

# Unit 2: The Role of the Speaker of Parliament and other Presiding Officers

## Learning Objectives Speakers and their Legislatures

After studying this unit, you should be able to:

- Describe the role, functions and responsibilities of the Speaker or other presiding officers of legislatures;
- Explain how they are supported in their tasks by their deputies and parliamentary staff;
- Understand the relationships that exist between the Speaker and other parliamentary and political officials;
- Discuss how and why the roles of presiding officers may vary in different legislatures.

### Introduction

In every parliament, whether Westminster or presidential, there is a person who takes on the role of a Speaker, or presiding officer. In this unit we consider the role of this individual and the systems in which they work. We then look at the individuals who help them accomplish their goals, and how the role of the presiding officer changes from system to system.

### The Functions of a Presiding Officer

A presiding officer is needed in all legislatures to impartially oversee the procedures of debate.

<b>Box 1</b> <b>Unicameral vs. Bicameral Legislatures</b>	
<b>Unicameralism</b>	<b>Bicameralism</b>
One legislative or parliamentary chamber or House	Two legislative or parliamentary chambers or Houses
Often small and homogeneous unitary states that consider an upper House or second chamber unnecessary	Power of two chambers varies where either two chambers have equal power, one chamber is superior, or the second chamber represents constituents
Checks and balances performed by committees	Checks and balances performed by lower House

Most commonly this officer is called the speaker especially in unicameral parliaments (those with one house) or in the Lower Houses of bicameral parliaments.

The presiding officer of an Upper House or second chamber is not normally called the speaker, but

most commonly president, chairman or chair. In some countries with a republican, or non-hereditary constitution, the vice-president of the country is sometimes, by virtue of the position, the presiding officer of the second chamber.

## **Box 2**

### **The Westminster Model**

The British system of government, which is characterized by the way in which powers are merged through the counterbalancing of the Crown, the House of Lords and the House of Commons. The head of state is the nominal or theoretical source of power. The exercise of both legislative and executive power lies with the majority party.

The speaker or other presiding officer, as a rule, is seen as an impartial authority conducting the proceedings but it is important to appreciate that this may be different in legislatures that are not based on the Westminster model (See Box 2).

As the controller of the proceedings of the House, the Speaker's role is to

- Allow Members who are speaking to express their views;
- Ensure that Members adhere to the rules of debate, that is, as required by the Standing Orders of the House;
- Regulate the time allocated for debate;
- Rule on any dispute as to the procedure to be followed by the House;
- Protect the rights of the minority

Speakers may also perform many other functions as the head of the legislature in which they are responsible, for example, for the general administration of the chamber and buildings as well as for security aspects. In this role they may have to act as chair of certain parliamentary committees, though some countries eschew placing the Speaker in such roles, as it may appear to detract from the impartiality of the office.

Finally the Speaker usually has a ceremonial role even outside of parliament and in the constitutions of certain countries he or she may hold a very high position in the order of precedence even being called upon to act for the head of state in the latter's absence from the country.

The key feature of the role of a Speaker in a Commonwealth parliament is impartiality and at least while holding the post during a parliamentary term, he or she is expected to be non-partisan in their actions. Though the Speaker would probably be a member of a political party, he or she should not distinguish between government and opposition Members in making decisions. The further implications of this impartiality have been interpreted in different ways according to the practices of each country. In certain jurisdictions, once a Speaker is appointed, he or she leaves the political party and the

interests of the constituency are seen to in other ways: at any succeeding election, he or she would stand as 'Mister or Madam Speaker' rather than as the representative of a political party. This strict view does not hold in the majority of Commonwealth countries and, once parliament is dissolved, the Speaker may contest as a member of a party, though naturally this would not guarantee that the new parliament would re-elect him or her as Speaker. Another model is for the Speaker to be appointed from outside parliament (see below).

### Election of a Speaker

In most Commonwealth countries, the Speaker is required to be a Member of Parliament and is usually elected by a secret ballot of Members conducted by the Clerk (or Secretary-General) as the first item of business of a new parliament. Similarly if a vacancy in the post has occurred during a session, the election becomes the first item of business thereafter. It is the only occasion in most parliaments when a secret ballot is taken.

