

Parliamentary History

by E. George MacMinn, O.B.C., Q.C., Clerk Consultant

Introduction

The Legislative Assembly of British Columbia is the home of parliamentary democracy in our province. Here, the plans, policies and decisions of the government are presented in the Legislative Chamber (also known as the House) to Members of the Legislative Assembly (MLAs) for consideration and debate, and are then approved or defeated.

The MLAs represent the broad diversity of people and places in our province. Members of the Legislative Assembly stand up for the values of their communities, and express our collective hopes for the future. Debate may be heated at times in the Chamber, and the words sharp with criticism, but the role of MLAs as the voice of the people who elected them is the foundation of parliamentary democracy.

Parliament evolved when ordinary people—the commoners—made it clear that it was no longer acceptable for laws to be made in private in the king’s chambers. No longer could laws be passed without the scrutiny and openness implicit in the parliamentary system we now uphold. Today, each law is brought into the House for three separate readings, or considerations, before being passed or rejected. The House also debates any requests for public expenditures by government, presented by each government ministry in the form of a supply bill or “Estimates.”

MLAs are elected to take part in debates on legislative proposals, to consider how the government spends money, and to examine the policies and priorities of government to make sure the principles of responsible government are upheld.

In following these procedures, the work of the MLAs and the functions of this House represent the essence of our democratic ideals.

Parliamentary History

The Westminster model of parliamentary democracy has its roots in British society, and it is found throughout the Commonwealth, including here in Canada, and in British Columbia. Parliament is easier to understand if we consider how it has evolved over the centuries. In fact, it has been said that the British Parliament has its roots so deep in the past that it’s difficult to explain even a single feature of how it works without referring to history. Early kings of England often summoned noblemen to ask their advice on important matters of state. These gatherings were described as “courts” or “great councils.” The Magna Carta, a document between King John and his English barons seeking to limit the king’s powers, was sealed on June 15, 1215, and by 1275, King Edward I was regularly summoning knights and burgesses to advise him on financial matters; in essence, to approve his supply of public funds. From these great councils of the 13th century, emerged the beginnings of the Westminster model of Parliament.

Historically, the Crown spent large amounts of money to run royal households and pursue military objectives. By the 14th century, the early British House of Commons recognized how much influence it had, in that House approval was necessary before any funds would be granted to the monarch. If the Commons perceived wrongdoing on the part of the king, it would petition him to correct it. In fact, the Commons would not agree to approve the supply of funds to the king until the wrong had been redressed. This principle, known as “redress before supply,” secured the

commoners some political influence over the events of the day—a tradition that continues today.

By the middle of the 14th century, Parliament had divided itself into two Houses: the House of Lords, whose members were hereditary noblemen and bishops, and the House of Commons, for elected representatives. In the years that followed, Parliament and the Crown struggled constantly for power. Parliament wasn't a permanent body with regular sittings, as it is now. It met only when the king called it together, and kings only summoned Parliament when they needed more money.

Today, one of the Legislature's primary functions continues to be the approval of public expenditures, now brought forward for approval by the executive branch of government rather than by the Crown.

More than most kings, Charles I resented any restriction to his power. By 1631 he had dissolved Parliament, refusing to recall it for 11 years. After exploiting every legal means he could think of to raise money, the Crown was broke, and the King had no choice but to summon Parliament again, in order to receive the funds he needed. Eventually, the tensions of this period, and Charles's disdain for Parliament, led to his execution. A brief and tumultuous rule by Oliver Cromwell as Lord Protector followed. After Cromwell's death, Britain had had enough of this alternative republican system, and Parliament welcomed Charles II, son of the former monarch, back from exile. This was referred to as the "Glorious Revolution." "Glorious" because no blood had been shed to restore the monarchy.

Almost 400 years of history had left its mark. The crucial balance between the Crown and Parliament was struck after decisive proof that neither body could perform the role of the other. Although the monarch was to govern, Parliament must first be consulted and offer its consent.

By the 18th century, political parties began to emerge, replacing the shifting alliances prevalent in earlier years, and the role of ministers, formerly the monarch's closest advisors, began to develop. Even though they had been elected as commoners, ministers had been, up to this point, primarily loyal to the Crown, rather than the House of Commons. Much of this gradual shift took place during the reign of the Hanovers, who were not terribly interested in the mundane affairs of government. Apparently some, including the German-born George I, didn't speak English well and were disinclined to influence or monitor Parliament's work.

