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Selection and Appointment of Clerks in Canadian Jurisdictions

Clerks hold a critically important position in Canada's parliamentary assemblies. Yet the path they take to the role is generally not well known or understood. In this article, the author outlines a Clerk's role and responsibilities, how they cultivate their procedural knowledge, and how the selection and appointment process for position has developed.

Deborah Deller

Over 40 years ago, I walked through the doors of the Ontario Legislative Building for the very first time. I had just returned from backpacking in Europe, was on my way to university and was in need of a job.

I had heard about an opening for a tour guide position. I applied and was lucky enough to be given an interview. Serendipity has played a part throughout my career and it certainly helped me out on that day.

During the interview I was asked what my dress size was. I answered that I was a size 7 (which in those days was true). That, as it turned out, was the right answer. New uniforms had just been purchased and one of the tour guides had quit. She was a size 7 – so they were looking for someone to fit into her uniform. Being eminently qualified, I got the job!

In the 37 years that I was employed full time at the Legislative Assembly I held numerous positions before retiring in 2016 as its Clerk. In my career, I bore witness to a great many significant changes in the procedural and administrative operations of the Assembly. For one thing, it no longer hires people based on their dress size!

Debates became televised as did committee hearings; a website was developed; computers became commonplace; and scissors and glue sticks were no longer required tools used to prepare the house documents. Security became a greater concern than ever before and global issues started to find their way to the steps of the legislative building.

This modernization brought its share of challenges. Many legislatures reside in old buildings ill-equipped for such things as computer cables and security apparatus. An information-insistent public requires more data in less time than ever before in our history and our parliamentary procedures have struggled to keep pace.

These changes have necessitated an increase in staff and budget. When I first began working there, Ontario's Office of the Assembly essentially consisted of the Clerk's office, Hansard, the Library, and a combined Finance and Human Resources office that fit into what is now a committee room. Today, every service available to Members is provided by the Office of the Assembly under the supervision of the Clerk. These now include, among other things: broadcast and recording, parliamentary and public relations, research, information and technology, and security and building management.

There are a myriad of services and facilities available and necessary to Members today that were not available before the early 70s.¹ A modern parliamentary democracy requires the support of a robust, non-partisan and professional procedural and administrative team. In Canadian legislatures, this team is managed by the Clerk. These days, the Clerk not only needs to be an expert on parliamentary procedure, but also needs to be the chief permanent officer responsible for a disparate and crucial set of administrative services.

In his 1994 address to the Canadian Study of Parliament Group, Sir Clifford Boulton, the former Clerk of the British House of Commons, said:

The whole service must be efficiently and effectively managed. It must be seen as a

Deborah Deller is a retired Clerk of the Ontario Legislative Assembly.

complete parliamentary service. I do not think it can become compartmentalized. I do not think one can say one service can act totally in ignorance or independence of what another service is planning. The whole thing must be drawn together in some way by some organization or some person who is prepared to take responsibility for giving that coordinated service.²

While the job has seen an expanded administrative role over time, the Clerk is still first and foremost a specialist in parliamentary law and procedure. Professor C.E.S. Franks noted that “The quality of the advice the speaker receives on procedure and other matters is crucial. The speaker’s adviser on procedure is the Clerk of the House of Commons.”³

It is a unique position for which, on the procedural side, there is little formal training.

There have been occasional relationships developed between academic and parliamentary institutions that have sought to address procedural education, however. Notable among these was an agreement established in 2007 between Laval University and the National Assembly of Québec which created the Research Chair of Democracy and Parliamentary Institutions. The agreement saw the creation of a specialized course in parliamentary law and procedure.⁴

By and large, the procedural knowledge is learned on the job. Hired into entry positions such as committee clerk, there has been largely a “learning by doing” approach to procedural training. Many jurisdictions have created some form of orientation and/or developmental rotations to supplement direct experiential training.

The necessity for procedural knowledge in the position, and the now essential requirement for senior level management skill, makes the qualified pool from which a Clerk might be hired fairly small.

Fortunately, there has historically been considerable longevity in the position and most parliaments are not frequently faced with the prospect of hiring a new Clerk. I was only the eighth Clerk to have served the Legislative Assembly of Ontario since 1867. I had close to 29 years of experience at the Legislature before I took the job; 15 of those years were at the Table. This pales in comparison, though, to someone

like George MacMinn, the retired Clerk of the British Columbia Legislative Assembly. He was honoured by Her Majesty Queen Elizabeth II as the longest serving Table Officer in the Commonwealth when he marked 50 years in that capacity in 2007.