The procedure for the election may vary but the usual system is that the successful candidate is required to obtain more than fifty per cent of the votes. Where there are more than two candidates, voting proceeds in stages by the elimination of the candidate with the least number of votes at each ballot until the necessary majority is obtained.

In some jurisdictions there is not a requirement for the Speaker or the presiding officer of the Upper House to be a member of the House and the post may be filled by the nomination of a person from outside the House, by the head of state or by the parliament itself. This does not interfere with the term of the post, which would remain the same as the life of the legislature.

In most parliaments it is the accepted norm that the party with the largest number of Members will see their candidate elected as Speaker. However other countries try to follow a system of rotation as new parliaments are elected.

## **Powers of the Speaker and Presiding Officers**

Given the heavy responsibility cast on the Speaker (and other presiding officers) to ensure fair debate in the Chamber, it is to be expected that the post will be vested with adequate powers to ensure this. The House too has to assist the Speaker in carrying out these functions, and MPs are required to adhere to the rules of debate.

### **Box 3 Legal Precedent**

Most legal decisions are based on the precedent or authority determined from earlier cases that establish a law. A precedent which must be applied or followed is known as a mandatory or binding precedent or binding authority, while a precedent which is not mandatory but which is useful or relevant is known as a persuasive precedent or an advisory precedent. In either situation, a new case can establish a new trend and that can establish a precedent that indicates the next logical step in evolving interpretations of the law. Precedent can also be overruled in case law, or the body of legal decisions that interprets prior legal cases, statutes and other legal authorities.

All debate is carried out through the Speaker and it is to him or her, therefore, that all speeches are addressed. The Speaker will ensure that MPs are not interrupted unless they agree to give way, but MPs who obstruct or disturb proceedings will be called to order. At worst, the Speaker can even arrange for an MP to be suspended from further proceedings of the House or to be removed from the Chamber.

In regard to the record of proceedings the Speaker's powers stretch to the ability to have objectionable words expunged and to order the media not to report some part of a debate if it is

struck from the record. A Speaker's rulings are made with due regard to previous rulings and he or she will always be aware that every decision taken can potentially create a new legal precedent (See Box 3).

These powers are given to Speakers because they are the guardians of the rules of the House. But a wise Speaker is always cognizant of the fact that he or she is also the servant of the House. While it would be easy to become authoritarian, the will of the House must prevail. Speakers would soon be made aware of any situation where they become incapable of

presiding over the House that elected them. Votes of no confidence in Speakers are rare, but not unknown.

## Other Responsibilities of the Speaker and Presiding Officers

Speakers or other presiding officers do not enter into debate on any matter that is before the House. This is in keeping with the impartial stance required of them and, accordingly, they will usually not vote either. A potentially sensitive situation occurs where there is a tied vote in the House and the Speaker has to resolve the matter by using a casting vote, or a vote given to the presiding officer of a council or legislative body in order to resolve a deadlock. The convention in Commonwealth countries is that the casting vote will be used to maintain the status quo.

### **Box 4** **Presiding Officer: The Case of Australia**

In Australia, each of the two Houses elects a presiding officer. In the Senate this official is called the president, and in the House, the speaker. Both are elected by secret ballot and are members of the governing party. They are expected to oversee debate and enforce the rules in an impartial manner.

Since both Houses may determine motions by voice vote, the presiding officers in each House facilitate the voice vote process by putting a question for debate, and, after translating the vocal responses, announce a result of "aye" or "no". When there is disagreement with those results by at least two Members, there is a call for a division during which voters physically move to different sides of the room depending on their answer to determine results. The Speaker will not vote unless there is a tie, but the President will always vote in cases of division.

In  
certain

parliaments, it is a requirement of the constitution that any bill should be ruled upon by the Courts of Justice as acceptable under the constitution to ensure that it does not violate fundamental rights of the citizens of the State. The Speaker would therefore send the bill for such determination and inform the House upon receipt of that decision. However, under such constitutions, once a bill has passed into law, there can usually be no further reference to the courts for further determination of its constitutionality.