With the declining interest of the monarchy, ministers became increasingly dominant within Parliament. They began to act co-operatively as a body. The group of ministers in this Cabinet, which had originated as a secret privy council advising the king, began to take on more executive functions, though still in the name of the Crown, as is the case today. A gradual process, it marked the beginnings of responsible government.

By the late 18th century, the main elements of the modern parliamentary system appeared to be in place: the supremacy of the elected Commons, well-defined political parties and a system of responsible government in which elected legislators oversaw the work of the executive branch and scrutinized the performance of colleagues who had taken on the roles of Cabinet ministers.

The Role of the Speaker

The most important office in the Legislative Assembly of British Columbia is that of the Speaker, without whom the House cannot operate. Section 37(1) of B.C.'s Constitution Act states that, "On

its first meeting and before proceeding to business, the Legislative Assembly must elect one of its members to be Speaker.”

On February 15, 1872, the first day of the first provincial Parliament in British Columbia, Lieutenant Governor Trutch refused to continue with the opening proceedings because a Speaker had not yet been chosen. With the Lieutenant Governor absent, MLAs elected James Trimble as the first Speaker, and the following day Trutch returned to read the inaugural Speech from the Throne. To this day, even though it is the Crown’s prerogative to open parliament, the Lieutenant Governor will only proceed with the opening once Members have elected a Speaker.

Because the Speaker chairs or presides over the meetings of the House, he or she is commonly referred to as the senior Presiding Officer. The mace, a ceremonial staff symbolizing the authority of the House and the Speaker, precedes the Speaker into the House at the beginning of each sitting and remains in the Chamber until the sitting ends. The Speaker’s authority is derived from the House, and he or she is answerable to it.

Election of the Speaker

The Standing Orders of the House require that the Speaker be elected by all MLAs in a secret ballot at the opening of a new parliament. The Clerk of the House is responsible for overseeing the election, and for announcing the result in the Chamber. Though not a requirement, the office of Speaker is usually filled by a member of the governing party.

When Parliament is dissolved before a general election, the Speaker and all MLAs cease to be Members of the Legislative Assembly. For administrative purposes, however, the Speaker (like the Executive Council or Cabinet) is deemed to continue in office until the next Speaker is chosen.

1 - The Speaker’s Role as Representative

As spokesperson for the the House, the Speaker is expected to maintain the authority of the House and to protect its rights and privileges in its relations with the Crown, as represented by the Lieutenant Governor of British Columbia, with the other branches of government - the executive and the judiciary - and with external organizations.

The Speaker receives special visitors on behalf of the House, including delegations from other parliaments, and on formal occasions, the Speaker plays a central ceremonial role in representing the House.

The Speaker is responsible to the House and all MLAs, regardless of which party they belong to. He or she is not responsible to the executive branch of government and, in fact, seeks to preserve the independence of the House from its influence.

2 - The Speaker's Procedural Role

As senior Presiding Officer, the Speaker oversees the proceedings of the House, making sure they are conducted in an orderly manner and according to the provisions of the Constitution Act and the Standing Orders of the House. Duties performed while in the Chair are probably the Speaker's most challenging.

The Speaker opens each sitting by calling upon a Member to lead the House in prayer. This is followed by various items of routine business and then items of government business. Throughout

the sitting, the Speaker must ensure that the rules of parliamentary procedure, as embodied in the Standing Orders and practice of the House, are applied. The Speaker interprets and enforces the Standing Orders, responds to Members' points of order, and gives rulings on procedure when necessary. For example, the Speaker is often called upon to decide whether remarks made about another Member are offensive, whether a Member's speech is relevant to the motion being debated, or whether a particular motion or amendment is permitted to be moved at a certain time.

The Speaker supervises rather than participates in proceedings. He or she does not take part in debates and votes only to break a tie.

An important part of the Speaker's job is to protect the rights of individuals and minorities in the House and to make sure that everyone is treated fairly within the framework set by the rules. The Speaker calls upon Members wishing to speak and, in a House with a relatively balanced allocation of seats, seeks to do so without favouring either the government or opposition Members.

The Speaker must maintain order during debate. While most proceedings pass routinely and without incident, there are occasions when the House becomes noisy and unruly. The arguments that sometimes occur in the Chamber do not necessarily indicate a loss of civility or an inability to negotiate. Often misunderstood, this quarrelsome conduct is an essential and important means of dispute and debate. However, the Standing Orders do provide the Speaker with disciplinary powers to maintain the rules of behaviour. These vary in severity and allow the Speaker to deal with breaches of order in an appropriate manner. For a minor infringement, a Member may merely be called to order or warned. For a more serious offence, a Member may be ordered to withdraw from the Chamber. For a major infraction or for persistent defiance of the Chair, a Member may be "named" by the Chair, and a motion put forward for the Member's temporary suspension.

