadian bank has not failed since 1923.

When revision of the Bank Act in 1956-57 allowed banks into low-cost mortgage lending, banks were not long to further consolidate their interests. In 1963 the chartered banks formed RoyNat Ltd. to engage in financing developments and the rental of commercial real estate. And despite the

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13 John Porter, The Vertical Mosaic, (Toronto: University of Toronto Press, 1965).

14 The Canadian Corporate Elite, Clement, op.cit., pp.156-159.

requirement of the Bank Act as revised in 1967 that banks reduce their equity holdings in trust companies to 10 percent, a close relationship remains.

Charles Rathgeb, a Director of IAC, has said that 'for a Canadian, becoming a Bank Director is the summit of one's business career. The banks are very powerful in the sense that no individual in Canada in my mind can do much without the support of the chartered banks'.[15] This statement illustrates, in Clements words 'that bankers and outside directors operate in a corresponsive relationship, mutually supportive and gaining from the contacts and capital of the other'.[16]

Bankers have high elite connections. Clements' study shows that 35 percent of Canadian bankers had strong elite connections and 52 percent were of upper class origins. It should come as no great surprise therefore, that Canadian Senators and Canadian Bankers find themselves in social and corporate interlocks which affirm their common interests and satisfy common goals.

In his 1973 study Presthus found that 37 percent of a total of 102 Senators came from business, industry or finance backgrounds, 30 percent from the legal profession, 16 percent from government or politics, 9 percent from professions other than law, 6 percent from agriculture and

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15 Quoted in Clement, op.cit., p.157 and in Peter Newman, The Canadian Establishment, Volume One, (Toronto, McClelland and Stewart, 1975) at page 110.

16 Clement, op.cit., p.158.

1 percent from labour.[17] The majority of Senators are therefore from the business and finance elite. The link between Senators, big business and banks is a very real one. 'Canadian businessmen aspire to bank boards the way politicians sigh for the Senate'.[18] In many cases, the same individual meets both objectives.

IAC was, at the time of its application to the Senate, mired in corporate interlocks with trust companies, industrial corporations and other banks. Its Board was a veritable 'who's who' of corporate power brokers. When this fact is clearly illustrated, the nature of the consolidation among Canadian financial institutions is evident, and clear too is a major reason for the speed in which Bill S-30 passed through the Senate.

The following table presents the IAC Board as of November 25, 1975, and the interlocks then current.

TABLE 2[20]

Director or Officer	Interlocks
1. Lyndon E. Nichol	Director of Ultramur (which is a holding company for Golden Eagle Ltd.)
2. K.H. Macdonald	Director, Uniroyal, Zellers
3. J.S. Land	Director, Canborough Corp.

17 Robert Presthus, Elite Accommodation in Canadian Politics (Toronto: Macmillan and Company, 1973).
18 Newman, op.cit., p.89.
19 The word 'interlock' is commonly used to describe the membership of one Board member on another Board.
20 For purposes of illustration, banks are underlined. Five chartered banks were represented through interlocks on the Board of IAC.

(Table 2 cont'd)

Director or Officer	Interlocks
(Land - cont'd)	Director, Premier Property Ltd
4. F.M. Covert	Director, Petrofina Director, Royal Bank Director, National Sea Products Director, Standard Brands Director, Trizec Director, Sun Life Insurance
5. J.S. Dewar	President, Union Carbide Director, Manufacturers Life Director, Toronto Dominion Bank
6. C.F. Harrington	Chairman, Royal Trust Director, Redpath Industries Director, DOMCO Trustee, BM-RT Realty Investments (which is jointly owned by the Bank of Montreal and the Royal Trust)
7. Peter Kilburn	Chairman, Greenshields Director, Zellers Director, Sicard, Inc.
8. David Kinnear	Vice-Chairman, Bank of Montreal Director, Canadian Pacific Director, T. Eaton Co.
9. L.A. Lapointe	Director, Brasian Director, Goodyear Tire and Rubber Director, Hilton of Canada Director, Rio Algom Director, Toronto Dominion Bank Director, Trizec
10. Paul Dave	President, Imasco Ltd. Director, Canadian Pacific Ltd Director, Canron Director, Royal Bank
11. Charles A. Rathgeb	President, Comstock International Director, Algoma Steel Director, Canadair Limited Director, Royal Bank

Director or Officer	Interlock
12. Renault St. Laurent	Chairman, Canadian Breweries Director, Banque Canadienne Nationale Director, Sicard Director, Anglo Canadian Pulp and Paper Director, Imperial Life Director, Scott Paper Director, Home Oil Director, Rothmans of Canada (son of Louis St. Laurent, former Prime Minister of Canada who was himself a Director of IAC)
13. D.K. Yorath	Vice-Chairman, I.U. International Director, Montreal Trust
14. D.W. Maloney	Director of a number of IAC affiliates
15. Harold Corrigan	President, Alcan Canada President, Canadian Manufacturers Association
16. J.C. Thackeray	Exec. Vice-President, Bell Canada Director, Bank of Montreal Director, Union Carbide
17. Peter F. Bronfman	President, Edper Investments Chairman, Canadian Areno Co. Director, Trizec
18. E.J. Courtois	Director, Bank of Nova Scotia Director, Brinco Director, Canada Life Director, Trizec President, Canadian Areno Co.

Even a quick glance at the above list indicates the secondary and tertiary system of corporate interlocks of the IAC Board. I now add to the Table above the following table which notes the interlocks between members of the Senate Banking, Trade and Commerce Committee and IAC.

TABLE 3[21]

Senator	IAC Interlocks
1. L.P. Beaubien	Director, Redpath Industries (Conrad Harrington) Director, Canadair Limited (Charles Rathgeb)
2. Sidney Buckwold	Director, Bank of Montreal (David Kinnear; James Thackeray)
3. Paul Desruisseaux	Director, Royal Bank (Frank Covert; Paul Pare; Charles Rathgeb)
4. Harry Hays	Director, Home Oil Ltd (Renault St. Laurent)
5. Hartland Molson	Director, Bank of Montreal (David Kinnear; James Thackeray) Director, Sun Life Assurance Molson Industries (Frank Covert)

In debate in the House of Commons on report of the House Standing Committee on Finance, Trade and Economic Affairs, Cyril Symes, M.P. the New Democratic Party member for Sault Ste. Marie delivered himself of this opinion on IAC's approach to the Senate.

> I notice that the Company chose first to introduce this bill in the Senate in the hope, quite understandably, it would receive a much more positive reception there because of the number of Senators who have an interest in banks.[22]

The multiple interlocks which existed between IAC and various Senators gives a good deal of credence to

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21 In the right column the bracketed names are members of the IAC Board who sat on the same Board with the Senator named in the left column.

22 House of Commons Debates, 1st Session, Thirtieth Parliament, Thursday, March 11, 1976, p.11726.

this comment, and reflects in no uncertain way upon the rather perfunctory examination given Bill S-30 by the Senate Banking, Trade and Commerce committee.

