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# A Declaration of Ethics for Presiding Officers?

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*Speakers have a particular interest in reinforcing proper ethical behaviour. All presiding chairs are cognizant that a respectful and courteous demeanor on the part of members can take the poison out of the atmosphere, can calm a stormy house, and facilitate the restoring of parliament to its ideal state where the fiercest controversies can take place within an ambit of mutual respect, personal honour, and regular procedure for the protection of all opinions, even those of the smallest minority. Other professions, including Judges, have attempted to apply ethical theory to real-life situations and to establish standards for ethical conduct. Since 2000, the Canadian Centre for Ethics and Corporate Policy together with the Conference Board of Canada has been holding a Business Summit to talk about the challenges and potential for business ethics in Canada. Many federal government departments have established the position of Officer of Public Service Values and Ethics for their employees, while smaller departments and agencies assigned additional responsibility for values and ethics to existing executives. This article suggests that Speakers could adopt a Declaration of Ethics for Presiding Officers to outline the importance of ethics in parliamentary institutions.*

Parliament has taken action with regard to the governance of the ethical conduct of its members, at least in matters of conflict of interest. With the passage of legislation in 2004 creating the position of an Ethics Commissioner and a Senate Ethics Officer, and the adoption in 2006 of the *Conflict of Interest Act*, both senators and members of the House of Commons have demonstrated their seriousness in wanting to establish public trust in the integrity of their positions and to demonstrate that private interests can be properly reconciled with public duty.

Yet these initiatives deal with the ethical standards by which parliamentarians relate to their external environment: they do not deal with how members should ethically relate to each other in the chamber or committee. It appears that quite often the long-standing tradition of parliament that members are to respect the integrity of their colleagues and to demonstrate proper behaviour while fulfilling their

parliamentary duties gets lost in the heat of question period and in the cut and thrust of debate. There is evidence that more effort could be made to reinforce basic ethical norms. As noted in the recently published Samara Report *Welcome to Parliament: A Job With No Description*, many newly arriving parliamentarians to Ottawa have little or no knowledge of the methods, traditions or culture of parliament and feel they receive inadequate training.<sup>1</sup> There may be a need to provide incoming parliamentarians with better instruction on the many rules of order and decorum, and to send out a reminder to the more long-serving members, since such rules are fundamental to the proper functioning of the chamber.<sup>2</sup>

Ethics may be defined as “a set of moral principles or values to guide behaviour.”<sup>3</sup> Although there are a number of branches of ethics, in simplified terms the two which appear to exhibit the most tension toward each other and are at opposite poles are *ordinary ethics* which holds that it is always wrong to lie or to harm other persons and *professional ethics* where it seems “a professional has the right to infringe someone else’s rationally grounded moral rights because this is required for carrying out the specific role-based ends or values of his profession.”<sup>4</sup> The dilemma

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professionals are constantly struggling with is the troubling question of whether the end of providing professional services justify using any means related to their expertise. For example, is it ethical for doctors to lie to patients about the seriousness of their illness in order to protect their mental well-being or for a trial lawyer to try to falsify true testimony? Such questions are at the heart of the many still unresolved problems within various professions.

Their relevancy may be important to parliamentarians. U.S. Congressman Omar Burleson once defined ethics as being “a barrel of worms”<sup>5</sup> which pretty much sums up the problem of deciding who can be ethical in politics or in diplomacy. As an American statesman once said, “Falsehood ceases to be falsehood when it is understood on all sides that the truth is not to be spoken.”<sup>6</sup> In professions such as these, there are always pressures to conceal the truth, to bluff and to exaggerate in order to persuade others to agree with them. There is often a mindset that if one enters the game, one must become thick-skinned and accept its “special ethical outlook.” One wonders however if, with the growing disillusionment with politics by the general public, there is not a necessity for the institutional ethics of parliament to be reviewed with the hope of setting the bar somewhat higher.

Fortunately, there have been few instances where the high degree of ethical conduct of the presiding officers of the Parliament of Canada themselves has been questioned. Their reputation for fairness was established early. J.G. Bourinot, one of this country’s most distinguished Clerks, wrote in 1878 that “It must be admitted that no one can justly give an instance where a Canadian Speaker, in these later times, has ever been influenced in his conduct in the chair by the fact that he was nominated and elected by the majority in the House. It is satisfactory to know that the moment a Canadian politician becomes the presiding officer of the Commons, he lays aside all his political prejudices, and discharges the duties of this office with fidelity to the constitution and impartiality to all parties.”<sup>7</sup> In 1982, the Lefebvre Committee on Standing Orders and Procedure stated in its *Fourth Report*: “Thanks to the successive speakers who have occupied the Chair of the House of Commons, the Canadian speakership has developed a tradition of impartiality and devotion to duty of which we can all be proud.”<sup>8</sup>

There have, however, been at least two instances in Canadian parliamentary history where the ethical conduct of a presiding officer has been questioned: the 1956 Pipeline Debate in the House of Commons and the 1990 GST Debate in the Senate.

