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IN BRIEF



The Legislative Process: From Government Policy to Proclamation

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Andre Barnes
Erin Virgint

Legal and Social Affairs Division
Parliamentary Information and Research Service

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CONTENTS

1	INTRODUCTION.....	1
2	THE CABINET STAGE	1
3	THE PARLIAMENTARY STAGE	3
3.1	House of Commons	3
3.2	Senate.....	3
4	THE ROYAL ASSENT STAGE	4
5	THE COMING INTO FORCE STAGE.....	5

THE LEGISLATIVE PROCESS: FROM GOVERNMENT POLICY TO PROCLAMATION*

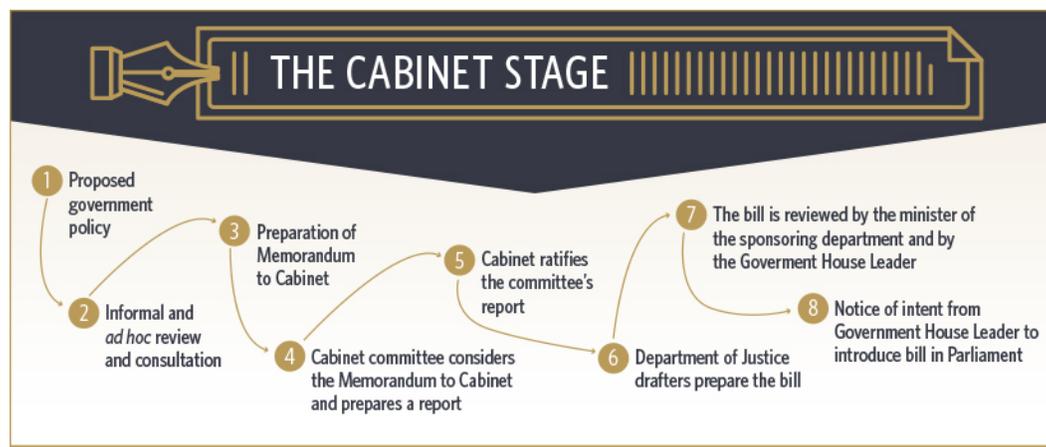
1 INTRODUCTION

How does government policy become law in Canada?

The law-making process can be understood in terms of four distinct stages:

- the Cabinet stage;
- the parliamentary stage;
- the Royal Assent stage; and
- the coming into force stage.

It should be borne in mind that the legislative process for private members' bills and private bills differs from that for government bills.¹ This paper discusses the legislative process for government bills only.



2 THE CABINET STAGE

The primary purpose of the Cabinet stage is to review and decide which measures the government wants to implement through legislation. Government policy – often announced in the Throne Speech, the budget, international or federal/provincial agreements, ministerial proposals and other sources – is the point of origin for most federal government legislation.

The appropriate federal departments review these sources to determine whether legislation is needed to implement a policy. If so, the relevant minister may, if he or she wishes, allow departmental officials to proceed with policy consultations. These consultations allow stakeholders, other departments, provincial governments and others to provide input into the legislation before it is drafted.

In light of these consultations, and contingent upon a decision being made to proceed with legislation to achieve the policy objectives, the sponsoring department prepares a Memorandum to Cabinet.² The Memorandum to Cabinet seeks policy approval and authorization for the Department of Justice to begin drafting the legislation. Also included in the Memorandum are drafting instructions that describe the contents of the bill in a clear manner for legislative drafters at the Department of Justice.

Before completing the Memorandum to Cabinet, the sponsoring department hosts a meeting for the purpose of interdepartmental consultation. After the affected departments and agencies are adequately consulted, the draft Memorandum is revised, taking into account comments from other departments. Once finalized, it is submitted for approval to the appropriate Cabinet policy committee, which reviews the Memorandum and prepares a report. For the policy to proceed, Cabinet as a whole must ratify the report of the policy committee.

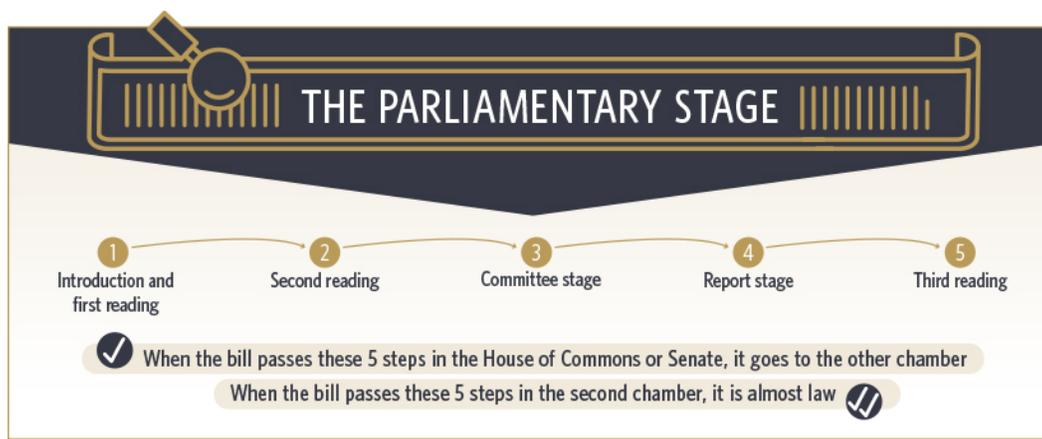
Once Cabinet approves the Memorandum to Cabinet and the drafting instructions, the legislative drafters prepare a bill in both official languages. This is done in consultation with the sponsoring department and its legal services. The draft bill is reviewed and approved by the sponsoring minister and the Government House Leader, who ensure that it is consistent with past Cabinet decisions, as well as by the Minister of Justice, who ensures that the bill is consistent with the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms*.³

