
The Office of Clerk

by E. George MacMinn Q.C. and Robert Vaive

The Clerks of Canada's Parliament and legislative assemblies are committed to serve parliamentary institutions with political impartiality, dedication and sincere respect. In fulfilling this role during often passionate parliamentary debate, the Clerk sits alone at the Table, never uttering a word, never speaking unless called upon to do so by the Speaker. Clerks are not players in the political arena and their names are seldom engraved for posterity. They are the ever-present, ever-watchful managers of the interaction evolving before them on the floor of the House, sometimes rowdy activity, sometimes dull and passive, sometimes abusive of parliamentary procedure - and sometimes dramatic and touching. Clerks are the silent facilitators of these political exchanges which they attempt to shape into proper parliamentary form, thus discreetly helping to preserve parliamentary democracy. This is the Clerk's single-minded resolve - respect for Parliament. This article looks at the origins of the office in the Great Britain and at some of the individuals who have held the office in Canadian legislatures, and how the office has evolved in recent years.

Parliament is not about the power of government; nor is it about the pursuit of special interests and single-issue politics. It is not about using parliamentary procedure to impede and interfere with the government's legislative programme; nor is it about silencing the opposition and other minority parties. Rather it is about ensuring that through their elected representatives the people's opinions and ideas and concerns are heard. Parliament is not a threat to government, on the contrary it helps make legitimate the exercise of executive power. It provides detailed examination of legislation, approves government expenditures and ensures government's accountability in its use of power and in its spending.

The Clerk is responsible for the procedural services to the House and, as such, is the principal adviser to the

House on the privileges, procedures and practices of Parliament. Procedurally, the Clerk also advises any Member who may seek assistance on questions of order or about the proceedings of the House, and on any other matter relating to the duties and responsibilities of a Member. The Clerk is also responsible for the preparation and printing of the daily Order Paper and the Votes and Proceedings of the House, as well as being the custodian of records and other documents of the House, including legislation throughout its stages and proceedings related thereto.

The Clerk is heavily involved in matters relating to the administration of the services of the House, including direction of legislative staff, payment of allowances and salaries, provision of financial, logistical and protective services, as well as library, Hansard and committee services.

Neither the Clerk of the House nor Clerks Assistant are public servants. The Clerk is appointed by order of the Lieutenant-Governor-in-Council in most provincial jurisdictions, or as in British Columbia and Prince Edward Island by resolution of the Legislative Assembly. The

George MacMinn is Clerk of the Legislative Assembly of British Columbia. Robert Vaive is Clerk Assistant of the British Columbia Legislative Assembly and President of the Association of Clerks-at-the Table in Canada.

Clerk of the Senate and Clerk of Parliaments, as well as the Clerk of the House of Commons, are appointed by Order-in-Council.

Origins of the Office

The profession of Clerk has its origins in the thirteenth century and has had an unbroken existence ever since. The first appointment of an official to attend on Parliament was in a secretarial or recording capacity in 1363, and while it would be inappropriate and somewhat hazardous to comment on incumbent or recently retired Table Officers a brief comment on two British Clerks may assist in "fleshing out" this relatively elusive profession.

The first Clerk Assistant, John Rushworth, was appointed Clerk Assistant to the House of Commons at Westminster in April 1640 at the request of Henry Elsing, the Clerk of the Commons. On January 4, 1642, Charles the 1st of England burst into the Chamber of the House of Commons demanding that five Members be surrendered to him immediately and thereby precipitated one of the most dramatic moments in the long history of Parliament. This moment has been captured and recreated by many artists over the years, but the most famous of these renderings can be seen at Westminster immediately adjacent to the Central Lobby, and portrays Charles listening to Speaker Lenthall's refusal to deliver up the Members the King demanded. Immediately to the left of this dramatic scene, the Clerk's Table is portrayed showing the Clerk Assistant John Rushworth diligently taking notes for the Journal, while the Clerk of the day, Henry Elsing, is looking over his shoulder immobilized by fear. (See cover of this issue) Some Clerks Assistant today might observe that in over 300 years nothing much has changed! Had the Clerk Assistant of that day not made a careful note of the events on January 4, 1642, one of the most important moments in the history of Parliament may well have been lost forever.

