

Minimum Sitting Dates

BRYAN SCHWARTZ & ANDREW BUCK

I. INTRODUCTION

As they often do, Manitoba Liberal MLAs Kevin Lamoureux and Dr. Jon Gerrard took their seats in the province's Legislature on 6 October 2006. There were, however, two significant changes on that particular day. First, the two MLAs were sitting in the building's rotunda, not the Legislative Assembly. That move was forced by the second significant aspect of that day—the House was not sitting. Mr. Lamoureux and Dr. Gerrard were staging a two-man mock question period to protest what they felt was the NDP government's refusal to be held accountable in the House. The government, under constant opposition scrutiny for its role in the collapse of the Crocus Investment Fund, had not called the House into session for over three months at the time of the Liberal stunt.¹

This particular demonstration was far from original. Mr. Lamoureux had staged a similar protest two years earlier, but even that wasn't the first time the rotunda played host to a "lock-out" demonstration. In fact, current Manitoba Premier Gary Doer sat in the same space and made the same arguments as an opposition leader in 1999. At that time, Mr. Doer was protesting the Filmon government's refusal to call the House into session during the inquiry into allegations that his party had engaged in vote-rigging in the 1995 Manitoba General Election.² But now that the scenario was reversed, the optics of the situation were not good. As an editorial noted: "Mr. Lamoureux's complaint looks particularly bad on Mr. Doer."³

The Legislative Assembly—and question period in particular—is where the government is held accountable. As a result, a government looking to escape

¹ Martin Cash, "Liberal MLAs want to work" *Winnipeg Free Press* (7 October 2006) A11.

² *Ibid.* The Monnin Inquiry, *Report of the Commission of Inquiry into Allegations of The Elections Act and The Elections Finances Act during the 1995 General Election* (Winnipeg: Election Inquiry Commission, 1999), eventually uncovered an unsophisticated vote rigging scheme in the Interlake constituency in the election. The report was seen as a major factor in the Tory government's subsequent defeat in 1999.

³ "Call them in," Editorial, *Winnipeg Free Press* (25 October 2004) A10.

the scrutiny of opposition parties and the media benefits when the House is not sitting. Good governance knows no partisan boundaries, yet Manitoba's current rules on House sittings allow the government to manipulate the schedule to its own benefit. When this happens, accountability evaporates and public policy takes a back seat to self-preservation. The federal government and several other provinces have stepped in to solve this problem by amending their respective House or Assembly rules to create scheduled house sittings.⁴ By doing so, these jurisdictions have also created a *de facto* minimum number of sitting dates.⁵ It is time Manitoba did the same.

II. THE PROBLEM: AN EMPTY HOUSE

A. Legislative Loophole

Rule 2(1) of the Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba holds that the Legislative Assembly “may” meet at any time:⁶

(a) from the first Monday in February to Thursday of the second full week in June, except during the week designated under The Public Schools Act as a spring break or vacation; and

(b) from the first Monday after Labour Day to Thursday of the first full week of December ...

Manitoba's rules governing sittings of the Legislative Assembly contain permissive language, unlike the above mentioned federal and provincial rules. Instead of being mandated to set in two or three seasonal sittings—as is the case in the other jurisdictions—governments in Manitoba are free to sprinkle sitting dates throughout the time frame allowed by the rules. Put simply, if the government doesn't want the House to sit, the House won't sit. This is alarming, considering the important role sittings of the House play in the overall development of policy and accountability.

⁴ See, for example, *Standing Orders of the House of Commons*, S.O. 28; *Rules and Procedures of the Legislative Assembly of Saskatchewan*, rule 3; *Standing Orders of the Legislative Assembly of Alberta*, S.O. 3.1; *Standing Orders of the Legislative Assembly of Ontario*, S.O. 6; and *Standing Orders of the Legislative Assembly of British Columbia*, S.O. 2. Each section sets out a time frame during which the House must meet in two or three annual sessions.