With respect to the Pipeline Bill, J. Gordon Dubroy, who at the time was the Second Clerk-Assistant in the House, wrote:

The pipeline issue highlighted the 1956 session of the Canadian Parliament, when the first use of closure in twenty-four years touched off a series of procedural wrangles that produced twenty-five appeals from rulings of the Chair in eighteen days of acrimonious, and at times disorderly, debate, and culminated in the only motion of censure of the Speaker in the history of the Canadian Parliament.<sup>9</sup>

What is instructive to remember is that this procedural crisis came on with lightning speed. On May 8, 1956, TransCanada PipeLines Limited signed an agreement with the Government of Canada that in return for certain loans the company would construct the Alberta-Saskatchewan-Manitoba section of the natural gas pipeline. The agreement placed a deadline of June 7, 1956 on the passage of the accompanying legislation. Up until that time, the Speaker of the House of Commons, Louis-René Beaudoin, was regarded as a very competent presiding officer. His nomination had been seconded by the Leader of the Opposition, the first time in Canadian history that this had happened. Within the course of around three weeks, his reputation was turned upside down. A large part of the controversy stemmed from the Government’s decision to ram the Pipeline Bill through parliament at all costs and to use all procedural devices to do so. Indeed there was some sympathy for the Speaker with what he had to deal with. On the final day of the debate to censure the Speaker, a leading Opposition member, Stanley Knowles, admitted to a Minister, “We are after the Government for what you did to our Speaker.”<sup>10</sup>

A second part of the controversy involved the Speaker reversing himself on a ruling. In the course of the debate, Speaker Beaudoin initially ruled that debate could occur on an appeal of the ruling by the Deputy Speaker. The next day, Mr. Beaudoin went back on his ruling and moved that the vote on the appeal must proceed without debate. The Opposition was outraged and felt the Speaker was blatantly favouring the Government. In his motion of censure, the Leader of the Opposition charged that because the Speaker was “subordinating the rights of the House to the will of the Government, this House resolves that it no longer has any confidence in its Presiding Officer.”<sup>11</sup>

A third aspect of the crisis was caused by the fact that the Speaker himself had written a private letter to a freelance journalist in which he said that in the censure debate, his “accusers had distorted the facts for their own political ends.” The letter was

subsequently quoted in a newspaper article and a question of privilege was raised in the House accusing the Speaker of impugning the motives of members. Speaker Beaudoin who apologized and claimed that the personal letter was never intended to be published offered to resign, but his resignation was refused by the Prime Minister. Speaker Beaudoin carried on to dissolution, was re-elected in 1957, but decided to retire in 1958. His reputation was destroyed. He moved to the United States and went from job-to-job. He returned to Montreal where he died of a heart attack at the age of 57 “virtually penniless and alone, in the back seat of a Montreal taxi.”<sup>12</sup>

The Senate, which has a reputation for exhibiting a higher degree of decorum than the House of Commons,<sup>13</sup> has shown that it is not immune from breaking into complete pandemonium and for Opposition senators to unmercifully vent contempt against their Speaker. Up until the time of the GST crisis, Senate Speaker Guy Charbonneau was much respected on both sides of the House for his service to his country as a soldier and for his success as a businessman. He had been appointed Speaker five years earlier and had been elected to chair the Internal Economy Committee of the Senate, the first Speaker to ever do so.

Like the Pipeline Debate in the House of Commons, the GST or Goods and Services Tax crisis came on very quickly. Second reading of Bill C-62, the legislation implementing the new tax, had gone relatively smoothly before the summer adjournment of 1990 and the bill had been referred to the Banking, Trade and Commerce Committee for cross-country hearings in July and August. However, with the presentation of the Banking Committee’s report in September recommending that the bill not be proceeded with further, the debate became extremely tense. It exploded on October 4, 1990 when the Speaker proceeded with a standing vote on the adjournment of the Senate without the consent of the Opposition Whip or the participation of Opposition members. Following the vote, the Opposition returned to the Senate floor and the proceedings turned chaotic. The Senate *Hansard* of October 4, 1990 records such comments as, “Today, the Speaker of the Senate committed the most grievous sin, a parliamentary sin of unprecedented enormity... Don’t let this man, who is taking his orders, unfortunately from the Prime Minister, trample on (our) rights... He has his name in this great book about the Speakers of the Senate. All of a sudden he has become a disgrace ...”<sup>14</sup>

