

# PROCEDURAL CHANGE IN THE NOVA SCOTIA HOUSE OF ASSEMBLY

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Parliaments and legislatures have traditionally been regarded as places where elected representatives perform four major tasks: the control of finance, the scrutiny of executive activities, the adoption of legislation and the redress of grievances. Procedures governing performance of these tasks have evolved over many years in response to changing conditions from within and without legislative bodies. The Nova Scotia Legislature, the oldest in Canada and one of the oldest in the Commonwealth, is no different in this regard from its counterparts throughout the world where the British parliamentary model is used. New rules of procedure in Nova Scotia were adopted on May 26, 1980. They were used for the first time during the third session of the 52nd General Assembly which began in February 1981. This article examines the background to these changes and outlines some of the major reforms.

The principles that lie at the basis of English parliamentary law have been succinctly stated by Sir John Bourinot, as being:

To protect a minority and restrain the improvidence or tyranny of a majority; to secure the transaction of public business in an orderly manner; to enable every member to express his opinions within limits necessary to preserve decorum and prevent an unnecessary waste of time; to give abundant opportunity for the consideration of every measure, and to prevent any legislative action being taken upon sudden impulse. (4th Edition, p. 200)

## BACKGROUND

The application of these principles requires different procedures at different times and in different places. The direct stimulus for reform will also differ. It may derive from a parliamentary crisis, a newly-elected government or long agitation by backbenchers. In Nova Scotia it was the death of the long-time clerk of the Legislature which provided the necessary stimulus. Mr. Roy Laurence had been clerk of the Legislature for nearly thirty years. His sudden passing left the House without an experienced successor. With a new session set to open in a few weeks an arrangement was worked out whereby a clerk from Westminster, Michael Ryle, was attached to the Nova Scotia Legislature to assist the newly appointed clerk,

Dr. Henry Muggah. During the session which lasted from January to March 1976 the Speaker and the Premier took advantage of Mr. Ryle's presence to ask him and Dr. Muggah to undertake a formal review of the Assembly's *Rules of Procedure* (last revised in 1955) and to recommend changes.

In his report and in a subsequent article in *The Table*, Mr. Ryle illustrated how the legislature appeared to a well-informed and interested outside observer. He noted that in contrast to Westminster, the attendance was good with nearly every member present nearly all the time. Debates were alive and vigorous yet conducted in high good humour. He felt the legislature was responsive to the issues of the day. He noted, however, a lack of clarity regarding some of the rules. Certain procedures were obscure while others were unnecessarily elaborate. He gave a number of specific examples:

All notices of motions were given orally in the House for a future day. This was the Westminster practice until 1854, but since about 1875 it has been largely supplanted by written notices given to the Clerks at the Table (or in one of their offices). Members seeking factual information did not use written Questions but—as used to be the regular practice at Westminster in the XVIII Century—they moved motions for returns, all of which could, of course, be debated and frequently were. There was, of course, no Supply guillotine. Every Estimate was examined in detail in Committee of Supply and a

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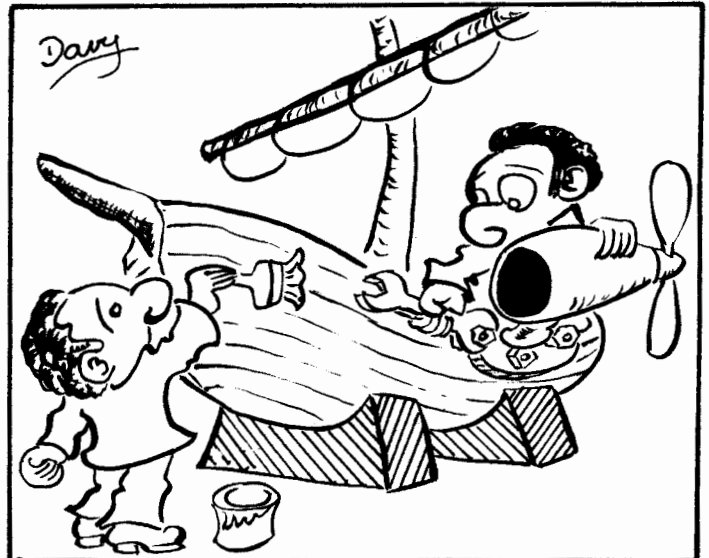
motion had to be made, which was usually debated, for the Speaker to leave the Chair and for the House to resolve itself into a Committee of Supply. And finally there was no time limit on Questions to Ministers and Members of the Legislature were anxious to test and criticise Ministers on matters for which they were responsible and to take up issue as soon as they arose. As a result Question time twice a week was a lively and sometimes lengthy Parliamentary occasion—often lasting two hours or more—when oral Questions (without notice as is the practice throughout Canada) were fired at any Minister, like machine guns firing at sitting ranks of the enemy.<sup>1</sup>

Mr. Ryle's report contained a number of detailed proposals for changes which included new rules regarding sitting hours; rules designed to clarify the priority to be given to Government and Opposition business, and a rule allowing the Opposition to call the business on one day each week. He also proposed more extensive use of written questions, a time limit on oral questions, more advance warning of the business, the giving of notices of motion in writing and clarification of the rules regarding financial business and money bills.