Longevity aside, the scope of the job of the modern day Clerk of a Parliament requires – now more than ever – a hiring process that ensures a high level of procedural knowledge and administrative ability alongside demonstrated political neutrality that will command the absolute confidence of Members on both sides of the Chamber.

In many or most parliamentary jurisdictions in Canada, the process for the selection of the Clerk is neither prescribed in legislation or in the rules of the House. However, what once may have been a government appointment with a perfunctory consultation with the opposition, has in most cases developed into a more or less open competitive process that involves the participation of all sides of the House.

In 2001 for example, the Canadian House of Commons agreed to a recommendation of the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons to provide for a committee review of any proposed appointment of a Clerk and a subsequent ratification vote by the House. This procedure was used for the first time when Audrey O’Brien’s proposed appointment was reviewed and recommended by the Standing Committee on Procedure and House Affairs and subsequently approved by the House.⁵

In Alberta, the appointment of current Clerk, Robert Reynolds, was announced in a press release issued by the Speaker, as having been made “after extensive consultations with staff and input from all legislative caucuses”.⁶

It was a statement farther along in this press release though that I think furnishes a description of what is taken into consideration when a Clerk is selected. Speaker Robert Wanner wrote that Mr. Reynolds was:

A long serving and dedicated employee of the Alberta Legislative Assembly, is recognized as one of Canada’s foremost experts on Westminster style parliamentary practice” and that he would ensure “continued focus on the Legislative Assembly Office’s (LAO) mission to

provide nonpartisan parliamentary support and to implement the innovative changes necessary to sustain the LAO as a leader in parliamentary support organizations in Canada.⁷

I know Mr. Reynolds well, and I know everything in Speaker Wanner's statement about him to be true. I also know that the same thing could be said for each of the Clerks currently serving parliaments across the country. They are a distinctly qualified cohort by virtue of their procedural expertise coupled with the administrative responsibility equivalent to a Deputy Minister. For the most part, they have long years of experience directly related to the procedural and administrative operations for which they are responsible. Those years of service have had the consequential benefit of earning the respect and confidence of all parties for professional, non-partisan service to Parliament.

The job has changed a lot in recent years; it requires a broad range of expertise and skill. With few exceptions, recruitment processes have developed to include consultation or participation with representation from all caucuses. In many cases, the position has been advertised widely, making it, in theory more open to a broader pool of applicants.

A parliament, however, is a unique institution. It operates by a set of procedures that are often not widely known or understood, even by those elected Members who are seated in it. This type of institution requires the assistance of someone expert in those procedures to provide advice and assistance and ensure the integrity of the proceedings.

This is a truth that one hopes does not become lost as the recruitment processes for the job of Clerk of the House are developed and modernized. Hiring panels need to be composed of participants who have intimate familiarity with the House, its committees and the administrative operations required to support them. Healthy consideration should be given to past experience; a candidate cannot hope to have the required procedural knowledge without some significant demonstrated capability in a parliamentary setting. As well, the trust between the Clerk and Members of all parties is one that develops over time and is usually well established long before an individual occupies the Clerk's chair.

Whatever has been debated or written about how parliaments operate, these institutions are an integral component of Canada's federal, provincial

and territorial political systems. Parliament needs to be preserved and protected, and the Clerk plays an essential role in ensuring that. A healthy, fair competitive process for the job can and should go hand in hand with consideration for and understanding of what essential skills and knowledge are required and the importance of parliamentary related experience in developing them.

In that 1994 address to the Canadian Study of Parliament Group, Sir Clifford Boulton opined (though not specifically speaking on the issue of recruiting a Clerk), "The methods of the boardroom are not appropriate for dealing with a parliamentary chamber."⁸ Truer words might never have been spoken.

The Selection of The Clerk In Canadian Legislatures

The following pages summarize the responses received from Canada's Legislative Libraries regarding the selection and appointment process for the chief procedural officer (i.e., the Clerk of the House of Commons, Secretary General, Chief Clerk, or Clerk of the Legislative Assembly). In the case of Ontario, the response was added by the author of the foregoing article.⁹

Notes

- 1 Graham White, "The Life and Times of the Camp Commission," *Canadian Journal of Political Science*, Vol. 13, No.2, (June 1980), p. 357-375.
- 2 Sir Clifford Boulton, "The Role of the Clerks in the Parliamentary System, Canadian Study of Parliament Group, 1994.
- 3 C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), p. 123.
- 4 The Society of Clerks-at-the-Table in Commonwealth Parliaments, House of Lords, "Comparative Study: Recruitment and Training of Clerks", *The Table: The Journal of the Society of Clerk-at-the-Table in Commonwealth Parliaments*, Vol. 76, (2008), pp. 107-127.
- 5 Parliament of Canada, Appointment of the Clerk of the House of Commons, <https://www.ourcommons.ca/About/Clerk-Appnt-e.htm> (accessed May 2018)
- 6 Corporate Communications and Broadcast Services Legislative Assembly of Alberta, (April 4, 2016), *New Clerk of Legislative Assembly of Alberta Appointed*, [Press Release]
- 7 Ibid.
- 8 Sir Clifford Boulton, "The Role of Clerks"
- 9 Laura Anthony, Nick Ruderman, Legislative Library and Research Services, Role of the Clerk, (March 22, 2018) (responses in Table compiled by Erica Smith, Research Librarian)