⁵ Rules that require the House to sit during a scheduled period will create a minimum number of sitting dates that can only be altered if the government chooses to vary the calendar by adopting an specific order to that effect. See, for example, the federal government's House calendar (*Standing Orders of the House of Commons*, S.O. 28(2)), which “provides for about 135 sitting days and seven adjournment periods at set times throughout the year”: Robert Marleau & Camille Montperit, *House of Commons Procedure and Practice*, 2000 ed. (Ottawa: House of Commons, 2000) at 324.

⁶ *Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba* are current as of 2005 amendments.

B. Accountability is Lacking

Responsible government requires the Prime Minister and Cabinet to answer to the House for their actions and use of the public purse.⁷ As a result, the House must—at the very least—be sitting before responsible government and the confidence convention can prevail. The concept of a government deliberately blocking a sitting in order to avoid the heat of a scandal is odious, yet it is not unheard of in Canadian politics. The Manitoba NDP Pawley government, for example, kept the House from sitting for nine months following the province's French Language Crisis in the mid-1980s.⁸ The next provincial government, the Tories under the leadership of Gary Filmon, also kept the House from sitting during the 1998 *Monnin Inquiry*.⁹ Finally, the current Doer government has been accused of practicing infrequent sitting as a means toward avoiding accountability in the wake of the Crocus scandal.¹⁰ All of these incidents point to the importance of a set legislative schedule that removes the government's ability to avoid the scrutiny of House sittings, and in particular question period.

Accountability puts the “responsible” in responsible government—it is the means to the end. As Thomas Axworthy has noted, “Accountability is about responsibility, the responsibility to answer for your actions.”¹¹ A Parliamentary research paper on the topic described accountability as follows:

Simply put, the term accountability refers to the need, or more precisely, the obligation of public institutions and office-holders to explain and justify their actions. Accountability in a democracy is part of the consensual, fiduciary contract between government and the governed. In our parliamentary system this relationship is embodied principally in the formal responsibility of Ministers of the Crown to the elected House of Commons representing all of the people.¹²

⁷ Marleau & Montpetit, *supra* note 5 at 36: An essential feature of parliamentary government is that the Prime Minister and the Cabinet are responsible to, or must answer to, the House of Commons as a body for their actions and must enjoy the support and the confidence of a majority of the Members of that Chamber to remain in office.”

⁸ Interview of Rick Mantey by Bryan Schwartz & Andrew Buck (26 July 2007) [Mantey]. Mr. Mantey, a former secretary of the legislative and regulatory review committee in Manitoba, currently operates a consulting company that advises clients on government relations, procedural development, legislative and regulatory development, and international relations.

⁹ Cash, *supra* note 1.

¹⁰ *Ibid.*

¹¹ Thomas Axworthy, “Addressing the Accountability Deficit: Why the Martin Minority Government Must Pay More Attention to the Three A’s” (2005) 26:1 Policy Options 9 at 10.

¹² Brooke Jeffrey & Gerald Schmitz, *Reforming the House of Commons: the Work of the Special Committee on Standing Orders and Procedure Established in 1982* (Ottawa: Library of Parliament, 1984) at 17.

It follows logically that the House needs to be sitting to create an atmosphere of accountability: not only in the sense of passing laws, which is dependent on the house sitting, but also during question period, where the opposition is able to hold government accountable in a public setting.¹³ Question period is often beset by petty partisan bickering, but it remains a valuable exercise nonetheless:

In the house, the government is on the hot seat to account for its spending and how its plan for the province's future is unfolding. Not every question is relevant and replies often are not illuminating. But a daily question period gives taxpayers timely feedback on how well government is operating. Avoiding public accountability is a tactic of governments too comfortable in power, or those nervous about their handling of the day's issues.¹⁴

The alternative to question period is “government by press release”,¹⁵ and that's exactly what the electorate can expect when the House isn't sitting.