On March 24, 1977 a Select Committee on Rules and Forms of Procedure of the House of Assembly was established. Using Mr. Ryle's report as its basic working document this Committee reported in July 1978, at a time when the House was not in session. It presented re-drafted rules which the Committee recommended be adopted for a trial period of three years to continue in force thereafter unless the House should dispense with them. The Select Committee did not accept Ryle's proposals *in toto* but the main thrust of his work is evident in a comparison of his report with the draft rules proposed by the Select Committee.

Before action could be taken implement the Select Committee Report a general election in September 1978 resulted in a change of government. The Progressive Conservative administration of John Buchanan commissioned its own review of procedure. During the session which began in December 1978 the Government presented its proposals for new rules. While these proposals contained only minor modifications of the proposals made by the Select Committee, they immediately encountered strenuous objection from the Liberal Official Opposition and from the New Democratic Party members in the House. A two-thirds majority was required to enact the new rules and Government supporters in the House were not that numerous. The Government therefore, decided not to proceed with its resolution. Instead, it proposed to set up an all-party

working committee to try to narrow the areas of disagreement. The Committee consisted of Hugh Tinkham, Liberal MLA for Yarmouth and Opposition Whip, Jeremy Akerman, then MLA for Cape Breton East and Leader of the NDP and myself. This group met on numerous occasions through the 1979 session. We tabled our recommendations on May 15, 1979, just as the session concluded.



The all-party committee was revived during the 1980 session. Some modifications were made in its earlier report and finally agreement was reached on the content of a proposal for new rules. This proposal was put before the legislature in Committee of the Whole on a pre-arranged timetable. Following a three-hour debate during which certain further changes were made, the House unanimously adopted the new rules.

## THE NEW RULES

Under the new rules the authority of the Speaker is greatly strengthened. Mr. Speaker now becomes responsible for the administration of Province House and its staff, including the Legislative Library and Hansard. He thus assumes greater administrative functions than previously and of course he continues his role as presiding officer in the House. Appeals from the Speaker's rulings, except by way of substantive motion, have been abolished. The Speaker is also Chairman of the Internal Economy Board of the House.

Under the old rules there was an oral question period on Tuesdays and Thursdays with no time limit.

<sup>1</sup> Michael Ryle, "A Westminster Clerk in Nova Scotia" *The Table*, (1975) p. 70-71.

On numerous occasions the Opposition would keep the question period going for the entire sitting on these days. Under the new rules the question period will be on Tuesdays, Wednesdays and Thursdays, immediately following the daily routine items and will have a time limit of one hour fifteen minutes.

On Wednesdays the Opposition will determine the order of business. Except for public bills and orders and private members' public bills, they may call any item on the order paper. That is, they may call resolutions of which they have given notice on earlier occasions, thus raising many controversial subjects which they wish to debate. It will become necessary for the Government to take a position on these issues by allowing them to come to a vote or it will have to have enough members speak to ensure that the debate continues until the adjournment hour. This might be difficult because no member is entitled to speak for more than fifteen minutes when the order "Opposition Members' Business" is called.

An Opposition member who wishes to debate a subject after the normal adjournment hour on Tuesday and Thursday or a private member on the Government side on Wednesday, may give notice of his intention to do so to the clerk who conducts a draw to determine the order of speeches and the items shall be called in that order following the adjournment of the House. At this time the normal quorum rules do not apply and the debate can continue for a maximum of thirty minutes, with a limit of ten minutes on the speech of any member.

The number of standing House Committees has been reduced to eleven and no standing committee shall consist of more than nine members, without leave of the House.

Until now an unlimited debate on the motion to go into the Committee on Supply was allowed. Under the new rules, such a debate, although not abolished, can continue for no more than forty-five minutes and no member is entitled to speak for more than fifteen minutes.

Minor changes relating to the hours of sitting have been made to bring them into line with the practice which had evolved since 1955. Finally, motions will no longer need to be seconded.

The changes are perhaps modest and some have suggested they do not go far enough. At present all legislation is referred after second reading to either the Law Amendments Committee or the Private and Local Bills Committee. Efforts to broaden the work of other standing committees by allowing reference of legislation to them were defeated when the new rules were debated in Committee of the Whole. The new procedures also continue the practice of scrutiny of all departmental estimates in Committee of the Whole, rather than permitting reference of the estimates, or at least some of them, to standing committees. It is in the area of broadening the scope of the work of House Committees and providing them with adequate staff that future change will probably lie.

## CONCLUSION

In a debate on procedural change in the British House of Commons in 1966 the late Richard Crossman outlined three tests to determine whether a modern legislature is working efficiently. Can it translate policies into law at the speed required by today's society? Is there sufficient time and opportunity to debate the great issues of the day? Finally does the legislature provide a continuous and detailed check on the executive as well as serve as an effective defence of the individual against bureaucratic injustice and incompetence?

Operating without adequate procedures, a legislature is likely to fail these tests. It is hoped that the new rules in Nova Scotia will assist in requiring the government to plan its business better, the Opposition to determine its priorities more exactly, and individual members to be more precise and pointed in their questioning and in their speeches. The Legislature is still the contact point between the people of Nova Scotia and their Government. It must remain in control of the government no matter what party is in power. By control I mean influence, not direct power; advice, not command; criticism, not obstruction; scrutiny, not initiative and publicity, not secrecy. If our new rules help these things to happen the long exercise leading to their adoption will have been worthwhile.

## SUGGESTED READINGS

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