**Podcast 8 – Legislative School House Rock**

**Professor Forcese**

Welcome back. This is the first in a series of two podcasts in which I converse with professor John Mark Keyes about legislation and its importance in the Canadian legal system. In this first podcast we examine how it is an idea goes from idea to law and more specifically we examine the legislative process at the federal and provincial level. I began by asking professor Keyes about his background and career

**Professor Keyes**

I’m an adjunct professor here at the University of Ottawa. I’ve been doing part-time teaching for quite a number of years. I started teaching in 1985-86. Also on an exchange with my employer I taught here full time for years at various points throughout the 90s and early 2000s. My day job through all of that was working at the Department of Justice, the Legislative Services Branch. It’s a part of Justice that is responsible for drafting laws, federal law. Basically bills for parliament and draft regulations for a whole range of government bodies that make regulations.

**Professor Forcese**

So one of the things you work on and one of the areas you work and are renowned for is the area of statutory interpretation. I thought we would start by making sure everyone understands what we mean by statutory interpretation and what we mean by legislation. And within the subset of legislation, what we mean by statute. Perhaps you could start by answering that question.

**Professor Keyes**

Great starting point, although it’s a surprisingly complicated starting point. I’ll try to give a succinct answer. Basically when we talk about statutory interpretation that encompasses acts of parliament, acts of the federal parliament, you also have acts of the provincial legislatures. A bit of shifting terminology when we talk about provincial legislatures and federal parliament. Essentially, they are the same kind of law making body, they make statutes. Statutory interpretation also applies to other legislative documents. There’s a whole second layer of legislation that we call delegated legislation or often goes by regulations or rules or by-law. This is another form of law that is made by delegated authority that has authority passed onto it by some act of parliament.

In terms of regulations, delegated authorities are very often led by cabinet or by particular agencies like the CRTC or the National Energy Board, which have delegated authority by an act of parliament to make additional legislation to supplement the act of parliament. Another really significant delegated actor is municipal councils. Cities, towns, which make by-laws. Municipal by-laws are a significant form of delegated legislation.

**Professor Forcese**

Statutes are almost at the top of pile. Statutes are the voice of the legislature, and authorize these other bodies to make whatever regulations, orders, by-laws they’re authorized to do. At some point presumably if you’re putting to issue to regulation. You have to find authority for that legislation in some statute. Is that right?

**Professor Keyes**

That’s exactly right. There are a few slender remnants of prerogative authority to make rules but they are really very slender. The only significant one that I know of is the Canadian passports order. Because passports have never been made subject to an act of parliament. It’s a facet of the prerogative of foreign affairs. The rules about the issue of passport are still made under the prerogative. That’s really the only significant form of regulation that’s made at that level under the prerogative. Everything else is made through an authority of an act of parliament.

**Professor Forcese**

So let’s focus on those acts of parliament. How does an act come about?

**Professor Keyes**

Formally speaking acts in the “parliamentary system” and that’s the system we have in Canada – all of the provincial and territorial legislatures follow it and the federal parliament – in that system, you have what are known as a series of readings of a bill. A bill is a draft law. To propose a law, that bill is introduced to a house of the legislature or parliament. It is given 3 readings. Only 2 of them are opportunities for debate. The first reading is really to get the ball rolling. It’s *pro forma*. It’s simply to announce that a bill is there in front of the legislature. The 2nd reading is really the 1st chance for some debate about whether the house should pass the bill or not. 3rd reading is the last chance for debate. In between 2nd and 3rd reading very often you have a bill sent to a committee. A committee studies a bill. It usually begins with hearing witnesses to talk about the bill. The lead witness is usually the Member of Parliament (MP) who introduced the bill. If that MP is a Minister, usually the Minister is accompanied by government officials who are involved in the preparation of the bill as well.

That’s the basic set of steps going through the parliamentary procedure. All of the provincial or territorial cases, there’s only one house of assembly. There the bills, provincial and territorial bills, just go through 3 readings and then are reading for final approval or royal assent given by the Lieutenant Governor.

At the federal level, we of course have 2 houses. We have the house of commons and we have the senate. The bill has to go through 1 house first and then, it has to go through the 2nd house. The procedure is the same in the 2nd house. Both of those houses have to agree on the bill. If one of the houses decides to amend the bill after the other one has finished with it, then those amendments have to go back to the 1st house. Actually, that’s something I should have mentioned a moment ago when I was talking about committee study.

Something that a committee can do is that it can amend the bill. It can report the bill back to the house with those amendments. The final opportunity for additional amendments occurs at 3rd reading. The bill that emerges from that process is not necessarily the same as the bill that entered that process.

**Professor Forcese**

Is there any rule on the federal level, which house can take the first charge of which sorts of bill? Is there a rule where one introduces certain sorts of bills?

**Professor Keyes**

Yes, there are some rules that focus on the bills that have to do with either the imposition of taxation or the spending of public money. Bills that basically deal with money have to originate in the house of commons, the lower house. That’s one of the fundamental prerogatives of the house of commons. One of the features of the way our law deals with taxation measures, recognizing that taxation is something that should come from the people. The house of commons is the body that has the most direct connection to representing the people. As long as a bill does not deal with taxation or spending, it can be introduced in either house, but of all the spending and all the taxation bills have always taken their journey in the house of commons.