Manitoba's current unfixed legislative sitting schedule is hindering accountability in the province, legislative process expert Rick Mantey agrees.¹⁶ But, he adds, the discretionary nature of sittings in Manitoba also creates a dearth of long-term planning and vision. Legislators find themselves out of time at the end of each session, and the only way to pass important laws is to ram them through the House without any or with limited scrutiny. “We don't have time for really solid debate”, Mr. Mantey says, contrasting the situation in Manitoba with that of the United Kingdom's House of Commons, where one bill can receive up to 300 amendments during debate.¹⁷ As another example, Manitoba is the only province that does not approve its electoral boundaries through the legislative process. Instead, the government simply adopts Elections Manitoba reports on presentation to the House.¹⁸

Alberta recently amended its Legislative Assembly rulebook to join the Canadian jurisdictions that observe a set (and minimum) sitting schedule. At that time, several MLAs addressed the reality of rushed legislation that the province's old discretionary schedule necessitated. One MLA, quite appropriately, compared the province's legislative process to her work in the film industry:

¹³ See Mía Rabson, “Colleagues don't like MLA's move” *Winnipeg Free Press* (16 March 2004) B1.

¹⁴ “Call them in”, *supra* note 3. See also Kevin Lamoureux, “King's jester” *Winnipeg Free Press* (22 February 2007) A13: “Question period is where the face-to-face televised questions and answers occur. It is where the media show up and thousands of Manitobans tune in. If you avoid question period, you avoid accountability.”

¹⁵ *Ibid.*

¹⁶ Mantey, *supra* note 8.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

You got up and went to work on the site every day, and you got home at some stupid hour, and you went to bed and got up six hours later and did it all over again. To me, that's what sitting in this House felt like sometimes. You really wondered very late at night whether you were in fact being very productive, trying to negotiate legislation in the small hours of the night.¹⁹

This situation is doubly problematic. Clearly, the quality of debate and scrutiny suffers. More broadly, legislators become so focused on passing legislation that they lose sight of the larger policy picture. If “hard cases make bad law”, what of late-night legislative sessions? The role of the Legislature should extend beyond simple law-making and into examination of policy and oversight of government administration. But with the current discretionary sitting session, it's less about planning and long-term goals and more about finding and filling potholes.

Parliamentarians have picked up on this shortsightedness. A recent report on parliamentary reform authored by a committee of MPs noted that Parliament “has lost its ‘forum’ quality”, “lost its ability to scrutinize government activity” and “no longer contributes meaningfully to policy debates”.²⁰ Significantly, these comments were made even though the federal government operates on fixed legislative sessions. The report argues that reform in this area should focus on:

[E]nsuring that Parliamentarians have an ability to (1) make the government speak, usually through a minister (answerability); (2) push the government to provide information on what it is doing, and create opportunities to debate the information provided (reporting); and (3) draw out the pros and cons of government policies as well as the alternatives (public debate on performance).²¹

These proposals all point to increased accountability. Fixed sitting sessions—and the assurance the government will be held to account that they provide—are a critical and necessary first step toward that accountability. It is unfortunate that Manitoba's Legislative Assembly does not even meet this preliminary requirement.

III. THE SOLUTION: CLOSING THE LOOPHOLE

A. Setting a Schedule

The end goal is improved accountability through guaranteed planned sittings of the House. The road to that end destination is a pleasantly short one: all that is necessary is the removal of one word from Manitoba's *Rules, Orders and Forms of Proceedings of the Legislative Assembly* and the substitution of another word in

¹⁹ Alberta, Legislative Assembly, *Hansard*, No. 3 (12 March 2007) at 75 (Laurie Blakeman).

²⁰ Carolyn Bennett *et al.*, *The Parliament we want: Parliamentarians' views on parliamentary reform* (Ottawa: Library of Parliament, 2003), online: Library of Parliament <<http://www.parl.gc.ca/information/library/views/pdf/parliamentviews-e.pdf>> at 7.

²¹ *Ibid.*

its place. As discussed above, rule 2(1) sets out the time frame for fall and winter sessions of the House. Instead of mandating sittings during that period, the section states that the House “may” meet during that time. Other jurisdictions replace the word “may” with either “shall” or “must”, meaning that the government does not possess the ability to call the House into session as it pleases. Manitoba should likewise adapt a fixed session schedule, and it can do this by removing “may” and adding “shall” to rule 2(1) of its *Rules, Orders and Forms of Proceedings of the Legislative Assembly*. Rule 2(2), which provides for emergency and extraordinary sittings of the House, should be retained. This would give the government the flexibility to step outside a set sitting schedule where circumstances demand it.