3. The Private Bill and Public Legislation

The passage of Bill S-30 in the Senate reflects upon a problem which, while not arising frequently, nonetheless raises the important question of the relationship of private bills to public legislation. It was pointed out in Chapter Three that the Examiner of Petitions has as his primary function the review of all pieces of private legislation presuming to be presented to the Senate. In so doing, he looks for irreparable conflicts with either federal legislative jurisdiction or existing federal legislation. An example of the former would be a private petition respecting expansion of a municipal charter. Illustrative of the latter is a private bill which in its terms is in direct conflict with the Bill of Rights.

The second example given above presents the extreme case of a private bill conflicting with existing legislation. But what of the situation where the private bill does not bring direct challenge to existing public legislation, but rather provides exemptions from certain fundamental provisions thereof? What is the proper policy of the Senate in that instance?

Bill S-30 presented this challenge: It contained seven clear exemptions to the Bank Act, three of consider-

able importance, reviewed here briefly.

(a) Clause 7(1) would have allowed the bank to be a wholly-owned subsidiary of another corporation.

(b) Clause 7(2) contemplated that the general meetings of the shareholders of the new bank would be comprised of the single proxy representative of IAC Limited.

(c) Clause 7(3) would have allowed a two year period within which interlocking directorates with other deposit-taking institutions would have been eliminated to bring the bank in compliance with the Bank Act.

(d) Clause 7(4) provided exemption from the provision in the Bank Act that no one shareholder may have more than ten percent of the shares of the bank. It further provided for a shared board as between IAC Limited and the new bank.

(e) Clause 7(4)(d) provided an exception to the provision in the Bank Act which holds that during the time in which any one shareholder holds more than 25 percent of the shares of a bank, the growth rate of that bank is restricted. IAC, as noted in Chapter Four above, would at the outset hold all the shares in the new bank.

(f) Under 7(4)(c) the new bank would be allowed to invest up to a 10 percent limit in residential

mortgages.

While various Senators raised questions in committee as to the substance of these exemptions to the Bank Act, not one appeared concerned with the possibility that the Bill, if passed into law, might prejudice the revision of that Act due in 1977. The decennial revision of the Bank Act being a serious matter, it is surprising that the point was never raised. Was it not raised because the Senators, for a myriad of reasons (some of which are covered above), wanted the Bill to pass despite its effect, or was it an oversight? The Examiner of Petitions did not raise the point because the conflict was not direct. In terms of statutory interpretation alone, Bill S-30 did not seek to amend the Bank Act, but rather to except Continental Bank from certain of its provisions. Had the point been raised, how could or would the Senate committee have dealt with it? What is, indeed, the policy prerogative of a Senate committee in treating a private bill?

(i) No Mere Oversight

From a close reading of the committee proceedings, and impressions taken from attendance at the meeting itself, it does not seem possible that Senators could have overlooked the impression which the Bill would make upon the Bank Act. Almost the entire proceeding was spent treating the exceptions. IAC counsel was called upon to explain and answer to them, as was C.L. Read, the Inspector General of Banks. Each

exception in turn received the 'scrutiny' of the committee. It is difficult to imagine raising the matter of these exceptions without being aware of their effect on the upcoming revision of the Bank Act, or the effect of that revision on the new bank itself. What if the revision, so close in time to the application, was to seriously change the rules of the game? In the House of Commons it was suggested that Bill S-30 hold off and see what revision might bring. These questions were not considered. The Senators were aware of the Bank Act and decennial revision, having examined the Act on more than one occasion in the abstract and many times with reference to a particular matter before them. Indeed, the decennial revision is accomplished in part through the examination and study of the Banking, Trade and Commerce committee.

At the end of the committee proceeding, Senator Hayden, clearly pleased with the committee's performance, pointed out to the witnesses that the committee had handled itself well. ('If I might indulge in a little self-praise, you will appreciate the fact that the committee appeared to be rather knowledgeable.').[23] Yet the committee raised only those questions for which it already had answers. Well aware of the upcoming revision of the Bank Act, it simply failed to raise the issue, and not through oversight. The committee consciously restricted the nature of its own inquiry, and

23 Proceedings of the Standing Senate Committee on Banking, Trade and Commerce, First Session, Thirtieth Parliament, No. 58.

allowed the bill through virtually unchallenged.

(ii) Use of Witnesses

The question is thus raised, what could the committee have done? The answer lies in part in the witnesses available to the committee. The committee did not make good use of its witnesses (this matter is treated further below). Appearing on behalf of IAC were Mr. Land, President, Mr. Melloy, Executive Vice-President, Mr. Paradie, Senior Vice-President; Mr. John O'Brien, Montreal Counsel; Mr. Robert O'Brien, Montreal Counsel,; Mr. Baillie, Toronto Counsel; and Mr. Blair, Parliamentary Agent. Also present was Mr. Read, the Inspector General of Banks and a senior official in the Department of Finance. The committee, with all the expertise before it, could have placed the Bill under very close scrutiny indeed. Instead, it expressly referred questions only to three of the witnesses and made dismal use of Mr. Read's acknowledged expertise in the banking industry and responsibility for the administration of the Bank Act. Mr. Read was never asked whether the Bill challenged the administration of that Act, either in its presented form or in the course of its revision.

Further, the Senate committee passed over lightly a most serious question of corporate propriety. I have indicated the nature of corporate interlocks in the banking and financing industries. The chief shareholder of IAC Limited, and the only shareholder with over the maximum of 10 percent allowed under the Bank Act, was Carena Bancorp.

It held approximately 19 percent of IAC's shares. Carena Bancorp is held by Edper Investments. Carena itself holds a number of other investments. Peter Bronfman, noted in Table 2, is President of Edper, and a Director of Trizec. Table 2 shows a number of IAC Directors having corporate connections with Canadian Arena.

The Bank Act provides that no individual shareholder is entitled to hold more than 10 percent of the issued shares of any bank. Thus Bill S-30 provided a four year period during which any shareholder in the new bank who held over 10 percent could divest itself of the shares it held which exceeded this established limit. This provision was directed expressly to Carena Bancorp, as the only possible transgressor of that provision.

The Bill, given first reading in the Senate on October 28, 1975, was a product of close to three years study and feasibility tests. In August, 1975 and September, 1975 only a few months before the introduction of the Bill, Carena Bancorp Inc. bought 6,600 shares and 49,600 shares respectively in IAC Limited to bring its total holdings to 2,628,220 shares.[24]

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24 The fascinating point of this whole affair, which the committee did not project, was the fact that just prior to increasing its holdings of IAC stock, Carena Bancorp had been known as Canadian Arena Company, Ltd. Did it have inside information through interlocks which led to Bancorp, e.g. 'Banking Corporation'? IAC officers firmly denied the possibility in the House, and there is no reason whatsoever to question their sincerity, but it nonetheless was a point of some importance, and

Only one Senator found it curious that Carena Bancorp could not have known of the plans of IAC to incorporate a bank. The very serious issue of insider trading and its ramifications, despite the availability of information of corporate interlocks and the IAC chain, failed to arouse the members of the committee. Senator Benedickson, who raised the issue, was not a member, and could not vote.