Speaker Charbonneau continued to preside over the debate on the GST, but every ruling he made was marked by controversy. On December 11, 1990,

a motion of censure was moved by Senator Richard Stanbury. The motion read in part, “Whereas Speaker Guy Charbonneau, on October 4, 1990, broke the *Rules of the Senate* by arrogating to himself the right to set the time for division in direct contravention of the Rules of the Senate, which provide that a vote will be taken only on the consent of the Whips ... Whereas Speaker Charbonneau collaborated with Government supporters to deprive senators of their rights as senators ... That, the privileges of Honourable Senators having been consistently abused by the Speaker of the Senate, the Senate do advise the Prime Minister that Senator Guy Charbonneau is unfit to continue to be the Speaker of the Senate.”<sup>15</sup>

Neither the motion of censure against Speaker Beaudoin nor the one against Speaker Charbonneau carried as both had the support of the majority of members. However, as the philosopher Jeremy Bentham observed, the Speaker is both the judge between individual members as well as the agent of the whole assembly and “he cannot be a judge unless he is above all suspicions of partisanship.”<sup>16</sup> Like Caesar’s wife, the Speaker must not only be virtuous, but must also appear to be virtuous.

As students of the speakership have noted, the key principle which guides the ethical behaviour of presiding officers is impartiality.<sup>17</sup> Speaker Horace King wrote that there must not only be impartiality in action, but that the Speaker must bear the trappings of impartiality:

The Speaker ... must not only be impartial in the Chair but his every action outside it must show the House, and indeed the country, that he is so. He must sever his party connections. He can no longer fight at a general election under a party banner. He is almost isolated from the social life of the House. When he meets Members socially, it must be clear that he is not selecting such Members on any party or personal basis. Every Member who becomes Speaker has built up during his years in the House a circle of friends. Once he is Speaker, the circle must widen to include every Member of the House. He must never lend his support to any controversial cause which sooner or later may come before Parliament for deliberation or decision. He is free to worship God in his own way, and speak of that; but all other speeches that he makes must be either on humanitarian causes that commend themselves to all citizens, or on parliamentary freedom itself and on the commonly held opinions of all Parliamentarians.

When he entertains in Speaker’s House, he must distribute his favours equally among the political parties, and among shades of opinion inside those parties. These, however, are the trappings of impartiality. They are necessary because at any moment he may be called upon to make a decision which either hurts or benefits

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an individual or group. Such a decision must be known to the whole country to be made judicially.<sup>18</sup>

Speaker King’s words represent a declaration of the high standards of impartiality required of a presiding officer. The reality is, however, that to bear all the trappings of impartiality is not a simple thing. As we know, there is much diversity among Speakers with regard to their parliamentary roles and the ethical challenges they face. There are considerable differences regarding how presiding officers maintain their relations with their own political parties and caucuses, the political balance within their legislatures, how they have entered parliament, how they were selected Speaker, the extent to which the rules allow them to participate in debate either in the chamber or committee, whether they have a casting or a deliberative vote, whether or not their rulings are appealable, and how they deal with constituency, diplomatic and administrative responsibilities. Given all these different circumstances, it may be quite difficult to not only be — but to appear to be — completely impartial, that is to show that one has set all self-interest aside and has become the “impartial spectator” or the “blindfolded contractor”. As one writer on ethics has stated, regardless of the circumstances it is perhaps untenable.<sup>19</sup>

Some Speakers are very transparent about retaining their self-interest in matters they feel are important and are open about setting goals for themselves while holding the office. For example, Dan Hays, on January 29, 2001 stated the following after the commission was read appointing him Senate Speaker:

Each Speaker chooses a role for himself or herself. The Honourable Speaker of the other place from the previous session, Gib Parent, for example, was active and interested in supporting humanitarian causes not necessarily related to his parliamentary role. As Speaker of the Senate, I intend to continue to maintain good relations with parliamentary institutions, the Government and particularly the Department of Foreign Affairs. During my mandate, I also intend to continue to adequately protect the interests of my region and province and to stress issues that concern Albertans.