Alternatively, the Legislative Assembly could follow the lead of provinces like Saskatchewan and empower its committees to hold the government accountable. Rule 119(2) of Saskatchewan’s *Rules and Procedures of the Legislative Assembly* delegates special powers to standing committees, and rule 125(1) allows the chair—as opposed to the government house leader, as is the case in Manitoba—to call meetings.²² In this framework, the committees may be able to hold the government to account in a capacity similar to regular sittings of the House at large. Manitoba’s Legislative Assembly rules have recently been amended to include intersessional standing committee meetings as part of the total number of sitting days for the Legislature.²³ If these meetings are being counted as sitting days—and if MLAs are being paid as such—a strong argument could be made for empowering committees in a manner similar to what Saskatchewan has done.²⁴

B. Paying Policy Dividends

There are several important benefits to be gained by the establishment of a set sitting schedule and the minimum number of sitting days it would provide. The Manitoba Legislature, hindered by the need to rush bills through at the end of each session, has become a legislation processing machine. In these situations, vision and planning fall victim to expediency.

A set schedule could help remedy this problem by providing certainty and a minimum number of sitting dates. Manitoba’s *Rules, Orders and Forms of Proceedings of the Legislative Assembly* sets out guidelines for public input on

²² Legislative Assembly of Manitoba, *Fact Sheet No. 5: How Standing Committees Operate*, online: Legislative Assembly of Manitoba <<http://www.gov.mb.ca/hansard/info/factsheets/fact5.pdf>>.

²³ Manitoba, Legislative Assembly, *Standing Committee on Rules of the House*, Vol. LVI No. 2 (16 June 2005) at 10 (Patricia Chaychuk).

²⁴ Mantey, *supra* note 8. Mr. Mantey believes standing committees can be used to hold the government accountable if they are given powers like the ability to call deputy ministers and meetings independently of the government.

legislation,²⁵ but these guidelines are rendered moot when the rush is on to ram laws through the House. A set schedule would help eliminate this problem by ensuring an orderly hearing schedule is preserved. All-party agreements such as the 22 December 1995 Memorandum of Understanding that led to the premature termination of debate on contentious Manitoba Telephone System legislation to allow the bill to be passed by a set deadline²⁶ could also be avoided.

Other benefits a set sitting schedule could provide include:

- An opportunity for frequent strategic review of important government initiatives and Crown corporations;
- Regular meetings to discuss long-term policy planning;
- Additional time for oversight and analysis of government administration.

C. Addressing the Critics

Legislation that would have provided a minimum number of sitting days has been brought forward twice in the Manitoba Legislature in recent years.²⁷ The NDP government refused to support both bills on several grounds. Interestingly, one government member spoke against the bill on the grounds that the status quo—uncertain as it is—allows MLAs to “plan summer vacations”.²⁸ Supporting the current rule regime on the grounds of blatant self-interest is shaky reasoning at best, but the member’s argument ignores the reality that a fixed legislative session would actually increase certainty. As an opposition MLA noted, the existing certainty in the House stops at the line that divides where government and opposition MLAs sit:

As it currently stands here in the province of Manitoba, we have a significant amount of uncertainty because we do not know when we are going to be recalled to the Chamber because as it stands at the present time, [the Speaker receives] indication of the date to which [they] are going to call us back to this Chamber from the First

²⁵ See, for example, rule 92(2), “Hearing presentations”.

²⁶ See “Underneath the Golden Boy: MTS Debate” (2003) 30 Man. L.J. 43 for a full account of the circumstances surrounding the passage of legislation to privatize the province’s telephone utility.

²⁷ MLA Kevin Lamoureux brought forward identical private members’ bills in two separate sessions. See: Bill 209, *The Legislative Assembly Amendment Act*, 2nd Sess., 38th Leg., Manitoba, 2004 and Bill 201, *The Legislative Assembly Amendment Act*, 3rd Sess., 38th Leg., Manitoba, 2004. Both bills did not pass first reading.

²⁸ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVI No. 13A (9 December 2004) at 535 (Doug Martindale).