**Professor Forcese**

Let’s takes some time to talk about private members’ bills and government bills. What are the differences?

**Professor Keyes**

A government bill is one that is introduced by a Cabinet Minister. It’s introduced on behalf of the government. When I speak of the government here, I’m really focusing on the Cabinet. The Prime Minister or the Premier. And the other Ministers who are part of Cabinet. The inner circle of advisors to the Governor General or the Lieutenant Governor. Those Ministers are the ones who control the executive apparatus of the government. They control government departments and they also control the agenda of the government in the house. Bills may be introduced on behalf of the Executive part of Cabinet, and those are typically known as government bills.

Private members’ bills are ones introduced by other MPs or members of the assembly. Those members can be members of the oppositions, but they can also members of the governing party. They’re not part of the cabinet. They’re not cabinet members. Another word for them are backbenchers. They support the party. They compose the majority that the government needs to maintain to maintain the confidence of the house. But they are not appointed to the executive. They like all other MPs have the ability to introduce or propose laws. Propose bills. In the legislature. Their bills are known as private members’ bills.

**Professor Forcese**

Where do the ideas for these law projects come from?

**Professor Keyes**

They can come from just about anywhere. With government bills they often originate in the election platform of the party that is elected to power. That’s typically what happens once a new party comes to power. The first thing it does, it’s starts to implement the agenda it campaigned on. All of those promises require legislation usually start to appear as government bills that wind their way through the house. Of course as time goes on the government looks for other sorts of ideas and those ideas are varied as can be. They may be ideas that come up through the party or they may be typically that come up through constituents, individual elected members of the party may generate ideas from their constituents. They suggest them to the government and they may end up being part of government program. Another great source of ideas is the public service. Public servants are there to support ministers in their departments. Especially since most legislation requires a certain amount of administration, the public service is a vital source of ideas on proposals for legislation, for approving the administration of government programs. The public service is a source of expertise on the various issues that typically come up.

We have a professional public service in Canada. They have a history, a very long-standing knowledge of these issues and how they’ve been dealt with through time. They bring all these experiences to the generation of ideas for parliament.

**Professor Forcese**

Is there a difference in the success of private members versus government bills?

**Professor Keyes**

Yes. There is a significant different between those. Historically, very few private members’ bills would be passed. You would perhaps get one or two a year at the federal level. At the provincial level there would be instances a year or two would pass where no private members bills would pass. About 20 years ago, at the federal level, the backbench MPs began lobbying for more opportunities to have their bills dealt with. The reason that historically private members’ bills were not passed was that the parliamentary agenda is controlled by the government, which of course, wants to make sure that its own business is taken care of before it allows time for other business. That meant that up until 15, 20 years ago, almost all of the business of parliament was devoted to the government and not devoted to the private members. Things changed federally about 15 years ago with some gradual changes to the rules of the house, which began to guarantee a certain amount of time for private members’ business.

In addition, federally, a lottery system was set up for private members’ business. Today you have 360 members of parliament. Of those, probably 330 are backbenchers. That’s potentially a lot of private members’ business. The government business still has to get done. In order to come up with a fair system for private members’ business a lottery was created. At the beginning of each session, the names of MPs and the top 30 then go on the roster for having their items dealt with. Those items can be bills or sometimes they are resolutions as well. It’s up to the MP to decide how they want to use their time if their name gets drawn. What we have now federally is a system that devotes, each day, a certain amount of time to private members’ business. In the course of a few weeks all of the business of those 30 members gets dealt with. An hour of debate is probably not enough to deal with the item, once you have your hour you drop to the bottom of the list of 30 and gradually you work your way up again. The result of this system is far more private members’ bills being passed than ever before. We’re up to between 5 and 10 private members bills a year, which is still relatively minor in comparison to the vast bulk of the government business, but it’s a really distinct improvement over the way things used to be.

**Professor Forcese**

You mentioned the final stage whereby a bill becomes an act or a statute is something called royal assent, what’s that?

**Professor Keyes**

Royal Assent recognizes that the concept of parliament itself is really a composite entity. At the federal level there are 3 components to the parliament. 1 is the house of commons. The 2nd is the senate. The 3rd one is the Crown, represented by the Governor General. For a bill to become law it requires the agreement of all 3 of those. Essentially, the role of the senate of the house of commons is to advise the Governor General to accept a bill. So that’s the final stage of the bill once it has passed both houses. It then goes to the Governor General for the final royal assent. Historically that’s been done in a ceremony that takes place in the Senate Chamber. But about 10 years ago a statute was passed to provide for a paper assent as it were. Very often now bills are assented to by the signature of the Governor General or it can also be the signature of one of the delegates of the Governor General. Those delegates are the judges of the Supreme Court of Canada. That again is a recognition of the nature of this role. That it’s really a formal role, it’s not substantive. It would be unthinkable for the Governor General to refuse to give assent to a bill that had passed through the House of Commons and senate. But it’s a very important symbolic role that recognizes that this law is something comes from the crown as the embodiment of the state. At the provincial level, where you only have one house, one assembly, the bills go through that assembly and then they’re presented to the Lieutenant Governors for their assent. The same role as the Governor General federally.

**Professor Forcese**

With that, John Mark Keyes and I completed our conversation about the legislative process. In the next podcast, we’ll discuss how it is that one is to read this legislation. How is it that one interprets a statute?