When a bill has been passed by the parliament, it has to be signed into law. In some countries the head of state is required to carry out this function but in others, a certification by the Speaker completes the necessary formalities and the bill duly becomes an act or law.

There may arise situations where the judiciary and the House are not in agreement on some aspect of procedure. Cases are known, and indeed have recently become more frequent, where the judiciary has asked that parliament should not debate some matter or that the Speaker should not give a decision on some matter, until the courts have come to their conclusions. Speakers of the House look upon these as cases which would violate the supremacy or sovereignty of parliament, however vague that term may be in the law, and do not seem inclined to accept such demands from the courts.

The duties of the Speaker and other presiding officers do not terminate with their departure from the chair at the end of the day. There are various other functions required of them, which extend from presiding over committees of the House (in some jurisdictions these are limited to committees, commissions or boards dealing with the administration and management of the House) to representational duties both at home and abroad.

Because of the wide variety of functions Speakers are required to carry out, legislatures usually assist them by electing at least one Deputy Speaker and further electing, or allowing the Speaker to appoint, a panel of other MPs who would share the burden of presiding over the House. Once again such officers are chosen from any of the parties in the House and are required to work with the same degree of impartiality expected of the Speaker.

### Other Officers of Parliament

Speakers also have various permanent officials in parliament to help them carry out these functions. The first and most senior is the Clerk, or Secretary-General, of the House. This is a permanent non-political official of the House whose work is usually defined as keeping the minutes of the deliberations of the House and being responsible for the safety of all documents.

In practice the work remit is much broader as the Clerk is really the administrator responsible to the Speaker for day-to-day work of the institution and, in particular, advising the Speaker and his deputies, as well as government and opposition Members on the procedures of the legislature.

In most Commonwealth countries the Clerk is an appointee of the parliament but in several he or she is a Member of the public service holding office in parliament in much the same way as one would in serving in a Ministry office. Impartiality in one's actions, especially in giving advice to the Speaker and to members, is a particular requirement of the Clerk's position and for this reason many countries protect the clerk constitutionally or in other ways.

Another important official of parliament is the Serjeant at Arms. This officer is responsible for the security of the House, an increasingly heavy burden in the current context of terrorism, and for physically enforcing the orders of the Speaker, for instance, in ensuring that suspended Members are removed from the House if they do not leave when ordered to do so by the Speaker.

The Librarian and the Editor of Hansard, the official record of parliament's debates, are other officials whose work underpins the operations of a well-organized parliament. Accordingly the Speaker and Clerk will place great reliance on them. In some legislatures their seniority is recognized as equivalent to that of the Serjeant at Arms.

An official who is not a member of the staff of parliament but spends much time in advancing the work of the institution is the Auditor General (in some jurisdictions termed the Comptroller and Auditor General). It would be impossible for parliament to carry out its work of scrutinizing the executive, especially in its financial operations, without receiving reports from the Auditor General and being able to rely on that official's assistance in deliberating on his or her findings at the meetings of the Committee on Public Accounts and, where it exists, the Committee on Public Enterprises (or Public Undertakings). For these reasons the Auditor General is looked upon as a semi-parliamentary official who is given the prerogatives of an officer of parliament but who will act on his or her own initiative and not be subject to the direction of the House as

to what matters to inquire into. This is to ensure impartiality and the post is invariably protected by the constitution of the country.

In recent times, many legislatures have had to call upon the services of a Parliamentary Commissioner for Administration, sometimes referred to as the Ombudsman. He or she investigates complaints from the public of maladministration that affects their rights. The parliamentary commissioner cannot make determinations about the pros and cons of a particular governmental policy but will report to parliament on important cases investigated or those that parliament has referred to him or her. This post is also usually protected under the constitution.

There are finally a group of political officials whose help is invaluable to the Speaker in carrying out his duties. They are the Leader of the House and the whips of political parties. The Leader of the House ranks in most countries as a government Minister but he or she has special responsibilities for government business in the legislature and therefore for safeguarding the privileges and procedures of the House. Government and opposition whips similarly have interests in getting their work done, and cooperate with the Speaker to arrange an orderly manner for the schedules for debates and other work of the House. The Leader of the Opposition could be added to this list of officials who help the Speaker. However, a whip usually represents him or her, just as the Leader of the House represents the Prime Minister. These officials invariably also serve on the House committees dealing with these matters more formally.

