
Parliamentary Tradition and the Legacy of 1812

Gary W. O'Brien

This year, for the bicentennial of the War of 1812, many Canadians will be celebrating Canada's military tradition. Our parliamentary traditions go back more than two hundred years and we tend to take them for granted. Had the outcome of the war with the United States been different, we may have had another governance system. The parliamentary debt that is owed for those who fought in that struggle should never be forgotten. This article suggests we should spend a bit of time reflecting on our parliamentary traditions as well as our military ones.

Our parliamentary tradition developed from two basic sources: the backwoods legislature of Upper Canada whose first sitting on September 17, 1792 near Niagara Falls was held, according to historian W.C. Crofton, "under a tree, a large stone serving for the Clerk's Table," and the much larger provincial parliament of Lower Canada which met in Quebec City in a seventeenth century church. At least five major characteristics of the modern Canadian Parliament can be traced to the procedures and practices that these assemblies developed before 1812.

The first notable feature is that our legislative practice has never been a replica of English procedures. Once their chambers were established, the Members had desks, not benches, and voted by roll-call divisions as opposed to entering lobbies with tellers counting the votes. Norman French was never used in royal assent ceremonies. There is no evidence that the Speakers were wigged. When the Americans burned York (Toronto)'s Parliament Buildings in 1813, they took the wig suspended over the Speaker's Chair as a scalp. It is often thought to be the Speaker's wig. It was more likely the periwig of a judge since the chamber was used as a courthouse when the assembly was not sitting and in April 1813 when the invasion took place, it was not. Unlike procedure at Westminster, the emphasis

was on rapid decision-making, stripped of multiplicity of questions and elaborate ceremonies.

The Canadian Parliament is a model to the world in conducting its proceedings in two languages and this practice began at the very opening of the First Session of the Lower Canadian Legislature in 1792. The initial Speech from the Throne was delivered in English but was accompanied by a French translation read by one of the Commissioners appointed to administer the oath to members. French-speaking members insisted that the first bill introduced in the assembly be in both languages. It was agreed very early that the Journals, the official record of the House, be bilingual and that "the Reports from Special Committees, or from the Committee of the Whole, Addresses, Messages and all other transactions or deliberations of the House, shall be put in both languages, and thus entered in the Registers." This practice was generally carried forward by the Parliament of the United Province of Canada and after 1867 by the Parliament of Canada.

A third characteristic is the incessant struggle to make the executive accountable to parliament, particularly to the popularly elected House. It is true that during this period the local legislatures had limited power in the financing of government and that previous to 1817 no funds were requested or estimates tabled. Yet both the Upper and Lower Canadian assemblies were determined to use what powers they had to make government responsible to them. In the 1793-94 session, the accounts of provincial revenue were printed in their entirety in the Lower Canadian

Gary W. O'Brien is Clerk of the Senate of Canada and Clerk of the Parliaments.

Journals and examined in a Committee of the Whole. Beginning in 1812-13 the accounts were referred to a special committee of five Members who would then report their observations. Impeachment of high officials was another procedure used and in 1814 the assembly agreed by a formal vote to impeach the Chief Justice of the Province. Shortly after the war, other practices evolved including the rejection of a permanent civil list, the refusal of supply and not proceeding with legislation until basic grievances were met.

Some commentators like former Senator Lowell Murray lament the fact that in recent years many parliamentarians have forgotten the struggle for the power of the purse which earlier legislators fought so hard to establish.

The legacy of vigilantly guarding parliamentary privilege has perhaps been better upheld. Privilege encompasses those rights enjoyed by a legislature without which they could not discharge their functions. The early legal opinions which came out of London stated that the privileges of the colonial assemblies and the British House of Commons were never to be considered co-equal. Nonetheless, by 1801

the Speakers of both assemblies were demanding to the Governor General “the freedom of speech and generally all the like privileges and liberties as are enjoyed by the Commons of Great Britain our Mother Country.” In spite of the fact that they were often acting beyond the scope of its powers, the Members claimed freedom from arrest when they were sitting, the right to be free from threats or bribes, the power to send for and question witnesses, and the right to punish for contempt. These basic elements which constitute the modern definition of privilege can be traced to the pre-1812 period.

Lastly, the professionalism and non-partisan nature of the House administration was established early. Throughout Upper Canada’s history, there were only four Clerks of the House of Assembly while in Lower Canada, only three men held the position. Maintaining professional continuity and corporate memory in the service of Members has remained unchanged. In the Province of Canada, only three persons held the position of Clerk of the Legislative Council while the Legislative Assembly had only one Clerk. Since 1867, there have only been 12 Clerks of the Senate and 12 Clerks of the House of Commons.

Even though parliamentary government is conducted so differently today, these and other parliamentary traditions constitute a substantial legacy and are deserving of recognition.