Details of Selection and Appointment Process for Clerks in Canada

Canada – House of Commons

The Clerk of the House of Commons is appointed by the Governor-in-Council under the provisions of the *Public Service Employment Act*, though neither the Clerk nor any staff of the House of Commons are technically part of the federal public service (see: Parliament of Canada, Appointment of the Clerk of the House of Commons).

Standing Order 111(1) specifies that “Where the government intends to appoint an Officer of Parliament, the Clerk of the House, the Parliamentary Librarian or the Conflict of Interest and Ethics Commissioner, the name of the proposed appointee shall be deemed referred to the appropriate standing committee, which may consider the appointment during a period of not more than thirty days following the tabling of a document concerning the proposed appointment.”

Canada – The Senate

The Clerk of the Senate and Clerk of the Parliaments is appointed by the Governor-in-Council under the provisions of the *Public Service Employment Act*. (see: Parliament of Canada, Appointment of the Clerk of the Senate and Clerk of the Parliament).

British Columbia

All permanent officers are appointed pursuant to section 39 of the provincial *Constitution Act*, R.S.B.C., c. 66, which provides that:

39 (1) The appointment of all permanent officers of the Legislative Assembly must be made by resolution of the Legislative Assembly or, during the interval between 2 sessions, by the Lieutenant Governor in Council. (2) All appointments of permanent officers of the Legislative Assembly made during any interval between sessions must be ratified by the Legislative Assembly at its next session. (3) The appointment of all other officers and employees of the Legislative Assembly must be made (a) by the Speaker, or (b) by the Provincial Secretary, if there is no Speaker or the Speaker is absent or unable to Act. (4) A person occupying the position of a permanent officer of the Legislative Assembly is deemed to have occupied that position on and after the date of his or her appointment until the person dies, resigns or is removed from office.

Alberta

There is no provision in legislation for the appointment of the Clerk of the Legislative Assembly of Alberta. As noted on page 118 of *The Table* article, “Comparative Study: Recruitment and Training of Clerks,” Alberta’s Clerks “are normally recruited through a competitive process.”

Manitoba

The Civil Service Act, section 32, speaks to the appointment of the Clerk of the Legislative Assembly. “Unless they are appointed by Act of the Legislature, the Lieutenant Governor in Council shall appoint (a) deputy ministers, the Clerk of the Executive Council, the Clerk of the Legislative Assembly, and other technical officers; and (b) the members, or members of the board of management or boards of directors, of agencies of the government with respect to which any provision of this *Act* has been brought into force.” The *Act* doesn’t specify the process for recruitment. In 1999, when the role was last filled, the competition process was run by a subcommittee of the Legislative Assembly Management Committee (LAMC), with support provided by the Director, Member Services. The role was advertised in the *Free Press* and the *Globe and Mail* and sent to the Clerks Association network. Interviews were conducted by a subcommittee of LAMC and ultimately LAMC determined who would be offered the position subject to Cabinet approval.

Ontario

The Legislative Assembly Act provides that:

77(1) The Lieutenant Governor in Council shall appoint the Clerk of the Legislative Assembly. R.S.O. 1990, c. L.10, s. 77 (1).

Tenure of office

(2) The Clerk of the Legislative Assembly shall hold office during good behaviour but shall be removable from office for cause by the Lieutenant Governor on address of the Assembly. R.S.O. 1990, c. L.10, s. 77 (2).

Quebec

In Québec, in 1969, the position title was changed from Clerk to Secretary General. Under section 26 of the *Act Respecting the National Assembly*, the Secretary General is appointed by the Assembly on a motion of the Premier. The Secretary General must enjoy the full confidence of the President and the House as a whole, which is why it is customary for the Premier to consult the Opposition before standing in the Assembly to propose a candidate. As the Act does not limit the appointment to a set number of years, a Secretary General's term of office is indefinite. (Source: Parliamentary procedure in Québec. Québec (Province). Assemblée nationale. Direction générale des affaires juridiques et parlementaires. Québec: Assemblée nationale du Québec, 2012, p. 157.