While the Speaker typically spends a considerable part of each sitting day in the Chamber, he or she is not always present throughout the proceedings. The Deputy Speaker, Assistant Deputy Speaker and the Deputy Chair of the Committee of the Whole often take the Chair to assist the Speaker.

Speakers of the Legislative Assembly strive to carry out their duties with impartiality. As a rule, Speakers have been sufficiently detached from government activity to ensure a high degree of impartiality in the Chair. Even though the Speaker belongs to a political party, Members are entitled to expect that he or she will act impartially. At the same time, a Speaker is entitled to expect support and cooperation from all Members, regardless of which party they belong to.

3 – The Speaker's Administrative Role

The Speaker is responsible for the administration of the Legislative Assembly. This includes the provision of support services to Members and the overall management of the Parliament Buildings and the legislative precinct. The Speaker is considered, in effect, the "minister" of the Legislative Assembly, with a role similar to that of the minister of a government ministry. The difference, of course, is that the Speaker does not have a seat in cabinet.

The Speaker also oversees the work of the Legislative Library, Hansard Services, Human Resource Operations, Financial Services, Information Technology, Parliamentary Education, Legislative Dining Room and the Sergeant-at-Arms staff. In undertaking his or her administrative responsibilities, the Speaker can also expect to have the advice and assistance of the Clerk of the House, Deputy Clerk and staff.

Legislative Assembly staff provide administrative and information support services for the efficient operation of the House and its committees. They also supply a range of services and facilities for MLAs, from finding office accommodation to the payment of salaries and allowances.

Historical Note

The office of Speaker is an ancient and essential feature of the Westminster model of parliament. Dating from 13th century England, the office of Speaker was central in the centuries-long battle for supremacy between Parliament and the monarchy, though the role was sometimes an unenviable one. The first Speakers were responsible for carrying messages—often complaints and grievances—from Parliament to the King or Queen. As the bearers of bad news, history shows a number of Speakers suffered violent deaths by way of execution. Others were lucky to be merely imprisoned, impeached or expelled from office. This rather bloody and dangerous past explains why Speakers elected today pretend to be reluctant to take the Speaker's Chair. House Leaders from both government and opposition drag the new Speaker to the chair at the front of the Chamber.

The Role of the Clerk

The Clerk of the House is the senior permanent officer of the Legislative Assembly. He or she is assisted by a Deputy Clerk and Clerks Assistant. The Clerk, Deputy Clerk and the Clerks Assistant are the procedural and legal experts of the House and its committees. The first Clerk of the British Columbia Legislative Assembly was Charles Good, appointed in 1872. In total, twelve Clerks have been appointed since parliamentary history began in British Columbia.

During sittings of the House, the Clerk, Deputy Clerk and one of the Clerks Assistant sit at the Clerks' Table on the floor of the House. Like the Speaker, they wear formal court attire, including a black robe, wing collar and white tabs. Strategically sited between the government and opposition sides of the House, the Clerks' Table has been compared to the best box seat in a theatre. Watching House proceeding may well be entertaining, but while at the Clerks' Table, the Clerk and Clerks Assistant have much to do.

The Clerk's primary function is to serve as the principal adviser to the House on the privileges, procedures and practices of Parliament. Like the Speaker, the Clerk is non-partisan. The Clerk is at the service of the Legislative Assembly and all MLAs, regardless of party affiliation. The Clerk hears, advises and counsels all Members with utter objectivity and impartiality. Any advice the Clerk gives, to the Speaker or other presiding Officers, is offered to assist in the effective and smooth functioning of the House.

While sitting at the Clerks' Table, the Clerk listens carefully to the debate, as he or she may be called upon to give immediate advice to the Chair or others regarding a procedural or technical matter. Any MLA can ask the Clerk for advice during proceedings—perhaps in relation to a point of order they wish to make, or a motion they wish to move. The Clerk, Deputy Clerk and Clerks Assistant don't just offer day-to-day procedural advice while at the Clerks' Table. They attend daily briefings to help the Speaker and other presiding officers prepare for each sitting and discuss any foreseeable points of procedural difficulty. A considerable amount of time is spent on this behind-the-scenes work.