The Government House Leader will then seek delegated authority from Cabinet to approve the bill for introduction in Parliament. The chamber in which the bill will be introduced and the timing of the introduction are determined by Cabinet on the advice of the Government House Leader and in consultation with the sponsoring minister. Typically, government bills are introduced in the House of Commons rather than in the Senate. Legislation that involves spending or taxation measures *must* be introduced in the House of Commons.⁴

At this point, the bill is almost ready to be introduced in Parliament.⁵ Bills that involve expenditure of public money require a royal recommendation⁶ before they can be passed by the House of Commons. A royal recommendation is obtained from the Governor General or a deputy of the Governor General (a Supreme Court judge). In current practice, the royal recommendation for government bills is communicated to the House of Commons before the bill is introduced and is included on the *Order Paper*. After first reading, the recommendation is printed in the *Journals* and included in the first reading copy of the bill.

If the bill is to be introduced in the House of Commons, the Government House Leader must give the Clerk of the House of Commons advance notice; typically, the notice period is 48 hours.⁷ The bill appears first on the *Notice Paper*⁸ and is subsequently moved to the *Order Paper*⁹ until its introduction by the appropriate minister.

If the bill is to be introduced in the Senate, no notice is required.¹⁰



3 THE PARLIAMENTARY STAGE¹¹

The bill must pass through both houses of Parliament, beginning in the one in which it was introduced.

For government bills introduced in the House of Commons, the steps in each house are as described below. (The procedure is similar for government bills introduced in the Senate, but in the reverse order.)

3.1 HOUSE OF COMMONS

- **1st Reading:** The bill is introduced and is given first reading.¹²
- **2nd Reading:** The principle of the bill is debated at second reading, and a vote is taken as to whether the bill will be referred to a committee for more detailed study. (In the House of Commons, it is possible to refer a bill to committee before second reading.¹³)
- **Committee Stage:** After carrying out a detailed study of the bill and a clause-by-clause deliberation, the committee reports the bill back to the House of Commons with or without amendments.
- **Report Stage:** The bill, as passed by the committee, is debated at report stage, during which any further amendments proposed by the Government or individual members can be adopted or rejected.
- **3rd Reading:** The bill, including any amendments to its text or to the motion for third reading, is debated and voted on.

3.2 SENATE

- **1st Reading:** The bill is introduced and is given first reading.¹⁴
- **2nd Reading:** The principle of the bill is debated at second reading. After debate, a vote is taken as to whether the bill will be referred to a committee for more detailed study. (In the Senate, it is possible for a committee to study, before second reading, or even before introduction in the Senate, the subject matter of a bill introduced in the House of Commons.¹⁵)

- **Committee Stage:** After carrying out a detailed study of the bill and a clause-by-clause deliberation, the committee reports back to the Senate with or without amendments.
- **Report Stage:** The Senate considers a bill at report stage only if the Senate committee has reported the bill back with amendments.
 - When the committee reports the bill back to the Senate with amendments, the bill is debated at report stage and the committee's report is either concurred with or amended.
 - When the committee reports the bill back to the Senate without amendments, the report is adopted without a motion.
- **3rd Reading:** The bill, including any amendments to its text, or to the motion for third reading, are debated and voted on.¹⁶



4 THE ROYAL ASSENT STAGE

When both the House of Commons and the Senate have passed a bill in the same form, the bill awaits Royal Assent. Royal Assent is the point at which a bill becomes an Act.

Traditionally, Royal Assent was granted only during a special ceremony in the Senate chamber involving the House of Commons, the Senate and the Governor General or a deputy of the Governor General (a Supreme Court judge).

In 2002, legislation was passed that permits Royal Assent to be signified by a written declaration, which can take place away from the Senate and House of Commons. The *Royal Assent Act* requires, however, that the traditional ceremony also be maintained. It is to be used at least twice in each calendar year, including for the first appropriation bill in each session. The new procedure requires that the Speakers of both the House of Commons and the Senate be notified of the written declaration before a bill is deemed to have received Royal Assent.