Sir Thomas Erskine May (1815-1886), Clerk of the House of Commons at Westminster (1871), is remembered largely as the author of the definitive authority in the Commonwealth on parliamentary practice, but it cannot be emphasised enough that without the devoted and scholarly work of successive Clerks and their team of assistants, the original editions of *Erskine May* would be so outdated as to be of little use to modern Parliaments. *Erskine May's Private Journal 1857-1882: Diary of a Great Parliamentarian* makes fascinating reading for not only Table Officers, but those interested in the parliamentary scene in the 1800s. It also revealed that Erskine May himself might have had some difficulty passing the non-partisan test so essential to the successful Clerk today.

Witness the contents of a personal note from Erskine May to the Prime Minister of the day, William Gladstone:

"House of Commons

February 3, 1871

My dear Mr. Gladstone,

I scarcely know how to express my sense of all your kindness and consideration in reference to my appointment. It is a particular satisfaction to me to have received it at your hands; and the manner in which the favour has been conferred has made it doubly gratifying. I must be permitted to add that I hope it will long be my pleasure to witness, from my Chair at the Table, your continued triumphs as Leader of the House of Commons.

Believe me

Yours sincerely

T. Erskine May"

Some Notable Canadian Clerks

At the federal level two names immediately come to mind when one thinks of the office of the Clerk. John George Bourinot was Clerk of the House of Commons from 1880 until his death in 1901. He was well known for his study on parliamentary procedure and he wrote a number of other scholarly books and articles. Arthur Beauchesne was Clerk of the House for twenty four years from 1925 to his retirement in 1949. He also wrote a book on parliamentary procedure and it has been revised and expanded several times since his death.

Aside from Bourinot and Beauchesne several Clerks both in Ottawa and the provinces have produced professional tools to assist in the understanding of parliamentary jurisprudence and practice. These include *The Annotated Standing Orders of the House of Commons* published in 1989, under the authority of Robert Marleau, Clerk of the House of Commons; *Parliamentary Practice in British Columbia*, third edition, 1997 (first edition, 1981), authored by George MacMinn, Clerk of the Legislative Assembly of British Columbia; and several editions of *The Précis of Procedure*, prepared by the Table Research

Branch of the House of Commons. The House of Commons and some provincial jurisdictions publish a compendium of summaries of important Speaker's rulings. For example, the Quebec National Assembly publishes annually, under the authority of Pierre Duchesne, the Secretary General of the National Assembly, the *Recueil de décisions concernant la procédure parlementaire*.

Anything of significance that happens in the House is recorded in the Journals of the House, and the Journal is one of the prime responsibilities of the Clerk and his or her assistants.

There are a number of other Clerks who deserve mentioning either for their longevity or some other distinction. In British Columbia the benchmark for clerking is E.K. DeBeck, Q.C., who served as Clerk of the House from 1949 to 1973. Held in great affection by his peers and Members alike "Ned" as he was universally known, had a career in law and was Superintendent of Brokers before becoming Clerk of the House. On his death, at age 91, the Speaker of the day referred to Ned DeBeck in the following terms "In an area often filled with incivility he was the soul of gentlemanly composure. Although he looked frail enough to be bowled over by the wind, he was as hearty as pampas grass and the most alert person of his age in memory and perception. He will live not only in the Journals of the House, but in the rules of parliamentary conduct he helped to maintain." Ned never lost his sense of humour even in crisis situations and was much more than the custodian of the sometimes dry rules of procedure. He was, in every way, a confidante to the Members and in his obituary in the *Victoria Colonist* of January 14, 1975, was aptly described as the "Father of the House". The main lounge in the Legislative Assembly of British Columbia is called the Ned DeBeck Lounge.

