Legislative Summary **LS-381E**

BILL S-13: THE ROYAL ASSENT ACT

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LEGISLATIVE HISTORY OF BILL S-13

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:		First Reading:	7 February 2001
Second Reading:		Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

Bill Withdrawn: 2 October 2001

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BACKGROUND

Bill S-13 was introduced in the Senate by Senator John Lynch-Staunton, the Leader of the Opposition in the Senate, on 7 February 2001.

Versions of this bill had been tabled previously. Senator Lynch-Staunton tabled Bill S-15, on 2 April 1998. That bill was given second reading and referred to the Standing Senate Committee on Legal and Constitutional Affairs on 9 June 1998. The Committee reported the bill back with amendments on 18 June 1998. The bill was withdrawn, however, on 8 December 1998. Senator Lynch-Staunton subsequently introduced Bill S-26 on 10 March 1999, but that bill died on the *Order Paper* when the first session of the 36th Parliament was prorogued on 18 September 1999. In the 2nd Session of the 36th Parliament, Senator Lynch-Staunton reintroduced the bill as S-7; that bill was identical to Bill S-26, and virtually identical to Bill S-15 as amended by the Standing Senate Committee on Legal and Constitutional Affairs.(1)

Bill S-13 would provide an alternative to the formal Royal Assent process currently used in the Canadian Parliament, so that Royal Assent could be signified by written declaration, in a procedure similar to that used in Australia for the past many years.

Royal Assent is the final stage of an Act of Parliament; it is the formal process by which a bill becomes law and is given by, or on behalf of, the Sovereign after a bill has been finally agreed to by both the Senate and the House of Commons. According to citation 753 of the Sixth Edition of *Beauchesne's Rules and Forms of the House of Commons of Canada*, "When bills, either public or private, have been finally agreed to by both the Senate and the House of Commons, they await only the Royal Assent to be declared to Parliament to give them the complement and perfection of law."

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(1) For a discussion of previous bills, see Library of Parliament, Legislative Summary LS-318E (Bill S-15); LS-336E (Bill S-26); and LS-348E (Bill S-7).

The *Constitution Act, 1867* provides in section 17 that:

> There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Sections 55 to 57 of the *Constitution Act, 1867* deal with the granting of Royal Assent by the Governor General, and with the circumstances in which Assent can be disallowed or withheld. These sections do not specify any particular procedure that must be followed.

In Canada, a formal Royal Assent ceremony is conducted in the Senate chamber, to which the House of Commons is summoned. On behalf of the Queen, the Governor General or his or her representative signifies Royal Assent to the bills that are presented. Normally, in a practice that appears to date back to 1885, Royal Assent is granted by a Justice of the Supreme Court of Canada acting as Deputy Governor General. The Letters Patent Constituting the Office of Governor General authorize the appointment of Deputies, saying that each of them is "to exercise, during the pleasure of Our Governor General, such of the powers, authorities, and functions of Our Governor General as he may deem it necessary or expedient to assign."

The Royal Assent ceremony traces its origins to the beginning of parliamentary history in Great Britain, when bills were presented by the Lords and the Commons to the Sovereign for Assent. The coming together of the three branches in a formal ceremony was an important part of the process and confirmation of their respective roles and relationships.

Most countries with a Westminster-style Parliament have abandoned the Royal Assent ceremony. Canada appears to be unique among Commonwealth countries in retaining the procedure. As long ago as 1958, it was said that "the Canadian ceremony seems to be that which most closely resembles the original."(2)

The question of reforming the Royal Assent process in the Canadian Parliament has arisen on a number of occasions in recent years. The more important of these are described below, as is experience with Royal Assent in other Commonwealth countries.

A. Canadian Proposals for Reform of Royal Assent Procedure

1. Senate Motion of Inquiry (1983)

On April 1983, Senator Royce Frith, then Deputy Leader of the Government, tabled a notice of inquiry: "That he will call the attention of the Senate to the advisability of

(2) Norman Wilding and Philip Laundy, *An Encyclopaedia of Parliament*, London, Cassell and Company Ltd., 1958, p. 501-502

establishing alternate procedures for the pronouncement of Royal Assent to bills." In a lengthy speech on 10 May 1983, the Senator raised the question of whether there was a need for an additional and simpler procedure and, if so, what form it should take and what method should be adopted for implementing it. He reviewed the history of Royal Assent in Great Britain, and the procedure in the Canadian Parliament. He set out the arguments in favour of establishing alternative procedures for Royal Assent: the precedents in other countries, the advantages of not requiring both chambers to be sitting, and the advantage of having Royal Assent expressed in writing, for instance by proclamation. Senator Frith also reviewed the legal and constitutional dimensions of the question. Debate on the motion was adjourned.