5 THE COMING INTO FORCE STAGE

Although a bill becomes an Act when it receives Royal Assent, the legislation is not automatically in effect. Acts come into force in various ways, and each Act must be examined to determine which commencement mechanism applies.

If an Act does not contain a provision specifying the date that it enters into force, the *Interpretation Act* states that the Act comes into force on the day it receives Royal Assent.

If the Act has sections providing for the coming into force of the Act, these provisions can take many forms, such as the following:

- The date on which the Act comes into force may be fixed. For example, there could be a section stating that the Act comes into force on a specified date.
- The Act comes into force on the day it receives Royal Assent.
- The Act comes into force if an order is issued by the Governor in Council.¹⁷ This and other statutory instruments can be found in Part II of the *Canada Gazette*. These orders of the Governor in Council state that all or part of the Act comes into force on a certain date or dates.¹⁸

It is also possible for an Act to take a very long time to be proclaimed in force. In 2008, in response to the fact that some Acts that had been granted Royal Assent decades earlier had yet to be proclaimed in force by the Governor in Council, a Senate public bill was passed providing for the repeal, on 31 December of each year, of any legislation that has not come into force within 10 years of receiving Royal Assent. This Act, known as the *Statutes Repeal Act*, came into force 18 June 2010.

When an Act comes into force, the transition from policy to enforceable law is complete.

NOTES

- * The original version of this paper was prepared by Megan Furi, formerly of the Library of Parliament, and by Peter Niemczak of the Library of Parliament.
1. For information about private members' bills and private senators' public and private bills, see Audrey O'Brien and Marc Bosc, eds., "[Chapter 21: Private Members' Business](#)" and "[Chapter 23: Private Bill Practice](#)," in *House of Commons Procedure and Practice*, 2nd ed., House of Commons, Ottawa, 2009; or Senate, "Chapter 7: Public Bills" and "Chapter 8: Private Bills," in [Senate Procedure in Practice](#), Ottawa, June 2015.
 2. For a discussion of the use and contents of memoranda to Cabinet, see Privy Council Office, "[4.1 Memorandum to Cabinet \(MC\)](#)," in *A Drafter's Guide to Cabinet Documents*, Ottawa, 2013.
 3. [Department of Justice Act](#), R.S.C. 1985, c. J-2, s. 4.1(1).
 4. [Constitution Act, 1867](#), s. 53.
 5. Parliament is the legislative branch of government and is composed of the Sovereign (represented by the Governor General), the Senate and the House of Commons.

6. A royal recommendation is a message from the Governor General; it is required for any vote, resolution, address or bill for the appropriation of public revenue. Only the Government (as opposed to an opposition party) can obtain such a recommendation.
7. The requirements for notice are set out in House of Commons, *Annotated Standing Orders of the House of Commons*, [Standing Order 54](#), 2nd ed., 2005.
8. Both the Senate and the House of Commons publish a *Notice Paper* for each sitting day; the *Notice Papers* present all notices of bills, motions and questions that senators, ministers or private members may wish to bring before their respective chambers.
9. The *Order Paper* is the official agenda of the Senate and the House of Commons. Both chambers publish this document for each sitting day. It lists all items that may be brought forward in their respective chamber on that particular day.
10. See Senate, *Rules of the Senate of Canada*, [Rule 5-7\(j\)](#), 7 May 2015.
11. Please note that this stage has been significantly summarized. For a complete and detailed description of this stage of the legislative process, see O'Brien and Bosc (2009), "[Chapter 16: The Legislative Process](#)," or Senate (June 2015), "Chapter 7: Public Bills."
12. When Government bills are introduced in the House of Commons, they are numbered C-2 to C-200. Private members' bills are numbered C-201 to C-1000, and private members' private bills are numbered C-1001 and up.
13. See *Annotated Standing Orders of the House of Commons*, [Standing Order 73\(1\)](#).
14. Bills introduced in the Senate are numbered S-2 and up, with no distinction between Government, private senators' public bills and private senators' private bills.
15. See *Rules of the Senate of Canada*, [Rule 10-11\(1\)](#).
16. For a detailed discussion of the process that occurs when amendments are made after third reading between chambers, see O'Brien and Bosc (2009), "[Consideration and Passage of the Senate](#)," or Senate (June 2015), pp. 149–150.
17. The Governor in Council is the Governor General acting by and with the advice and consent of those members of the Privy Council who make up the Cabinet. The Privy Council is a formal advisory body to the Crown appointed by the Governor General on the advice of the Prime Minister. All Cabinet members must be sworn to the Privy Council, to which they are named for life.
18. For example, the statutory instrument for the *Act to Amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act* (SI/2008-93) states that "the Governor General in Council ... hereby fixes September 12, 2008 as the day on which the Act comes into force, other than sections 51 and 52."