(iii) Policy Prerogative

What is the policy prerogative of the Senate committee when reviewing private legislation? The difficulty in answering this question is that it is rarely applicable. The majority of private bills which the Senate committees review present little challenge to existing public policy. Yet the question does clearly arise insofar as Bill S-30 and the Banking, Trade and Commerce committee is concerned. Here was the opportunity for the committee to take a good close look at the factors lying behind the application of IAC. A Senator's power to reject or amend legislation is never so great as when he treats private legislation. He is in these circumstances under little pressure. The government is not involved. Only the proponents of the legislation matter, and only they bring influence to the committee room. There is no evidence whatsoever, save for Mr. Read's brief remarks in committee, that government policy was tending towards the expansion of the banking industry in efforts to increase competition, or of

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the failure of the committee to raise it casts serious doubt upon its ability to function objectively.

government pressure on the Senate to pass the Bill through. The committee was free to do as it chose. It chose to welcome the Bill wholeheartedly and pass it through unscathed.

The answer to the question in the abstract is that Senate committees have a considerable policy prerogative insofar as private legislation is concerned. The BTC committee could have sat on Bill S-30 and forced it out of consideration until the next session or after the revision of the Bank Act. It could have amended the Bill. It is of interest that the committee quite perfunctorily permitted Bill S-30 to stand, notwithstanding the exceptions to the Bank Act. Here the politics of Senate performance may clearly have outweighed public policy. To challenge the committee's performance is not to challenge Bill S-30 nor the need for more and better banks in Canada. Yet in failing to give to Bill S-30 a detailed and critical analysis, the committee did it a disservice in terms of its future success in the House of Commons (as more than one member there remarked) and raised suspicions that, in light of the Tables noted above, the committee was not entirely objective in its review.

4. Interest Group Representation

One of K.C. Wheare's seven characters described in Chapter Three was the interested party, who plays the role of intervenor and thereby enhances the consideration which a committee can give to any topic. The concerns of

the intervenor are narrow and self-serving, but he can effectively broaden committee review.

Senate special committees survive only through the active participation of the interested party. Briefs are solicited and efforts are made to hear every person or group who wishes to appear before the committee. The lack of an adequate research staff places the committee at the mercy of general interest representation. Without it, both the substance and the mandate of the inquiry suffers.

Standing committees are also available to interested parties and they too make every effort to give equal representation to all who desire it. However, their mandate is somewhat different for they have before committee a specific piece of legislation upon which the applicant's interests are clearly based. The committee in these circumstances must be careful to avoid encouraging an adversary process, in which it serves only to monitor the representations of two self-seeking groups, one whose interests will be enhanced through passage of the legislation, the other whose interests and advantage may well diminish. In these circumstances, while welcoming representations of interested parties, the Senate committee can only remain effective by relying on existing public policy as the common denominator in its deliberations.

It is a fact that the Senate committee cannot, as a public committee, easily reject applications of interested

parties to make representations before it. To do so would be to raise suspicions and encourage doubts as to the interests of individual senators themselves. The Senate committee on Banking, Trade and Commerce was ready therefore, to hear any party who was concerned with the effects of Bill S-30. In fact, it was so concerned to leave the impression of an open, disinterested inquiry that it opened a second hearing after all representations had been made in the first and the report back to the Senate had been prepared.

It is significant that not one of the chartered banks appeared before the committee to challenge the incorporation of a competitor, who by virtue of the exceptions to the Bank Act would have greater freedom than the chartered banks currently held. The committee received no representations or briefs from individual banks or from the Canadian Banking Association. One member of the House classified this situation as a 'conspiracy of silence'. In light of the objectives of Bill S-30, this silence was indeed deafening.

Before the committee, the President of IAC listed five brief reasons for IAC's desire to convert into a bank:

- to improve its ability to serve an established market of individuals and small and medium sized businesses;

- to broaden the range of its financial services;
- to attract additional funds from institutional investors and individuals;
- to employ its trained and efficient staff more effectively;
- to be of sufficient size to compete effectively with existing chartered banks.

Given the clear intent of IAC to improve its competitive position, the failure of existing chartered banks to appear at committee and challenge the Bill would be curious indeed if it were not for the fact that IAC was breaking new ground. Clearly even if it had not occurred to the Senators that the upcoming revision of the Bank Act might be prejudiced by the success of Bill S-30, it must have occurred to the chartered banks. Could IAC be given increased banking powers beyond the norm without the chartered banks receiving the same through revision of the Bank Act, their own charter? It was alleged in the House that the banks had an interest in remaining silent.

It is of interest to note that the overall chance for the success of Bill S-30 was hurt, not only by the silence of chartered banks, but by their failure to make representation to committee and challenge the Bill. The chartered banks were in a 'damned if we do, damned if we don't' situation. Had they opposed the Bill, they would have raised cries of monopoly amid free enterprise. By remaining silent they

raised the possibility of collusion, which hurt the Bill considerably in the House of Commons where more than one speaker remarked upon the coziness of the whole affair.

As a question of tactics, it would have been far wiser for the chartered banks to further their interests in supporting the Bill by challenging it in Senate committee. Paradoxically, only by challenging it feverishly in the Senate could they have ensured its success in the House. The intent of IAC Ltd to enhance competition in the banking industry lost credibility when the competitors failed to show any sign of worry. 'Competition' became collusion in the view of the Bill's opponents, and the interests of Bill S-30, insofar as the House was concerned, where it would have been welcomed had it appeared capable of cutting through the corporate monopoly, were irrevocably damaged.

The only challenge raised against the Bill in the Senate came after the scheduled committee hearing had passed. The Chairman, Senator Hayden, decided presumably upon consultation with proponents of the Bill, to re-open the proceedings for a further hearing. This step was taken even though the committee had made its report to the Senate, and as such was unusual. But IAC Ltd may have been anxious to avoid the appearance of rushing the Senate committee, and either requested or acceded to the Chairman's decision to re-open its deliberations and hear the applicant.

The intervenor was the Continental Illinois National Bank and Trust Company of Chicago which has a Canadian subsidiary, Continental Illinois Leasing and Financial Limited which is not a bank. The challenge was to the name 'Continental Bank of Canada'. The hearings were re-opened to allow this intervention on the condition that representations made considered the question of the name only.

The committee gave a full hearing to the intervenor, but rejected the contention that confusion would arise in the financial sectors between the Continental Bank of Canada and the Continental Illinois Leasing and Financial Limited. Two points which arise pursuant to this intervention are of interest.

First, the intervenor recognized the nature of the committee's mandate and centred its argument on the public interest. It would not be in the public interest or consonant with public policy, it argued, to allow even the possibility of confusion in the public mind and in the Canadian and international banking communities to arise over the two names. The committee found that the public interest was not impaired by the name Continental Bank of Canada and that essentially the word 'continental' was not generic and had no intrinsic value, and could not be subject of a proprietal interest.

The second point of interest in the intervention was the attention given by Senator Walker to its source. Senate committees, and the Senate and House in general, have always been adept at appreciating the symbolic element if not the substantive element of a particular matter.