A few other former Clerks are perhaps worthy of mention due to the unusual circumstances surrounding their careers. For example, two provincial Clerks, both from Saskatchewan, have gone on to hold similar office in Ottawa. Charles Beverley Koester was Clerk of the Saskatchewan Legislature from 1960 to 1969 and he later became Clerk of the House of Commons from 1980 to 1987. His successor in Saskatchewan, Gordon Barnhart, was Clerk in the province from 1969 to 1989 before becoming Clerk of the Senate where he served from 1989 to 1994.

In Ontario Major Alexander Lewis was Clerk from 1926 to 1954 and was succeeded by his son, Roderick Lewis, Q.C. who was Clerk from 1955 to 1986. The first woman to hold the Office of Clerk in a Canadian legislature was Betty Duff of Newfoundland.

Of course the Office of Clerk includes more than just the Clerk. In every jurisdiction there have been Deputy Clerks, Clerks Assistant, Law Clerks and other Table Officers who have made a significant contribution to the development of parliamentary government in Canada. One such individual was Gordon Dubroy, a Clerk Assistant in the Canadian House of Commons who served at the Table from 1968 to 1975. Prior to becoming a Table Officer he was Chief of the English Journals. Enormously knowledgeable on matters of procedure, personally colourful, Gordon was possessed of a prodigious memory for faces, names and constituencies. Within a very few days of a new Parliament, he was able to stand in the House of Commons and without notes correctly identify all 264 Members of the Commons without making a single error. When called upon by innumerable Table Officers in the provinces for assistance, he was prompt and helpful with his advice.

The Evolution of the Office in Recent Years

Over the last two decades the profession of Clerk-at-the-Table has evolved. The composition of the Table, the arrival and departure of Clerks, the mobility of Clerks among jurisdictions, the professional development of Canadian Clerks, technological innovations and procedural reforms have contributed to this evolution. Increasing numbers of seats, progressively longer and more frequent sessions, the volume and complexity of government legislative and spending programmes, increase in committee work, as well as the increasing complexity of the role of Members, have also been contributing factors in the changing of the Clerk's role. The total growth of legislative budgets in all jurisdictions from \$257 million in 1981 to \$530 million in 1996 (as reported in Fleming's *Canadian Legislatures*, 1997, 11th edition) reflects the added responsibilities which have been assumed by the Clerk.

Hence the arrival of more professional management of legislatures in the 1980s. In the late seventies and early eighties, there was a proliferation of boards of internal economy or legislative assembly management committees. These committees asserted more administrative control over the legislative precinct, and as a result devolved administrative responsibilities to the Clerk in the process of reviewing all areas of assembly administration and expenditures.

Recently, rapid technological change has created possibilities for parliamentary assemblies to provide a more dynamic and cost-effective menu of services to Members. The manner in which Parliament conducts its business today is markedly different than 20 years ago. Under the stewardship of their Clerks, parliamentary assemblies have adopted new and increasingly sophisticated technologies, which have in turn completely altered the procedural and administrative framework within which Clerks function.

The following are some of these new technological initiatives:

- Most legislatures in Canada have introduced gavel-to-gavel broadcasting of their proceedings on a dedicated television channel. This practice has also been extended to the proceedings of some parliamentary committees on an ad hoc basis.
- Parliamentary committees in some jurisdictions, such as the House of Commons and Manitoba, have employed video conferencing, using long-distance telephone lines between two (point-to-point) or more (multi-point) specially equipped centres.
- Assemblies have also implemented local area networks, thereby providing Members and staff with electronic mail and other intranet services. Internet sites provide access to information on virtually all aspects of assembly operations, from the status of legislation and the daily business of the House to membership of committees. Many parliamentary documents produced by the Office of the Clerk are now being distributed more efficiently to a wider audience by means of the Internet.
- The House of Commons resorted to computerised recording of House proceedings at the Table, thereby addressing the issues of timely entries into the Scroll and Time Book and delivery of this information from the Table.
- The Ontario Legislature has introduced an electronic device that displays to all Members of the Assembly information on times prescribed in the Standing Orders, such as the time allotted for question period, time limits of speeches and the actual duration of Members' speeches.
- The House of Commons has also supplied the Speaker and Table Officers with a timing-device providing a count-down of time remaining for Members speaking.