2. McGrath Committee (1985)

In its Second Report, the Special Committee on the Reform of the House of Commons (commonly referred to as the McGrath Committee after its chair, the Hon. James A. McGrath) dealt with the issue of Royal Assent. It noted that, in the first session of the 32nd Parliament, witnessing Royal Assent had taken more than the equivalent of a full sitting day, as well as interrupting the flow of business in the House. The Report favourably reviewed the Australian procedure and observed that the United Kingdom and other Commonwealth Parliaments no longer maintained the system used in Canada. The Committee recommended that:

> the declaration of Royal Assent by written message be adopted in Canada and that the Government embark on the necessary discussions to achieve this change. Notwithstanding this recommendation, provision should be made for the use of the present practice should that be the pleasure of Her Excellency on the advice of Her Ministers.

3. Standing Senate Committee on Standing Rules and Orders Report (1985)

On 6 November 1985, the Standing Senate Committee on Standing Rules and Orders presented its Fourth Report, in which it noted that there had been considerable discussion in both the Senate and the House of Commons with respect to possible changes to the Royal Assent ceremony; as well, the issue had been raised in recent years in the Senate in Question Period. The Committee had held a series of meetings between May and October 1985 to consider the question of changes to the ceremony and recommended the following:

> That the present formal procedure of Royal Assent be retained and that it be used
>
> (a) at the request of the Governor General or of either House of Parliament and
>
> (b) at least once a session, for example at the prorogation of a session.
>
> That, in addition to the present practice, a simpler procedure be established based on the following principles:
>
> (a) that the procedure involve representation from both the Senate and the House of Commons,
>
> (b) that it be public, and
>
> (c) that the declaration of Royal Assent be subsequently reported to both Houses of Parliament.
>
> That representatives of the Senate meet with representatives of the House of Commons to draft a resolution for a joint Address of both Houses to be presented to Her Excellency the Governor General praying that she approve such changes to the Royal Assent ceremony as described in this Report.

4. Bill S-19, Royal Assent Bill (1988)

In July 1988, Senator Lowell Murray, the then Leader of the Government in the Senate, introduced Bill S-19 respecting the declaration of Royal Assent by the Governor General in the Queen's name to bills passed by the chambers of Parliament. As an alternative to the formal Royal Assent process, the bill proposed a system similar to that used in Australia for many years. Several – but not all – of the recommendations of the Standing Senate Committee on Standing Rules and Orders were included in the bill. Although it was debated several times, the bill had not received second reading when Parliament was dissolved on 1 October 1988, and it was not re-introduced in the next Parliament.

5. House of Commons Standing Committee on House Management (1993)

In 1993, the House of Commons Standing Committee on House Management tabled a report on parliamentary reform, which addressed, among other issues, Royal Assent. It was noted that the current procedure was time-consuming, interrupted the flow of business in the House, and was inconvenient when one chamber was not sitting and had to be recalled specifically for the procedure. The Committee believed that the recommendation of the McGrath

Committee had merit and should be pursued, and went on to make an almost identical recommendation:

> The declaration of Royal Assent by written message be adopted in Canada, and that the government undertake the necessary discussions to achieve this change. Provision should continue to be made for the use of the present practice of witnessing Royal Assent should that be the pleasure of His Excellency on the advice of His Ministers.

6. Previous versions of Bill S-13 in the Senate

As noted above, versions of Bill S-13 have been before the Senate since 1998. The Standing Committee on Legal and Constitutional Affairs studied Bill S-15 in June 1998, and heard witnesses; it reported the bill back with a number of amendments, which have been incorporated into subsequent versions. In the second session of the 36th Parliament, Bill S-7 (as it then was) was referred to the Standing Committee on Privileges, Standing Rules and Orders, which considered the bill on a number of occasions.

B. Procedure for Royal Assent in Other Commonwealth Countries

It is also relevant to review the experience and practice in other countries, particularly those with a parliamentary tradition based on the British model.

In the United Kingdom, until 1541 Royal Assent was granted by the Sovereign in person. In that year, to spare the King Henry VIII the indignity of assenting in person to the Bill of Attainder, which levied punishment for high treason against Queen Catherine [Howard], assent was accorded for the first time by royal commission. The practice of appointing Lords Commissioners to grant assent on behalf of the Sovereign became increasingly common. The last occasion in Great Britain on which Royal Assent was granted by the monarch in person was 12 August 1854, when Queen Victoria personally assented to several bills before proroguing Parliament.

Two incidents in the British Parliament in the 1960s led to the discontinuance of the Royal Assent ceremony there. In 1960, and again in 1965, Black Rod inconveniently arrived at the door of the British House of Commons, when the House was engaged in very heated debates. A number of Members protested loudly and strongly against the interruptions, staying in

their places and refusing to attend the Royal Assent – in the 1965 incident, a group of Members continued to debate the issue under discussion, even though the Speaker had left the chair.