New Brunswick

In New Brunswick, the Clerk is appointed by resolution of the House. Furthermore, according to the New Brunswick's *Legislative Assembly Act* 41(2), "The Clerk shall be appointed by the Legislative Assembly on the recommendation of the Legislative Administration Committee."

Nova Scotia

Neither the legislation nor the rules of the House specify the appointment process. *House of Assembly Act* 46: "The Governor in Council may appoint a suitable person to be Chief Clerk of the House, who shall perform all the duties performed by the Chief Clerk of the House prior to the seventeenth day of April, 1937, in addition to the further duties prescribed after that date." Nova Scotia's present Chief Clerk took on the role in an acting capacity in 2010 and was appointed in 2011; he was formerly an Assistant Clerk. He tells Nova Scotia's Legislative Library that the process has changed since his appointment. The procedure now (used for more recent hiring of Assistant Clerks) is through an open national competition run by a three-party subcommittee of the House of Assembly Management Commission. The interview panel is supported by Legislative Counsel, the Director of Administration (Speaker's Administration Office), and the government Public Service Commission.

Prince Edward Island

Under section 38(2) of the *Legislative Assembly Act*, the Clerk and Clerk Assistant are appointed by the Legislative Assembly on the recommendation of the Standing Committee on Legislative Management and shall serve at pleasure. The Standing Committee on Legislative Management may employ whatever process of selection it deems appropriate.

Saskatchewan

The information available for the appointment of our Clerk in Saskatchewan comes from *The Legislative Assembly Act, 2007*: Appointment of Clerk 77.1 The Clerk shall be appointed by order of the Legislative Assembly. (2015, c.14, s.9).

Newfoundland and Labrador

In Newfoundland and Labrador, the process of appointment for the Clerk of the House is provided in section 7 of the *House of Assembly Accountability, Integrity and Administration Act*. It specifies that: “House officers 7. (1) Upon nomination by the House of Assembly, the Lieutenant-Governor in Council shall, by Commission under the Great Seal, appoint the following officers: (a) the Clerk of the House of Assembly; (b) the Clerk Assistant of the House of Assembly; (c) the Law Clerk; and (d) the Sergeant-at-Arms of the House of Assembly. (2) Before a nomination is made under subsection (1), the speaker shall consult with the commission, the Clerk of the Executive Council and the chairperson of the Public Service Commission to determine an appropriate process for recruitment of suitable candidates for appointment. (3) Where an officer referred to in paragraphs (1)(a) to (d) is unable to act by reason of absence, incapacity or other cause or the office is vacant, the Speaker, upon the recommendation of the commission, may appoint a person to act as that officer in a temporary capacity for a period that shall not exceed 12 consecutive months.”

Northwest Territories

The Legislative Assembly and Executive Council Act provides the following with respect to the appointment of the Clerk: | “54. (1) The Clerk shall be appointed by the Commissioner on the recommendation of the Board of Management approved by motion of the Legislative Assembly.”

Nunavut

In Nunavut, the process for nominating a Clerk is in the *Consolidation of the Legislative Assembly and Executive Council Act*. Appointment of Clerk: 50. (1) The Clerk shall be appointed by the Commissioner on the recommendation of the Management and Services Board approved by motion of the Legislative Assembly. Tenure of office (2) The Clerk holds office during good behaviour but may be removed from office for cause by the Commissioner on the recommendation of the Management and Services Board approved by motion of the Legislative Assembly. (S.Nu. 2010,c.13,s.11).

Yukon

In Yukon, the position of Clerk is classified in the *Public Service Act's* regulations as a deputy head. Neither the *Public Service Act*, nor any other legislation describes the process for the recruitment and appointment of the Clerk of the Legislative Assembly. The last time a clerk was recruited (2007) the recruitment process was created by the Assembly's Members' Services Board (the Assembly's board of internal economy). The MSB created an all-party subcommittee to recruit and recommend to MSB a person to assume the role of Clerk. The sub-committee consisted of the Speaker (as Chair) and one member from each caucus represented in the House. There was no motion in the House confirming the appointment. An order in council, issued pursuant to the *Public Service Act*, was the legal instrument used to appoint the current clerk.

The process for removing the Clerk is contained in the *Public Service Act* regulations [sections 4.1(1) and (2)]. The process contains the following provisions:

1. “The Speaker of the Legislative Assembly, on the advice of the Legislative Assembly or an appropriate committee thereof, may recommend to the Commissioner [of Yukon] the probationary release, the suspension or termination of the Clerk of the Legislative Assembly.”
2. “Where the Speaker makes a recommendation pursuant to subsection (1), it shall be in writing with reasons for such recommendation and a copy of the recommendation shall be forwarded to the Public Service Commissioner.”