The Clerk, Deputy Clerk and Clerks Assistant are the only non-MLAs to have a speaking role in the proceedings of the House. They announce each item of routine business to be considered during the day's sitting and read aloud the names of each bill passed by the Legislative Assembly prior to the Lieutenant Governor of British Columbia granting Royal Assent.

As the day's sitting unfolds, the Clerk, Deputy Clerk and Clerks Assistant enter the decisions and actions of the House into minute books for publication in the Votes and Proceedings (essentially, the minutes of the House), which are eventually compiled as the annual Journals of the House.

Unlike the Hansard record, which is a verbatim transcript, the Journals record the decisions and business items completed by the House, not every word said during a sitting.

The Clerk, Deputy Clerk and Clerks Assistant also oversee the taking of votes, known as divisions, and report the results in the Votes and Proceedings.

The Office of the Clerk also compiles another publication for each sitting day—the Orders of the Day. This document is essentially the agenda of the House. For each sitting, staff in the Office of the Clerk list all items of business eligible to be called by the Government House Leader.

The Clerk is the official custodian of all House records and any official documents deposited with the House, such as legislation at its various stages, petitions and reports. The Clerk ensures that these documents are complete, appropriately presented and considered by the House, and then safely archived. Archiving is central to the openness and transparency of the Legislative Assembly, and allows for public access to the documents.

Another of the Clerk's duties is to assist the Speaker in the administration of the House by providing financial, committee, library, Hansard, computer, educational, human resource, dining and security services.

The Clerk is responsible for providing services to the Speaker and MLAs, and administers the work of staff members on behalf of the Speaker, in much the same way that a deputy minister of government manages a department for a minister.

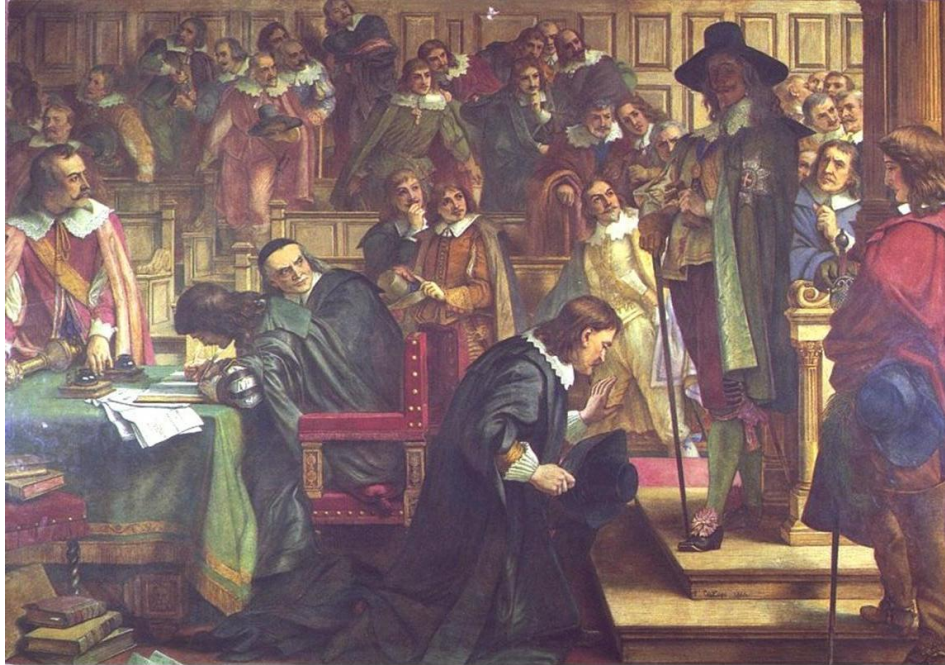
Historical Note

The office of the Clerk of the House has its origins in the early English Parliament. Then, the term “clerk” signified a person who could read and write—uncommon skills at the time—and that person's role was to record parliamentary proceedings. The first reference to a Clerk of the British House of Commons occurs around 1363. One of the best-known Clerks, Clerk Assistant John Rushworth, was appointed to the British House some 300 years later. It is thanks to Rushworth that we have a record of one very significant moment in parliamentary history.

January 4, 1642 was the day King Charles I arrived at the House of Commons determined to arrest five of its Members. Their crime was sponsoring a petition critical of the King. Charles and his soldiers strode into the Chamber and up to the Speaker's Chair. Standing before the chair, King Charles I said, “By your leave, Mr. Speaker, I must borrow your chair a little,” and called out the five names. He was met with a stunned silence. The five Members he called had been warned and had slipped out the back door prior to his arrival. King Charles turned to the Speaker and demanded to know their whereabouts. The Speaker went down in history for replying, “May it please Your Majesty, I have neither eyes to see nor tongue to speak in this place, but as the House is pleased to direct of me, whose servant I am. And I humbly beg Your Majesty's pardon that I cannot give any other answer than this.”