The result was the *Royal Assent Act of 1967*, which set out two possible means for the granting of Royal Assent. The traditional means of doing so through three Lords Commissioners "in the presence of both Houses in the House of Lords in the form and manner customary before the passing of this Act" was confirmed. The Act went on, however, to declare that, alternatively, Royal Assent could be "notified to each House of Parliament, sitting separately, by the Speaker of that House or in the case of his absence by the person acting as such Speaker." In this case, Royal Assent is granted by the Lords Commissioners on Her Majesty's behalf (usually at Buckingham Palace) and relayed to each chamber by the Speaker or acting Speaker at a convenient time during the course of that day's business. In the House of Lords, Royal Assent may be notified at any convenient time during a sitting. In the House of Commons, Royal Assent may be notified immediately after prayers, at the commencement of public business, between Orders of the Day, between speeches in a debate, and between amendments at the consideration stage of a bill. The Commons has also ruled that the House should not be adjourned until notice of Royal Assent has been given. The traditional ceremony is observed at prorogation when Commissioners are directed by Letters Patent of the Sovereign to prorogue Parliament and to grant the Royal Assent to any outstanding bills.

Although the formal ceremony by which Royal Assent is granted to bills in the Australian Parliament is similar to the traditional practice in Great Britain and Canada, it has not taken place since the early years of the Australian Commonwealth. The usual practice is for the chamber that has initiated the bill to transmit copies of it to the residence of the Governor General. After the Governor General has affixed his or her signature, the assent is made known by Messages to the President of the Senate and Speaker of the House of Representatives, who duly notify their respective chambers.

In New Zealand, the Governor General has not attended in person to prorogue Parliament or assent to bills since 1875. Rather, bills are presented for Royal Assent at Government House where the Governor General assents to the bill by signing the two copies presented and returning these to the House with a Message informing the House that assent has been given to the bill in the name of the Sovereign. The Message, if received while the House is still sitting, is read to the House by the Speaker.

DESCRIPTION AND ANALYSIS

Clause 1 sets out the short title of the bill: the Royal Assent Act.

As the granting of Royal Assent is a royal prerogative, there was at one time some discussion about the procedure for effecting changes to it. When the issue was discussed in 1988 with respect to Bill S-19, the general feeling seemed to be that it would be appropriate for a bill to be passed by both chambers of Parliament and subsequently presented to the Governor General for Royal Assent.

Clause 2 provides that Royal Assent granted by the Governor General in the Queen's name to a bill passed by the Senate and the House of Commons could be declared either as at present, with the Royal Assent ceremony in the Senate chamber, or by a written declaration. These procedures would take place during the parliamentary session in which both Houses passed the bill. The first appropriation bill presented for Assent in any session, however, would require a formal Royal Assent ceremony, pursuant to clause 2(b). The procedure for appropriation bills is slightly different, in that the Speaker of the House of Commons presents them as a reminder that it is the House that grants aids and supplies and has the pre-eminent role in voting supply. The requirement that the first appropriation bill in a session be given Royal Assent in the traditional form would also ensure the occasional holding of a formal ceremony.

Clause 3 provides that a declaration of Royal Assent in the traditional way would have to take place on at least one occasion in each calendar year. This would address the problem posed by lengthy parliamentary sessions, which in recent years have not uncommonly lasted for two or three years. Without a requirement for at least one Royal Assent ceremony each year, such a ceremony might not be held for a long time.

Clause 4 proposes that a written declaration of Royal Assent would have to be reported in both the Senate and the House of Commons by the Speaker, or the person acting as the Speaker. There would be no requirement for this to take place within any specified period of time after the signing of the declaration.

Clause 5 provides that, where Royal Assent was given by means of written declaration, the date of assent would be the day on which the declaration was reported in both chambers; if it was reported in each chamber on different days, the assent date would be the later of those days. This would be particularly relevant to bills that came into force upon Royal Assent, or on a day related to the date of Royal Assent. This provision could lead to difficulties where one chamber was not in session, as when the House of Commons commonly adjourns prior to the Senate before Christmas and summer breaks. The government would usually have

an interest in ensuring that both chambers came back into session so that the written declaration could be reported; even so, it might be preferable to make provision for such contingencies in the *Rules of the Senate* or the *Standing Orders of the House*.

At present, it appears that Royal Assent is given at the moment that the Governor General or Deputy signifies assent by nodding his or her head. By the same token, under the bill assent would apparently be given at the moment that the written declaration was signed, not when it was communicated. Obviously, there is a concern that Royal Assent be formally conveyed to the two chambers. It may be that a written declaration filed with the Clerk of either chamber could be more efficient, less costly, and allow for more urgent situations; however, it would have to be communicated in some way to the members of the chamber.