> Senator Walker: But I would think the ordinary depositor who has never heard of your bank in Canada, because, of course, it is not here with a name like 'Continental', would not be deceived in any way at all. The more sophisticated people are not going to be taken in by two names that are somewhat similar. I cannot understand why, because you are a powerful bank in the United States, you have spread your tentacles up here and say, "no, no, nobody else can have this name in Canada". Where can the confusion be? For the ordinary depositor there is no confusion at all. And the more sophisticated person will know the difference.[25]

The Globe and Mail, in its report the following day on the committee's 'second look at Bill S-30', concentrated entirely on this brief exchange.[26]

5. The Role of the Chairman

The Chairman of any committee has a great potential to organize and, if he cares to, monopolize committee time. This characteristic is more prevalent in the House of Commons than in the Senate where the committee chairman owes his position to his membership in the governing party and his longevity in that position to his skill in pushing

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25 Proceedings, op. cit., No. 59, p. 59:8.
26 The Globe and Mail, Friday, November 14, 1975, p.28 ('Bank Bill Passes Committee')

government legislation through committee. In the Senate, a similar circumstance could well arise with respect to an urgent government bill upon which the Government's political integrity depended, but it is uncommon for it to occur where a private bill is the topic of discussion. In this circumstance the chairman might be likely to 'hurry up' his fellow Senators where the legislation was neither complex or controversial. He would not be expected to do so where the bill is the exact opposite.

Senator Salter Hayden has a very stable power base in the Canadian Senate. He has been a Senator since 1940, when he was appointed by the Liberal government of Mackenzie King. His knowledge and indeed expertise in tax matters specifically and financial matters generally, goes unchallenged. He is capable of controlling his committee when he finds it necessary, and he controlled quite effectively the consideration which the committee gave to Bill S-30.

In the first proceedings of the committee on Bill S-30, of the twelve Senators present Senator Hayden far outshone his fellow Senators in contributions to the general debate. During the course of the hearing Hayden entered the discussion a total of 93 times. Putting the contributions of remaining Senators together, their total is 100 times. Close to 50 percent of Hayden's comments were answers to questions raised by other members of the committee, or clarifications of answers given by the witnesses. His

overall conduct during the course of the inquiry indicated that he had come to grips with the legislation and determined that it should pass. He very smoothly guided the witnesses along in their justification of the Bill, and became as much the advocate as the impartial procedural arbiter.

In the second committee proceeding on the Bill Senator Hayden contributed to discussion 25 times, while remaining Senators contributed 43 times. Assuming that it is possible to draw some conclusion from these figures alone, the discrepancy between Hayden's participation ratio in the first proceeding, which was 93 percent, and his participation ratio in the second, 58 percent, is due in part at least to the differing nature of the two hearings. The first dealt with substantive matters, and Hayden maintained control; the second was concerned only with the name of the proposed bank and Hayden had determined along with IAC Ltd. that the intervenor should be given a full hearing.

One exchange between Senator Hayden and Senator Lang in the second proceeding is of some interest. It arose over Senator Walker's opinion that a confusion as to the two names would be unlikely to occur.[27]

> Senator Walker: And the more sophisticated person will know the difference.
>
> The Chairman: Or perhaps he will inquire.
>
> Senator Lang: What possible confusion there is, might arise in the mechanism of banking both nationally

27 Proceedings, op.cit., No. 59, p.59:11.

and internationally where a relatively unsophisticated bank clearance girl is clearing papers between banks.

The Chairman: Of course, that is always a possibility. People dealing with it may not be alert enough; confusion may develop in that sense. I am trying to assess the situation.

Senator Lang: Could the witness answer my question?

The Chairman: The pride of name is understandable.

Senator Lang: Mr. Chairman, could the witness answer my question. I asked a question of the witness but I have not had an answer.

The Chairman: Go ahead.[28]

6. A Note on the Committee Amendments

The report of the Standing Committee on Banking, Trade and Commerce, if taken alone, would indicate that the committee heard the Bill, took careful and inquisitive note of its provisions and amended it fourteen times. The casual Senator voting on third reading who had not referred to the proceedings of the committee, having sent it to committee as a 'committee bill' for scrutiny, might well be satisfied that the committee had performed its task. It had, after all, amended the Bill substantively fourteen times.

In fact, the committee did not amend the Bill at all, IAC did. As the transcript of the proceedings indicated, after the Bill received first reading and was printed for distribution, a number of changes were found to be necessary. Some were technical, some substantive, most simply editorial due to unfortunate wording. IAC, as the proceedings indicate, determined to present fourteen amendments at the committee

stage.

The committee met on Thursday, November 6, 1975. On Wednesday evening the Clerk of the committee took IAC's proposed amendments and prepared them in their formal draft for the signature of the Chairman. All that was required on Wednesday, the night before the committee met for the first time on the Bill, was the signature of the Chairman. Once signed, the amendments were effectively reported.

The committee did not make a single change to the fourteen amendments. Indeed, it did not even consider them separately.[29]

> The Chairman: All the other amendments, I take it, Mr. Land, are amendments that you are proposing on behalf of IAC, is that right?
>
> Mr. Land: Yes.
>
> The Chairman: And only two of them involve matters of substance. Is that a correct description?
>
> Mr. Baillie: Yes, that is right.
>
> The Chairman: Does the committee want all these amendments to be read to them or simply to be incorporated in the transcript of proceedings this morning?
>
> Senator Macnaughton: Mr. Chairman, they have been cleared and agreed to by all parties, have they not?
>
> The Chairman: They have been cleared by the parties-that is, by the principals or the petitioners-with the acting law clerk. I have to confess that acting law clerk has spoken to me about them and I do have some familiarity with them as a result of that.

And with that brief exchange, the committee passed fourteen amendments to the Bill without knowing the individual effect

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29 Proceedings of the Standing Senate Committee on Banking, Trade and Commerce, First Session, Thirtieth Parliament, No. 58, p.58:28.

of each one. Admittedly, these amendments were not complex. But the above exchange highlights the reliance of the committee on IAC, the law clerk, and the Chairman himself, who in his words was implicitly assuring the Senators that everything was in order, and his word was good enough for them.

7. Use of the Expert Witness

In this section I wish to comment briefly on the failure of the Senate committee to take advantage of the presence in committee of C.L. Read, the Inspector General of Banks.

Section 64(1) of the Bank Act provides for the appointment by the Governor General on the recommendation of the Minister of Finance of an Inspector General of Banks whose duties include the inspection from time to time, but not less frequently than once a year, of the books, business and affairs of every chartered bank in Canada. In so doing, he is to be satisfied that the provisions of the Act, having reference to the safety of bank creditors and shareholders, are duly observed. At the conclusion of his examination, the Inspector General reports to the Minister of Finance.

Under Section 104 of the Bank Act every chartered bank, within the first twenty-eight days of each month, is required to return to the Minister and to the Bank of Canada a record of currency reserves. One function of the Inspector General is to certify that Section 104 returns are correct.

The Inspector General, in short, is an expert on Canadian banking. He, better than anyone else, is in a position to discuss the limitations to which banks are subject under the Bank Act. When IAC referred their proposed Bill to the Inspector General in the early stages of its creation, it was presumably more than a simple courtesy. Nothing in the Bank Act required the participation of the Inspector General in such a venture, yet it was imperative that his counsel be taken.