It was the first direct and public rebuke to the King, and an assertion of Parliament's right to meet independently and without interference from the Crown. King Charles stood down. He remarked, “I see the birds have flown!” and left the Chamber amidst angry calls of “Privilege!” by the Members. It was clear to all that King Charles I had violated one of the fundamental principles of Parliament.

The words of the King and the Speaker during this famous episode would have been lost in history had it not been for John Rushworth. As Clerk Assistant, he diligently recorded the famous exchange for the Journals of the House, as apparently, the Clerk of the House had been immobilized with fear.



Speaker Lenthall Asserting the Privileges of the Commons
against Charles I when Attempt was made to Seize the Five Members, 1642
by C.W. Cope, 1866

The Role of the Lieutenant Governor / Lieutenant Governor in Council

Canada's system of government is a constitutional monarchy, based on the Westminster model of parliamentary democracy. In fact, the preamble of Canada's Constitution Act, 1867 states that our country shall have "a Constitution similar in principle to that of the United Kingdom." The Canadian monarch is the same person as the British monarch, Queen Elizabeth II. She is Queen of Canada and the constitutional head of state of Canada.

Just as the Governor General represents the Queen federally in Canada, each province appoints a Lieutenant Governor to represent the Queen. British Columbia's Constitution Act recognizes this in saying,

There must be in British Columbia a Legislative Assembly constituted as provided by this Act, and the Lieutenant Governor has the power, by and with the advice and consent of the Legislative Assembly to make laws in and for British Columbia in all cases, subject to the Constitution Act, 1867, and to the order of Her late Majesty in Council.

The Lieutenant Governor's power to make laws means he or she must approve or give "Royal Assent," before any bill passed by the Legislative Assembly can become law. Our provincial Constitution Act also requires that any bill proposing to spend public money or impose a new tax must be accompanied by a recommendation or "message" from the Lieutenant Governor of British Columbia when it is introduced in the House. That statutory requirement is an historical remnant of the time when only the king or queen could raise public funds. Today, it could be argued that almost every legislative proposal involves public spending in some form, so the practice in British Columbia is for all government bills to be accompanied by a message from the Lieutenant Governor.

At the beginning of each new session of the Legislative Assembly, the Lieutenant Governor opens the session by reading the Speech from the Throne, announcing the government's plans for that session. He or she also prorogues (closes) each parliamentary session and dissolves the Legislative Assembly prior to a provincial general election.

Executive government in British Columbia is vested in the Lieutenant Governor acting by and with the advice of the Premier. The Premier selects MLAs from his or her party and advises the Lieutenant Governor to appoint them as ministers of the Crown, known as Cabinet. Similarly, the Lieutenant Governor also has the power to dismiss both the Premier and Cabinet ministers.

It is important to note that in a constitutional monarchy, the monarch—represented by the Lieutenant Governor—reigns, but does not govern. He or she has the authority to assent to legislation, but does so only on the advice of the Premier.

Lieutenant Governor in Council

Although the Legislative Assembly is responsible for the consideration and creation of new laws, it is also common practice for the Legislature to delegate its statutory powers. These are most frequently delegated to the Lieutenant Governor in Council, meaning the Lieutenant Governor, acting by and with the advice and consent of, the Executive Council. When the Lieutenant Governor in Council exercises this delegated authority, it is usually implemented in the form of an Order in Council (OIC).

Although Orders in Council are passed by the Lieutenant Governor in Council, the Lieutenant Governor does not meet with the Executive Council to consider the content of each order. Instead, once the Executive Council has passed an Order in Council, it is then sent to the Lieutenant Governor for signature. Each Order in Council is signed by the minister responsible, the Premier and the Lieutenant Governor.

It is important to note that any regulations passed in the form of an Order in Council have the same legal effect as if passed by the Legislature. OICs generally deal with consequential or administrative matters arising from legislation already considered and approved by the Legislature. No original or unique policy matters should be captured within them.

Conclusion

The Westminster model of parliamentary government took hundreds of years to evolve. It ensures that the will of the majority prevail, but gives the minority the right to be heard. It also secures the right of elected representatives to review the administrative decisions of the elected government. Today, we may take these elements of the parliamentary process for granted, but as history shows, it was achieved through centuries of conflict and consideration.