Minister. We cannot as individuals know what the Premier (Mr. Doer) is thinking, and this spawns uncertainty.²⁹

Debate on the issue indicates that some MLAs seem to have an inaccurate picture of the role of an elected representative. MLAs are elected to serve their constituents. But this does not mean, as one government MLA put it, “working out in our constituencies ... is, quite frankly, where we belong”.³⁰ Undoubtedly, touching base and attending meetings in one’s home community is an important part of elected office. But what separates MLAs from non-elected citizens is their ability to represent their constituents in the House, by voting on bills, asking questions and generally holding the government to account.

Government MLAs have also complained that a minimum number of sitting days places an unfair burden on rural representatives, who must travel further from their homes to attend sittings of the House. These complaints are off the mark, Mr. Mantey argues, for several reasons. First, every MLA is not mandated to attend every sitting of the House. Second, technological advancements in communication allow MLAs to be better connected with both their constituents and the House at all times. Third, expecting 80 sitting days from our elected officials is hardly an onerous demand.³¹ Manitoba’s elected officials should be honest and admit that either they are not prepared to spend as much time in the House as other elected representatives in Canada,³² or that they are not prepared to do so without a pay raise. The arguments thus far raised by the government against adopting a fixed legislative session simply cannot justify avoiding fixed legislative sessions.

²⁹ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVI No. 38A (28 April 2005) at 2006 (David Faurshou).

³⁰ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVI No. 30A (14 April 2005) at 1325 (Tom Nevakshonoff).

³¹ *Ibid.* The proposed changes to legislative rules discussed in this paper would create roughly 85 annual sitting days, Mr. Mantey says.

³² The Manitoba Legislative Assembly sat an average of 66 days per year between 2000–05, 10 fewer than the average number of sitting days between 1995–99: Mia Rabson, “NDP stalling over tough questions, opposition says” *Winnipeg Free Press* (26 February 2007) B3. Compare this to averages from other jurisdictions: 113 (federal government), 81 (Ontario) and 57 (B.C.). Sitting information compiled from: Parliament of Canada, *Sitting Days of the Provincial and Territorial Legislatures by Calendar Year*, online: Parliament of Canada <<http://www2.parl.gc.ca/Parlinfo/Compilations/ProvinceTerritory/SittingDays.aspx?Language=E>>; Parliament of Canada, *Sitting Days of the House of Commons by Calendar Year*, online: Parliament of Canada <<http://www2.parl.gc.ca/Parlinfo/compilations/HouseOfCommons/SittingDays.aspx?Menu=HOC-Procedure&Chamber=03d93c58-f843-49b3-9653-84275c23f3fb&Language=E>>.

IV. CONCLUSION

Canada's federal government has operated on a fixed sitting schedule since it was recommended by the 1982 Special Committee on Standing Orders and Procedure.³³ Other provinces have also moved to adopt a similar schedule. Manitoba, however, remains stuck with a system that allows the government of the day to avoid the scrutiny of the opposition, the media and the public. This is bad for accountability, bad for policy and bad for governance. Alberta MLA and Government House Leader Dave Hancock acknowledged as much when he introduced rules that brought Alberta in line with other fixed session jurisdictions:

The House leaders' agreement came together because, I believe, all members of the House would like to see the House, and private members particularly, more engaged in discussion, an opportunity to really make the Legislature the pinnacle of the governance and legislative process in this province. To that effect, we wanted to look at issues of the hours and the time that the House sits so that it was a place which had good work/life balance where members could actually engage enthusiastically in debate and in governance processes but could also go home and see their families from time to time.³⁴

As an editorial has noted, "An opposition member sitting outside the assembly's doors, begging to be heard, is a sad sight."³⁵ It's also an unnecessary sight: Manitoba's government should move to set legislative sessions and embrace the opportunity for accountability they provide.

³³ Parliament, Special Committee on Standing Orders and Procedure, "Third Report to the House" in *House of Commons Debates*, No. 17 (5 November 1982) at 20449.

³⁴ *Supra* note 19 at 74 (Dave Hancock).

³⁵ "Call them in", *supra* note 3.