## **Unit 2 Questions**

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. What pressures may a Speaker expect to face that could militate against his or her work as an impartial office holder?
2. What responsibilities would be shared between presiding officers in a bicameral parliament?
3. Discuss the ways in which the opposition could help presiding officers to carry out their duties. Is it in the interests of the opposition to do so?
4. Apart from the Auditor General and the Parliamentary Commissioner for Administration (Ombudsman), what other posts of similar status do you consider should be created in your country to assist the Speaker and parliament in their work?

## **Relevant Abbreviations**

ComSec	Commonwealth Secretariat
CPA	Commonwealth Parliamentary Association
IPU	Inter-Parliamentary Union
NDI	National Democratic Institute for International Affairs
UNDP	United Nations Development Program
WBI	World Bank Institute

## **Relevant Internet Resources**

UNDP Constitution

<http://www.undp.org/governance/parldev/docs/constution.htm>

UNDP Governing Systems and Executive-Legislative Relationships

<http://www.undp.org/governance/parldev/docs/govern.htm>

UNDP Legislative Chambers: Unicameral or Bicameral?

<http://www.undp.org/governance/parldev/docs/chambers.htm>

## **Select Bibliography**

May, T. Erskine (2004). *Treatise on the Law, Privileges and Proceedings of Parliament*, 23<sup>rd</sup> edition (ed. McKay, Sir William). London, Butterworths.

Beauchesne, A. (1989). *Rules and Forms of the House of Commons of Canada*, 6<sup>th</sup> edition (ed. Fraser, A., Dawson W.F. and Holtby, J.A.). Toronto, Carswell Co Ltd.

Grove, R., Swinson, M. and Hesford, S. (eds.). (2007). *New South Wales Legislative Assembly: Practice, Procedure and Privilege*. Riverwood NSW, Ligare Pty Ltd.

Harris, I.C. (2005). *House of Representatives Practice*, 5th edition. Canberra, Department of the House of Representatives.

<http://www.aph.gov.au/house/pubs/PRACTICE/Index.htm>

Kaul, M.N. and Shakhder, S.L. (2000). *Practice and Procedure of Parliament*, 5<sup>th</sup> edition (ed. Malhotra, G.C.). New Delhi, Metropolitan.

MacMinn, E.G. (1987). *Parliamentary Practice in British Columbia*. Victoria BC, Queen's Printer.

Marleau, R. and Montpetit, C. (2000). *House of Commons: Procedure and Practice*. Ottawa, House of Commons.

McGee, D. (2005). *Parliamentary Practice in New Zealand*, 3<sup>rd</sup> edition. New Zealand, Dunmore Publishing.

Parliament of the Republic of South Africa (2004). *National Assembly Guide to Procedure*. Cape Town, Parliament of the Republic of South Africa.

Wijesekera, P. (2002). *Parliamentary Practice in Sri Lanka*. Sri Lanka, Parliamentary Secretariat.

Hatchard, J. and Slinn, P. (1999). *Parliamentary Supremacy and Judicial Independence*. London, Cavendish.

Laundy, P. (1984). *The Office of the Speaker in the Parliaments of the Commonwealth*. London, Quiller Press.

MacMinn, E.G. (2008). *The Art of Briefing a Speaker*, in *The Parliamentarian*, Vol. LXXIV, Issue One. London, CPA.

NDI (1996). *Legislative Research Series: Presiding Officers*. Washington D.C., NDI

Rashid, M.H. (2000). *Rulings of the Speaker* (compiled by Hasan, K.T. and others). Dhaka, Institute of Parliamentary Studies, Bangladesh Parliament.

Shell, D.R. (1998). *Second Chambers*, in *World Encyclopedia of Parliaments and Legislatures*, ed. Kurian, G.T. and Longley, L. Washington, D.C., Congressional Quarterly.