- The House of Commons' Speaker is provided with a composite rotation list consisting of Members wishing to speak, including constituency and party affiliation.
- Furthermore, the House of Commons' Clerk can electronically communicate notes relating to procedure from the Table to the Speaker's screen at the Chair.

The Association of Clerks-at-the-Table in Canada has provided a means for its members to share parliamentary experiences of mutual interest and for exchanging information on subjects relevant to their duties, mainly through its annual professional development seminars and through the *Table Review*, the association's quarterly publication. Notably, list server and file transfer sites have been created, providing automated exchanges of information among association members through internet e-mail. The association has, since the early eighties, established a close working relationship with the American Society of Legislative Clerks and Secretaries. Both associations meet jointly in a professional development seminar every two years. As well, Clerks have created more and more opportunities for mutual learning and professional development through attachments and exchanges with other jurisdictions.

Additionally, Clerks have participated in a programme of annual speaking engagements since 1988. This programme provides Clerks who speak to university students on parliamentary topics. It affords students an opportunity to gain an insight into the institution of Parliament by hearing directly from a serving Clerk who is in a position to speak with authority on numerous topics. This practice is very much an extension of the public education/outreach responsibilities which reside with the Clerk. This responsibility has also been manifested in the production of written and electronic information on the parliamentary process.

Conclusion

Clerks have experienced over the past 20 years a full range of procedural events, some positive and some verging on the negative. The former category includes the practice of electing Speakers by secret ballot, time limits on speeches and on bell-ringing summoning Members for recorded divisions, simplification of the business of supply, the power of committees to initiate studies, and enlargement of opportunities for private members' business. It is also true that during the last couple of decades Clerks have experienced many procedural manoeuvrings and much political warfare on the floor of the House. It was during this period that Clerks

saw the perfection of the filibuster, the advent of protracted bell-ringing and presentation of petitions, endless and consecutive recorded divisions, successive superseding motions in rotation, round-the-clock consecutive sittings for days to deal with thousands and thousands of amendments, and the use of ever-more imaginative "unparliamentary language" in the House.

The evolution of the profession of the Clerk has accelerated dramatically over the last 20 years, both procedurally and administratively, but today's Clerks, in unbroken line with their predecessors, continue to serve Parliament in a quiet, efficient and professional manner..... alone at the Table.

A selection of related articles from previous issues of the *Canadian Parliamentary Review*

- Margaret Banks. *New Insights on Bourinot's Parliamentary Publications*, vol. 15 (1):19-25, 1992.
Gordon Barnhart. *The Saskatchewan Table*, vol. 8 (3): 13-15, 1985.
Paul Benoit. *The Politics and Ethics of John George Bourinot*, vol. 7(3): 6-10, 1984.
Charles Bogue. *The New English Standing Order of the Quebec National Assembly*, vol. 17 (4): 16-19, 1994.
Michael Clegg. *The Association of Parliamentary Counsel in Canada*, vol. 8 (1): 16-17, 1985.
C.E.S. Franks. *C.B. Koester: A Personal Memoir*, vol. 21 (1): 27-29, 1998.
Roderick Lewis. *A Note on Privilege and Order in Ontario*, vol. 5 (2):11, 1982.
Henry Muggah. *Association of Clerks-at-the-Table*, vol. 2 (4): 29, 1979.
Mathieu Proulx. *The Samuel-Phillips Data Bank in Parliamentary Procedure*, vol. 17, (4): 13-15, 1994.