The first reason for IAC approaching the Inspector General likely concerned the drafting of the Bill itself. The second reason may have been strategic; since IAC was then in a position before the Senate and House committees to point to the satisfaction, if not tacit approval of the Bill, on the part of Mr. Read and other senior officials in the Department of Finance.[30]

The Senate Banking, Trade and Commerce committee did not direct many questions to the Inspector General. He was in a position to provide an independent assessment (as he did in House Committee) of the Bill and its merits. The committee's record in the matter may have been improved had it chosen to use Read more effectively.

The committee allowed Read to make a short statement. In it he stated the policy noted above of the government to encourage competition in the banking industry through

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30 That these assumptions are correct is made clear by Mr. Read's participation in House committee.

the development of new banks. He commented on the historical broadening of bank powers and indicated to the committee that the conversion of a financial institution to a bank was a natural result of this expansion.

Only ten questions were directed to the Inspector General. Not one placed the Bill in any jeopardy. Nor did any question direct Mr. Read's attention to the more controversial aspects of the Bill. He was simply asked if he approved of it, and he replied that he did. That was the extent to which the committee encouraged him to participate.

8. The Rules

As indicated above the Senate Rules and the Standing Orders of the House, for that matter, can be used to good advantage either in support of or in opposition to a bill. Private bills in particular have their access to the legislative process considerably restricted by available time as prescribed in the rules.

This section briefly considers two situations where success or failure of a particular stage in the process may depend on the use made of the available rule.

(i) Motion for Adjournment

The first stage of any significance in the presentation of a private bill is second reading. The object of the exercise is to convince the Honourable Senators, who are not at that point altogether familiar with the bill, to pass it

on to committee. Reference has been made earlier in this Chapter to the so-called 'committee bill'. This classification is often used in an undisguised effort to pass the bill quickly and clearly through second reading. It is subject however to an unfortunate provision in the rules which allows the simple motion for adjournment of debate to impede the progress of the bill. This so often is the case.

Should any Senator be dissatisfied with the performance of the sponsor in presenting his second reading arguments, or in answering questions raised thereupon, he may move that the matter be adjourned until the next sitting of the Senate. Private bills, not generally being of interest to anyone but the sponsor himself, the motion for adjournment so raised is usually undebated. The bill waits for a better day.

When this occurs, the sponsor of the bill will step away from the rules and begin his lobbying in earnest. His first tactic remains along the lines of the 'committee bill' approach. He will advise those Senators who seem to be opposed that the applicants will attend committee hearing and be available at that time to answer any and all questions raised. He will try to ensure that his bill will receive second reading when the Senate next sits. Therefore, he will approach government leaders and the Senate House Leaders as well as the mover of the motion and assure them

that the matter will be fully dealt with in committee. I have noted earlier that this promise of committee performance as a means of assuaging what opposition there may be at second reading is not often kept.

(ii) Intervenor Strategy

The emphasis in the rules of presentations in both official languages can be used to good advantage by an intervening party who wished to keep the text and scope of his intervention confidential until he appears before committee. A practice has grown out of this emphasis that material presented to Senate and, for that matter, to House committees will not be distributed to members of the committee or to any other interested party (which includes the sponsor of the bill) until it is available in both languages. The clerk of the committee is instructed to ensure that no material reaches member Senators unless presented in both languages.

While I have not seen example of how this practice may be used by the intervenor in the Senate, it may have been used to good advantage by the Equipment Lessors Association of Canada who opposed Bill S-30 in House committee. The Equipment Lessors Association represents the great majority of companies carrying on the business of equipment leasing in Canada. It was opposed to Bill S-30 because, as noted above, the Continental Bank of Canada would during the transitional period have been permitted to

carry on leasing business. When it first became apparent that the Association had prepared a brief for presentation to the committee, the sponsor of Bill S-30 and officials of IAC Ltd might well have been anxious to determine the nature and substance of the intervention. But the Clerk to the Standing Committee on Finance, Trade and Commerce could not release any documentation and nothing was available or learned until the committee hearing itself.

The Association had presented its brief to the clerk in English only. Thus the clerk, under instruction of the Chairman, could not distribute until translation had been effected. There is no indication one way or another that the Equipment Lessors Association of Canada knew the effect of a single language submission. If they did, then one inference which could reasonably be drawn is that they made their submission in English only to forestall the sponsor of Bill S-30 from obtaining their brief until it was presented. Whether or not this was the case, the circumstance points to an interesting but certainly unintended use of the rules concerning submissions in both official languages.

B, Bill S-30 in the House

While the fate of Bill S-30 in the House of Commons and in House committee is not germane to the topic and object of this study, it nonetheless serves as a useful and illustrative foil in further describing the inadequate treatment given to Bill S-30 by the Senate. This section

briefly considers, under similar headings to those followed in Section A above, the reception given to the Bill in the House.

The premise in doing so is that while great differences exist between Senate and House committees in their deliberations upon public legislation, there is little difference in their deliberations upon private bills. There is nothing in the attitude of Members of Parliament to Bill S-30 which in abstract is necessarily foreign to the Senate. The Senate committee had every opportunity to give adequate and detailed consideration to the Bill, as did the House committee. In neither chamber was the integrity of the Government at stake.

1. The 'Committee Bill'

As indicated above, the House sponsor of the Bill also classified it as a 'committee bill' and urged the House on second reading to send it to committee where it would receive microscopic attention. In this case, however, this promise was kept. The House committee's record on Bill S-30 is somewhat better than that of the Senate BTC committee. The House committee on Finance, Trade and Economic Affairs held five proceedings on the Bill, a considerable number for a private piece of legislation. Witnesses during these proceedings were questioned thoroughly, and members of the committee were not prone to taking their replies at face value. In the House at least, when a private bill is referred to as a 'committee bill', being beyond the limita-

tions upon the House at second reading, that reference is a meaningful one.

2. System Bias

The essential difference between the House and the Senate is that Senators are appointed with a fixed and certain tenure, and Members of Parliament are elected with uncertain tenure. Thus party politics play a greater role in the House. But there is no reason why members of the Senate BTC committee, in the abstract at least, could not have approached Bill S-30 upon philosophical grounds.

Reaction in House committee to Bill S-30 was not completely the result of party affiliation. Yet members approached the Bill with greater suspicion and with a higher level of analysis than did those members of the Senate committee who were in no hurry to pass the Bill through, there being fewer shared values to make this a possibility. Yet apart from that distinction, Members of the House committee showed a greater understanding of the nature and effect of Bill S-30 and accorded to it greater respect than did the Senate committee.

System bias was not a factor in House committee. Yet even had it been there is evidence in the way members rose above party lines to indicate that it would not have been significant. The fact that M.P.'s are elected and therefore responsible gives to them a different, more precise style of technical analysis which even in the case of a private bill is apparent. Senate committees are not suited

to deliberate on defined legislation be it public or private. It has never been their historical tradition to do so in meaningful fashion. Bill S-30, a piece of private and therefore parochial legislation, nonetheless indicates that the Senate committee is better suited for general policy inquiries; House committees for specific analysis of legislation.