Clause 6 provides that a written declaration of Royal Assent would not be a statutory instrument within the meaning of the *Statutory Instruments Act*. The definition of "statutory instruments" is intentionally broad; anything that falls within it is subject to parliamentary review and other procedures. Royal Assent in the form of a written document was obviously not intended to be subject to such review.

Clause 7 provides that no Royal Assent would be invalid simply because clause 3 had not been complied with. This provision is designed to quell any doubts about the validity of any bills or Royal Assent declared during a year in which, for some reason, there had been no formal ceremony. For example, there might have been no appropriation bill, or a prorogation or dissolution might have taken place before a ceremony had been held. Some concern has been expressed, however, that this provision could be used to avoid the traditional ceremony altogether.

COMMENTARY

The dissatisfaction with the current process for granting Royal Assent has been smouldering for a number of years. Attendance at the formal ceremonies is often sparse, and their timing can be inconvenient for Senators, Members of the House of Commons, and the Governor General or his or her Deputies. The recent practice of having justices of the Supreme Court of Canada deputize at such ceremonies also leads to concerns: not only does this duty place an extra burden on already very busy judges, but they may be called upon in future to adjudicate challenges to the legislation in question. It has also been pointed out that the planned renovations to the Centre Block on Parliament Hill may require the House of Commons and

Senate chambers to be located in different buildings at times in the next few years, thereby exacerbating difficulties in scheduling Royal Assent ceremonies. Bill S-13 is intended to provide an alternative to the traditional procedure – one that is simpler, more expeditious and more practical.

Against these arguments, it has been observed out that the Royal Assent ceremony is an important and meaningful part of Canada's parliamentary heritage. As one of the few occasions on which the three component parts of Parliament come together, it reminds Members and the general public that laws are enacted only with the approval of the Senate, the House, and Governor General. The elimination of the ceremony would, it is argued, further diminish the importance of the Senate and of the Governor General. The fact that other jurisdictions no longer have a formal ceremony is said not to be sufficient reason for Canada to follow their example.

There has been a certain amount of media coverage of Bill S-13 and its predecessors, but it does not appear to have generated much public discussion. The Monarchist League of Canada, which appeared before the Standing Senate Committee on Legal and Constitutional Affairs during its consideration of the bill, objected strenuously to the bill, arguing that the traditional Royal Assent ceremony is important constitutionally and symbolically and should not be jettisoned, that the alternative procedure proposed in the bill could well become the norm, and that there are other ways of addressing the issues that gave rise to the bill.

There is no requirement in the Canadian Constitution regarding the specific procedure to be used for obtaining Royal Assent, and, as noted above, most other parliamentary governments have eliminated the need for an actual ceremony. Proponents of Bill S-13 and its predecessors point out, however, that the intent of the bill is not to abolish the Royal Assent ceremony. The bill itself provides as a minimum that there would have to be a traditional ceremony for the first appropriation bill in each session, and at least one ceremony per year. It has been suggested that a Royal Assent ceremony should be held in the case of important bills – such as amendments to the Constitution or bills of historic significance. Senator Lynch-Staunton, the sponsor of the bill, has suggested that if fewer Royal Assent ceremonies were held, these might be accorded more respect and take on more significance than the present, more routine, ceremonies.

Suggestions other than those proposed in Bill S-13 have been put forward for dealing with the problems of the existing practices and procedures. Some parliamentarians feel it is essential that the Governor General should personally attend the Royal Assent ceremony, or at least attend more frequently than has recently been the case. It has also been suggested that the

Governor General could appoint eminent Canadians, such as Companions of the Order of Canada, as his or her deputies to preside over the ceremony. Another proposal is that Royal Assent ceremonies could be scheduled in advance – for instance, every fourth Thursday – to enable Parliament and parliamentarians to make the necessary arrangements.

Another suggestion is that the traditional ceremony be maintained for the most part, with an alternative Royal Assent procedure available only when the Senate and the House are not both sitting. This would deal with the situation that arises before a lengthy adjournment, when the House rises before the Senate, leaving bills to be passed by the latter chamber; in such situations, it is common for the House to be represented only by a deputy Speaker and one or two Members.

It would also be possible for Bill S-13 to be amended to include a provision allowing either chamber, the House leaders, or a certain number or percentage of Senators and/or MPs to request a traditional Royal Assent ceremony. The government could always opt for the traditional ceremony, and this would ensure that other parliamentarians could request it.

Apart from the proposal that Royal Assent be signified by written declaration, Bill S-13 does not specify the details of the proposed procedure. It has been suggested, for instance, that representatives of the government and opposition in both the Senate and the House of Commons could be in attendance when the bill was presented to the Governor General, although it is not clear whether or not this would be in public. Critics have expressed concern, however, that such a requirement would create an elaborate Royal Assent ceremony similar to that in the United States when the President signs bills. Such details would have to be spelled out.