There is no evidence that these factors listed above have affected the impartiality of Canadian presiding officers while in the Chair. However, it may be worthwhile for Speakers to consider drafting a statement, or a declaration, of the ethical frame of reference by which presiding officers are guided. Such a document could perhaps assist Speakers with difficult ethical and professional issues and help ensure that their parliamentary colleagues and the public alike are aware of the ethical principles which guide them in their duties. The creation of such a

statement, like the increasingly used procedural practice of electing Speakers by secret ballot, may bestow greater legitimacy upon the position and remove any doubt about the ethical values a Speaker possesses. It could also stand as an example to their colleagues of the importance of ethics to the performance of parliamentary duties. The statement, like the one published by the Canadian Judicial Council regarding the ethical principles for judges, would be advisory only and not a code of conduct setting out the standards by which misconduct would be defined. The process for how each Speaker would commit to or sign on to the declaration would have to be examined in more detail, but it could be as simple as a presiding officer stating upon accepting the position that she or he intends to uphold the principles described in the *Declaration of Ethics for Presiding Officers*. Such a statement would be an important contribution to parliamentary government in Canada.

Notes

1. Samara, *Welcome to Parliament: A Job With No Description*, The MP Exit Interview Reports #2, December, 2010, pp. 8-10.
2. For the rules that deal with order and decorum in the Senate, see Rules 18-21, *Rules of the Senate of Canada*, March 2010 as well as Senate Procedural Note No. 12, “Decorum”, September 2004. For a discussion of the rules of order and decorum in the House of Commons see Audrey O’Brien and Marc Bosc (eds.), *House of Commons Procedure and Practice* (Ottawa: House of Commons, and Montreal: Editions Yvon Blais, Second Edition, 2009), Chapter 13, pp. 593-646.
3. Douglas S. Sherwin, “The Ethical Roots of the Business System”, in Andrews, *op. cit.*, p. 148.
4. Alan Gewirth, “Professional Ethics: The Separatist Thesis”, *Ethics*, January, 1986, pp. 286, 289-290.
5. Quoted in Kenneth R. Andrews, *Ethics In Practice: Managing the Moral Corporation* (Boston: Harvard Business School Press, 1989), p. 100. Omar Burleson was a county attorney and later a judge in Jones County, Texas. He served in House of Representatives from 1947 to 1978.
6. Quoted in Andrews, *op.cit.* p. 100. The statesman was Henry Taylor, former U.S. Ambassador to Switzerland.
7. J.G. Bourinot, “Mr. Speaker”, *The Canadian Monthly and National Review*, January to June, 1878, p. 133.
8. House of Commons, Special Committee on Standing Orders and Procedure, *Fourth Report*, December 3, 1982.
9. J. Gordon Dubroy, “Canada: House of Commons: Relations Between the Chair and Opposition in 1956”, *The Table*, 1956, p. 39.
10. See W.F. Dawson, *Procedure in the Canadian House of Commons* (Toronto: University of Toronto Press, 1962).
11. Dubroy, *op.cit.*, p.47.
12. Mark Maloney, “A tragic, shocking fall from grace”, *Toronto Star*, February 27, 2007.

13. In a ruling on unparliamentary language given on March 1, 2000, Speaker Molgat stated, “I remind honourable senators again as to the custom and practices of this house. We are members of a house which always has taken the position that we be polite to each other. We treat each other with respect. We address each other as individuals, and I refer to each honourable senator by name. It is a very different context from that in the House of Commons. One has only to compare the Question Period in the other place with the Question Period in this place to see that. I make no criticism in that regard. They are a different house.” See *Senate Debates*, March 1, 2000.
14. *Senate Debates*, October 4, 1990.
15. *Senate Debates*, December 11, 1990.
16. *Bourinot’s Rules of Order*, revised by J.G. Dubroy (Toronto: McClelland and Stewart, 1963, Second Edition), p. xi.
17. C.E.S. Franks writes: “The Speaker’s job is to ensure that all proceedings of the House are conducted in fairness and impartiality.” See *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), pp. 120-121. Philip Laundry in *The Office of the Speaker* (London:

Cassell, 1964), p. 29 notes: “Total impartiality is the basic requirement of the Speaker, and in particular a regard for the rights of minorities.” The parliamentary authorities also emphasize the importance of this ethical principle. May’s *Parliamentary Practice, 23rd edition* (London: Butterworth, 2004), p. 220 states: “The chief characteristics attaching to the office of the Speaker in the House of Commons are authority and impartiality.” O’Brien and Bosc, *op. cit.*, p. 313 states: “When in the Chair, the Speaker embodies the power and authority of the office, strengthened by rule and precedent. He or she must at all times show, and be seen to show, the impartiality required to sustain the trust and goodwill of the House.”

18. Horace King, “The Impartiality of the Speaker”, *The Parliamentarian*, April, 1996, p. 128. Dr. King was Speaker from 1965 to 1971.
19. John Cottingham, “Ethics and Impartiality”, *Philosophical Studies*, 43 (1983), p. 83.
20. *Senate Debates*, Monday, January 29, 2001.