3. Private and Public Legislation

The Senate failed to consider the effect which Bill S-30 would have upon The Canada Bank Act. In House committee this question attained a level of great significance. Members of all parties expressed in debate their great concern with the effect that the exemptions provided in Bill S-30 from The Bank Act would have on the upcoming revision of that Act. They were not prepared to take the chance that a particular piece of public policy would be subverted to a private bill. Was the Senate? It is this issue which caused the Bill distress upon report stage, and continues to keep Bill S-30 in the House indefinitely. The validity of the issue is another matter.

4. Interest Group

I have already noted the intervention in committee of Equipment Lessors Association. However, it is interesting to note that none of the chartered banks nor the Canadian Banking Association made any attempt to express their concern or to influence the nature of the Bill which the

House would eventually pass. Again there is the disconcerting conclusion that the element of competition so prevalent in representations made by proponents of the Bill is not as probable as they expressed it to be. Whether or not this is so, the assumption follows, and was raised in House committee and more vehemently at report stage.

5. The Role of the Chairman

In House committee the Chairman is not of long standing. His tenure in that position is determined by his performance, his success at maintaining his seat and the success of his party in holding onto government. No Chairman of any House committee has even come close to the longevity in that position enjoyed by Senator Salter Hayden.

The Chairman of the House Committee on Finance, Trade and Economic Affairs played a procedural but not a substantive role in the committee's deliberations upon Bill S-30. He never intervened as did Senator Hayden, nor did he ever act as an apologist for the Bill. Essentially he restricted his own participation to the maintenance of the decorum of committee proceedings.

6. Amendments

The amendments which the House committee proposed to the Bill were major. Whereas Senate amendments were chiefly editorial (two being of some significance) and were prompted not by committee but by IAC itself, House amendments were a result of considerable debate between IAC and members

of committee, a debate in which the committee at all times had the upper hand. The House committee effected serious changes to the Bill, most prominent among them being removal from Section 7 of the two year transitional period for interlocking directorates.

7. Expert Witness

The difference between the responses of the Senate committee and House committee to Bill S-30 is dramatically illustrated in their use of expert witnesses, chiefly the Inspector General of Banks, Mr. Cyril Read. Where the Senate committee ignored Mr. Read, the House committee seized upon him as an impartial and therefore credible witness. Mr. Read attended each proceeding, and the committee never failed to call upon him. In fact, as many questions were referred to Mr. Read as were referred to other witnesses before the committee.

CONCLUSIONS

It is difficult to draw general conclusions from a case study which has centred upon a particular process involving a single and particularized piece of legislation. Yet examination of the manner and form in the reception given to Bill S-30 in the Senate does lead to certain general comments respecting the make-up of that body and the nature of its deliberative skills.

The object of this paper, as expressed in the Introduction, was to identify and examine the elements of policy and politics in the legislative procedures of the Senate of Canada. The distinction between 'politics' and 'policy' was stated to be the difference between process and attitude. The effect of party, social and economic class, ideology and institutional structure and mechanisms are elements of politics. The ability to identify a problem and come to a workable solution within the confines placed by politics is the chief element of policy, as referred to in this study. The question which this study sought to answer, through analysis of the treatment given a private bill, was the nature and extent of the Senate's ability to effectively and creatively combine politics and policy.

In this respect Bill S-30 has proven a worthwhile object of examination. As a private bill with pseudo-public qualities it demanded, but did not receive, a high level of intensive inquiry. The Bill has exhibited characteristics

which should have prompted policy considerations. It demonstrated frailties of Senate performance which bear further inquiry.

First among these was the effect of Senate membership as presently constituted. The Senate, as studies pointed to in Chapter Five demonstrated, is a socially homogenous group with shared values and socio-economic interests. Insofar as party membership is concerned, it is decidedly Liberal. The Senate's participation in Bill S-30 raises the strong inference that it is not well-suited to consideration of private or public legislation of any significance. It is not capable, as presently constituted, of delivering the 'sober second look' which it was originally intended to deliver.

Secondly, examination of Bill S-30 pointed to the very political role of the chairman in committee proceedings. While the measure of control over the Banking, Trade and Commerce committee may be atypical, it nonetheless demonstrates the capability of Senate chairmen whose appointments to that position are generally for the duration of their term remaining, to increasingly monopolize and direct committee performance.

Thirdly, this study has demonstrated the effect and influence which outside interests maintained by a Senator may have on his ability to deliberate. The Canadian Government has been slow to adopt strictly enforceable

conflict of interest guidelines for M.P.'s and Senators. Concomitant with appointment to the Senate should be the dispensation of economic interests which could or would be likely to influence future judgement. Instability of office and tenure cannot be offered in the Senate in excusing such a measure as easily as it can be raised in the House of Commons. When a bill such as Bill S-30 receives the perfunctory treatment which it received in the Senate in the face of the shared interests and corporate interlocks referred to in Chapter Five, it is time for re-consideration of the constitution of the Senate and the factors inhibiting its intended performance.

Much of this paper has concentrated upon the Senate committees, on the understanding that "the value of the Senate's contribution to parliamentary legislation can be measured almost solely in terms of the accomplishment of its committees".[1] Judging at least from consideration of Bill S-30, this contribution may be found wanting. Bill S-30 was not, of course, a piece of public legislation, but it was far broader in scope and effect than any private bill hitherto presented in either chamber. In failing to accord to the Bill more attention than the ordinary private prayer could have received, the Senate exhibited again its general weakness in the analysis of legislation, private or otherwise.

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1 F.A. Kunz, The Modern Senate of Canada, 1925-1963: A Re-Appraisal, (Toronto: University of Toronto Press, 1965).

Kunz identifies six functions of Senate committees, which may be differentiated as either primary or derivative.[2] The three primary functions of Senate committees are to legislate, scrutinize and inquire.[3] Of these, examination of Bill S-30 and this study generally have considered only two: the functions of legislation and inquiry. Bill S-30 indicated the weakness of the legislative function of the Senate, due in good part to Senate politics. The pattern of behaviour exhibited by the Banking, Trade and Commerce committee in consideration of a private bill is evidence at least of a general disability of the Senate to make substantive alteration to public legislation as well, since Bill S-30 was closer in all ways to a public bill than to a private prayer for relief.

Chapter Two identified a trend in the Senate toward greater use of Senate time on general policy inquiries, unassociated with a particular bill. This is the more suitable role for the Senate under its present constitution. Senate committees escape many of the tendencies which Bill S-30 has demonstrated in their policy oriented inquiries. The control of the chairman is lessened, outside interests play a decreased role, political and historical traditions do not inhibit Senators in their deliberations. Witnesses are paid greater heed, and research facilities are much

2 Ibid., Chapter 3.

3 The derivative functions are interest articulation, education and liaison.

improved.

Apart from raising inferences respecting Senate performance generally, this paper was designed primarily as a case study of a single bill, Bill S-30. The methodological approach was based upon participation and observation. As a means of examining a particular piece of legislation in a particular process, this method has proven worthwhile and generally salutory. In developing the 'story' of Bill S-30, this paper has considered the role of Senate committees generally (Chapter One), the part played in the legislative processing of a private bill by various administrative personnel (Chapter Three), and the Senate Rules and Procedures. Each of these Chapters, while associated with the whole, have proved in their own right to be independent sources of information and discussion.

Essentially, the method of participation and observation of particular and restricted subject matter has proved to be a success. General observations such as those outlined above may be examined and validated or disputed through much broader approaches incorporating a larger set of data. The function of the case study is to particularize a specific instance within a broader framework of analysis, and it has been a generally successful means of examining the variables present in the deliberation of the Senate upon a private bill.

APPENDICES

APPENDIX I - SELECTED SECTIONS OF THE B.N.A. ACT, 1867

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

22. In relation to the Constitution of the Senate Canada shall be deemed to consist of Three Divisions:

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick; which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by Twenty-four Senators; Quebec by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A to Chapter One of the Consolidated Statutes of Canada.

23. The Qualification of a Senator shall be as follows:

(1) He shall be of the full age of Thirty Years:
(2) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada, after the Union:
(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same:
(4) His Real and Personal Property shall be together worth Four Thousand Dollars over and above his Debts and Liabilities:
(5) He shall be resident in the Province for which he is appointed:

(6) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a member of the Senate and a Senator.

25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators, and no more.

28. The Number of Senators shall not at any Time exceed Seventy-Eight.

29. A Senator shall, subject to the Provisions of this Act, hold his place in the Senate for Life.

30. A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

31. The Place of a Senator shall become vacant in any of the following Cases:

(1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:

(2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power:

(3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:

(4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:

(5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

34. The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

APPENDIX II - SENATE SPECIAL COMMITTEES 1903 - 1974

Year	Topic
1903	Rules
1904	New York Mutual Reserve Fund
1905	Opening Prayers
	Production of Aluminium
	Suppression of Tuberculosis
1906	Rules
1907	Saskatchewan Watershed
1908	Cost of the Senate
	Annunciator System
1910	Mineral Resources
1915	Constitution and Powers of Senate
	Standing Committees
1916	Promotion of Trade
1917	Veterans
	50th Anniversary of Canada
	Trade
	Cost of Parliament
	Rules of Divorce
	Employment of Veterans
	Rights of Senate re Money Bills
1918	Bill 69 - Act to Amend Criminal Code
1919	Memorial to Harold Baker
	Biological Board Act

Year	Topic
	Cancellation of Alberta Coal Leases
	Copyright Act
	Hudson Bay
	Government
	Parliament Buildings
1920	Memorial
	Allocation of Rooms
	Amalgamation of Staff
	Parliamentary Restaurant
	Development of Oil Shales
	Carillon
	Hudson Bay
	Steamship Service
1921	Oil Development
	American Exports
	Senate Chamber
	Unemployment
	Bill to Amend Gold and Silver Marketing
	Bill to Amend Criminal Code
	Rules of Senate
1922	Oil Development
	Extension of Right to Appeal
	Routing of American Exports
	Bill to Amend Cold Storage Warehouse Act
1923	Fuel Supply in Canada

Year	Topic
	Act to Amend the Dominion Lands Act
	Act Respecting Chinese Immigration
	Returned Soldiers Insurance Act
	Department of Soldiers Act
	Pension Act
1924	Bail
	Efficiency of Civil Service
	Opium and Narcotic Drugs
	Ticket of Leave Act
1925	Canada Evidence Act
	Disposal of Canteen Funds
	Canteen and Disablement Funds
	Printers Liability
	Grain Act
	Pension Act
	Railway Expenditure in Canada
1926	Possession of Weapons
	Soldier Settlement Act
1927	Seating of Guests
	Allied Tribes of B.C. (joint)
1928	Dominion Forest Reserves and Parks Act
	Immigration Act
	Seeds Act
	Development and Improvement of St. Lawrence River

Year	Topic
1930	War Veterans Allowance Act
1931	Escape by Flight
	Judges
	Hospital Sweepstakes
	Senators and Dominion Government
1934	Canadian Sealing in Pacific Waters
	Public Accounts of Canada
	Tourist Traffic
1936	Government Annuities Act
	Free Foreign Trade Lanes Act
1938	Divorce and Matrimonial Causes Act
	Railway Problems in Canada
1940	Crown Debts
	War Compensation Committee
1943-44	Post-War Reconstruction
1945	Income Tax Act
	Standing Committees
1946	Indian Act (joint)
	National Flag (joint)
1947	Human Rights (joint)
1950	Old Age Security
1951	Combines Legislation
1952	Salacious Literature
1953-54	Capital Punishment
1956	Federal District Commission

Year	Topic
	Senate Orders and Customs
1957	Land Use in Canada
1960	Manpower and Employment
1963	Aging
1965	Penitentiaries
1966-67	Consumer Credit (joint)
	Hate Propaganda (joint)
	Divorce
	Immigration
	Justice Leo Landreville (joint)
	National Anthem (joint)
	Public Service (joint)
1967-68	Science Policy
	National Capital Commission (joint)
1968-69	Mass Public Communication
	Role of Senate
	Rules of Senate
	Tax Reform
1970-71-72	Constitution of Canada (joint)
1973-74	Science Policy
1974	Science Policy

APPENDIX III- CHAIRMANS REPORT (SENATE)

Thursday, November 6, 1975.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-30, intituled: "An Act to Incorporate Continental Bank of Canada" has, in obedience to the order of reference of Thursday, October 30, 1975, examined the said Bill and now reports the same with the following amendments:

1. Page 3: Strike out lines 38 to 45, inclusive and substitute therefor the following:

"(a) IAC Limited may, notwithstanding sections 53 and 54 of the Bank Act,

(i) subscribe for shares of the capital stock of the Bank at not less than par value and cause to be registered in the name of IAC Limited the shares issued pursuant to such subscriptions, and

(ii) exercise, in person or by proxy, the voting rights pertaining to shares of the capital stock of the Bank registered in the name of IAC Limited;"

2. Pages 5 to 7: Strike out lines 17 to 49, inclusive, on page 5, all of page 6 and lines 1 to 31 on page 7 and substitute the following:

"10. (1) IAC Limited and the Bank shall, within ten years after the coming into force of this act,

(a) subject to subsection (2), amalgamate in accordance with the Canada Corporations Act or the Canada Business Corporations Act, whichever Act applies to IAC Limited at the time of the amalgamation, as if the Bank were a corporation subject to the Act that applies to IAC Limited, or

(b) amalgamate in accordance with sections 100 to 102 of the Bank Act, as if IAC Limited were a bank to which that Act applies,

and subject to subsections (4) to (6), the Bank after the amalgamation is subject in all respects to the Bank Act.

(2) If the Canada Business Corporations Act applies to IAC Limited at the time of the amalgamation and, if immediately prior to the amalgamation, IAC Limited owns all of the outstanding shares of the capital stock of the Bank,

(a) subsection 178(1) of that Act applies to an amalgamation under paragraph 1(a), and

(b) the resolutions referred to in paragraph 178(1)(b) of that Act may vary from the requirements set out in that paragraph to the extent necessary to give effect to section 11 of this Act.

(3) Prior to an amalgamation under paragraph (1)(b), the Governor in Council may, by order, prescribe that, notwithstanding subsection 101(2) of the Bank Act, the terms of the proposed amalgamation agreement need not be submitted to the shareholders of IAC Limited.

(4) Subject to subsection (6), if, when an amalgamation under subsection (1) takes effect, there is outstanding any indebteness of IAC Limited, other than the debentures referred to in subsection (5), that is of a kind that the Bank is not permitted to incur under the Bank Act, then notwithstanding the Bank Act, any such indebtedness incurred prior to October 28, 1975, remains outstanding after the amalgamation as indebtedness of the Bank and is binding upon and enforceable against the Bank in accordance with its terms, including any terms as to security.

(5) Subject to subsection (6), if

(a) an amalgamation under subsection (1) takes effect prior to July 15, 1984, and

(b) on the day when the amalgamation takes effect there are outstanding any debentures that carry rights of conversion into shares of IAC Limited to be issued on such conversion then, notwithstanding the Bank Act, during the period from the day the amalgamation takes effect until July 15, 1984, the rights of conversion under any of those debentures that were issued prior to October 28, 1975 remain oustanding as rights of conversion into shares of the Bank and shares of the Bank may be validly issued during that period upon the

exercise of the rights of conversion except that shares of the Bank may not be so issued to a person from whom a subscription for a share of the capital stock of the Bank could not, by reason of paragraphs 53(4)(a) or (b) or subsection 56(2) of the Bank Act, be accepted by the Bank.

(6) Subsections (4) and (5) apply to any indebtedness and any debentures referred to therein only if

(a) the terms thereof do not permit the debtor, at its option, to discharge the indebtedness or the debentures prior to the amalgamation, whether or not the discharge would require payment by the debtor of a premium or bonus; and

(b) the Minister of Finance consents to the application of those subsections to that indebtedness or those debentures upon submission to the Minister made by IAC Limited that it has attempted to arrive at alternative arrangements that would avoid the necessity of relying upon those subsections as to that indebtedness or those debentures.

(7) The submission referred to in paragraph (6)(b) shall be accompanied by an undertaking to discharge the indebtedness at the first date upon which it may be discharged at the option of the debtor, whether or not upon payment of a premium or bonus.

(8) Any indebtedness referred to in subsection (4) and any debentures referred to in subsection (5) that have not met the conditions set out in subsection (6) shall be discharged prior to an amalgamation under subsection (1).

(9) For greater certainty, all of the provisions of the Canada Corporations Act, the Canada Business Corporations Act or the Bank Act, as the case may be, relating to the effects of an amalgamation apply to an amalgamation under subsection (1), except as provided in this section and in section 11.

(10) The Bank may enter into such agreements as may be reasonably necessary to confirm that any indebtedness to which subsection (4) applies remains outstanding after the amalgamation as indebtedness of

the Bank, and any debentures to which subsection (5) applies are convertible after the amalgamation into shares of the Bank to be issued on such conversion."

3. Page 7: Strike out lines 32 to 35, inclusive, and substitute therefor the following:

"The Bank shall be the continuing corporation resulting from the amalgamation of the Bank and IAC Limited referred to in subsection 10(1) so that,"

4. Page 7: Strike out lines 41 and 42 and substitute therefor the following:

"mence business when the Bank was originally permitted under that section to commence business."

5. Page 8: Strike out lines 16 to 22, inclusive, and substitute therefor the following:

"Act apply to IAC Limited and sections 38 to 56 of the Bank Act apply to the shares of IAC Limited, and"

6. Page 10: Strike out lines 20 to 27, inclusive, and substitute therefor the following:

"15(1) During the period commencing on the day this Act comes into force and ending on the expiration of two years next following that day or on the day on which an amalgamation under subsection 10(1) takes effect, whichever occurs first, a person referred to in subsection 2(1) is not ineligible, notwithstanding paragraph 18(5)(b) and subsection 18(6) of the Bank Act, to be elected or appointed a director of IAC Limited by reason of his being a director of a bank, or of a bank to which the Quebec Savings Banks Act applies or of any company referred to in subsection 18(6) of the Bank Act, but no person who, but for this subsection, would be ineligible for election or appointment as a director of IAC Limited may hold in IAC Limited any of the offices referred to in section 21 of the Bank Act or continue after the expiry of that period to be adirector of IAC Limited."

7. Page 11: Strike out line 38 and substitute therefor the following:

"is a subsidiary of IAC Limited (any such corporation being hereinafter in this section and in sections 17 to 19 called a "restricted corporation"), to carry on"

8. Pages 12 and 13: Strike out lines 22 to 43 on page 12 and lines 1 to 17 on page 13 and substitute therefor the following:

(a) IAC Limited may acquire, and may permit any restricted corporation to acquire,

(i) assets from the Bank previously acquired by the Bank as permitted by the Bank Act (such assets and other assets which the Bank is permitted to acquire under the Bank Act being hereafter in this section called "eligible assets"), and

(ii) eligible assets from IAC Limited or any restricted corporation,

but the prior consent of the Inspector General of Banks shall be required for the acquisition of any eligible assets that consist of shares in the capital stock of a corporation, other than a corporation that is a subsidiary of IAC Limited when this Act comes into force;

(b) IAC Limited may acquire, and may permit any restricted corporation to acquire, assets for the purpose of leasing such assets to its customers, and IAC Limited may enter into leases of any such assets and may permit any restricted corporation to enter into leases of any such assets, and

(c) IAC Limited may lend money to make advances, and may permit any restricted corporation to lend money or make advances, upon the security of real or immovable property in Canada or of an equity of redemption therein or of an assignment of or mortgage on the interest of a lessee thereof where such loans or advances would not be permissible for the Bank by reason of the restrictions contained in subsections 75(3) or 75(4) of the Bank Act (the said loans and advances, and leases of assets referred to in paragraph (b), being hereinafter in this section referred to as "non-eligible assets"); and

(d) IAC Limited may acquire, and may permit any restricted corporation to acquire, non-eligible assets from any other of those corporations.

9. Page 13: Strike out lines 22 to 25, inclusive, and substitute therefor the following:

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"assets held by IAC Limited and every restricted corporation be in excess of the aggregate value,"

10. Page 13: Strike out lines 33 to 36, inclusive, and substitute therefor the following:

"gible assets held by IAC Limited and every restricted corporation, excluding those non-eli-"

11. Page 14: Strike out lines 23 to 25, inclusive, and substitute therefor the following:

"by IAC Limited or any restricted corporation in any other of those"

12. Page 14: Strike out lines 35 to 37, inclusive, and substitute therefor the following:

"IAC Limited or any restricted corporation is under no obligation to"

13. Page 14: Strike out lines 42 to 45, inclusive, and substitute therefor the following:

"If the Bank or IAC Limited or a director of the Bank or IAC Limited is, in the opinion of the Minister of Finance, in contravention of any requirement of section 8, 9, 12"

14. Page 15: Strike out lines 27 to 29, inclusive, and substitute therefor the following:

"tion 15(1) of the Bank Act, the provisions of this Act that affect or restrict IAC Limited, the subsidiaries of IAC Limited or the shares of IAC Limited shall cease to have effect, except that subparagraph 7(4) (a) (ii) and paragraphs 7(4)(b) and (c) shall remain in effect for purposes of giving effect to subsections 15(2) to (9) of the Bank Act."

Respectfully submitted,

Salter A. Hayden,
Chairman.

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