More than just points of order—
the role of a Speaker in a small legislature

Paper to be presented by Tom Duncan,
Clerk of the Legislative Assembly for the Australian Capital Territory
“The Speakership is an ancient and honourable office and an essential feature of the parliamentary system.”

“The office of Speaker does not demand rare qualities. It demands common qualities in a rare degree.”

Introduction

While many see the role of the Speaker as a rarefied and cranky prefect whose responsibility is largely confined to the coercion and punishment of wayward Members during rowdy proceedings, there are, of course, many other aspects of the role.

This paper discusses the role of the Speaker in a small legislature (the Legislative Assembly for the Australian Capital Territory) and how the role has evolved over that time. While many of the matters that I reflect on here will be familiar to those from other parliaments, there are some that are novel, and others that are unique.

Speakers in the ACT Legislative Assembly

The role of the Speaker in the Assembly is similar to the role of Speakers in most Commonwealth Parliaments. As set out in the Speaker’s Guide:

> In the chamber, the Speaker presides over the Assembly’s proceeding, interprets the rules on the application of the standing orders, and is responsible for maintaining order. The Speaker is in many ways a custodian of the institution of parliament and plays an important role in defending, strengthening and promoting its legislative, representative and accountability related functions.

Of the seven Speakers elected in the ACT Legislative Assembly since its inception in 1989, three of them have not been government Members of the Legislative Assembly (MLA). In the First Assembly, an MLA from the No Self Government party was elected as Speaker. In the Seventh Assembly, an ACT Greens MLA was elected Speaker and, in the Eighth Assembly an opposition MLA was elected Speaker.

In addition, on three occasions the Assembly elected a Speaker who had no prior experience as a parliamentarian. This occurred in the First, Second and Seventh Assemblies. Two Speakers elected had been ministers prior to taking the chair. And two Speakers have served for two terms—one for the Third and Fourth Assemblies and one for the Fifth and Sixth Assemblies.

As Speaker Burch details in her paper to this conference, three out of the seven Speakers elected were women. And two Speakers were elected unopposed.

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3 The Assembly has 25 Members, increased in 2016 from 17.
5 There was a parliamentary agreement between the Greens and the Labor Party, and the Labor Party formed the Government.
Speaker presides over question time

One of the more prominent tasks performed by the Speaker in Australian parliaments is presiding over question time each sitting day.

Delegates may be interested to know that under the ACT Assembly’s standing orders, Question Time cannot conclude until every non-executive Member rising has asked at least one question. Such an exhaustive approach is, of course, only possible in a small parliament but even with only 17 non-executive Members eligible, that amounts to 51 questions (including supplementary questions) that are asked in any given Question Time period, 36 of which are asked by the Opposition.

As is the case in most other parliaments, the Leader of the Opposition asks the first question during Question Time. The Minister responding has two minutes to answer and the Member who asked the original question is then entitled to ask a supplementary question, which the Minister also has two minutes to answer. Then another Member can ask a further supplementary, which the Minister has two minutes to answer. This continues until all non-Executive MLAs rising have asked at least one question.

One of the challenges of presiding over the large volume of questions is ensuring the proper application of the relevance rule in relation to supplementary questions. Standing order 113B provides that:

Immediately following the answer to a question, one supplementary question may be asked by the Member who asked the original question: provided that the supplementary question is relevant to the original question or arises out of the answer given, contains no preamble, introduces no new matter and is put in precise and direct terms. The Speaker may allow one further supplementary question from other non-Executive Members, provided that the questions are relevant to the original question or the answers given.

The Speaker must pay careful attention to the content of each of the original 17 questions and their two supplementaries to ensure that there is a sufficient connection between the two to be in order.

Speaker faces no confidence motions

In the short history of the Assembly there have been only two motions of no confidence moved against the Speaker.

Although there is no provision in the standing orders for a dissent motion to be moved to a ruling of the Speaker, there is a practice that, on most occasions, leave will be granted for a Member who wishes to challenge a ruling to move a motion of dissent. There have been only two successful dissent motions moved since 1989—one overturning a decision of the Chair that the word “furphy” was unparslimentary, and another overturning a decision not to allow access to the media to film or record proceedings of the Assembly (Table 1).

Table 1: Motions of no confidence and dissent from Speaker’s rulings moved

<table>
<thead>
<tr>
<th>Assembly</th>
<th>Want of confidence motions</th>
<th>Dissent from Speaker’s rulings</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Assembly</td>
<td>–</td>
<td>1 (Asst Speaker) withdrawn</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 passed</td>
</tr>
<tr>
<td>Second Assembly</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Third Assembly</td>
<td>1 negatived</td>
<td>1 adjourned</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 negated</td>
</tr>
<tr>
<td>Assembly</td>
<td>Want of confidence motions</td>
<td>Dissent from Speaker’s rulings</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Fourth Assembly</td>
<td>–</td>
<td>1 passed 3 negatived</td>
</tr>
<tr>
<td>Fifth Assembly</td>
<td>–</td>
<td>1 negatived</td>
</tr>
<tr>
<td>Sixth Assembly</td>
<td>–</td>
<td>4 negatived</td>
</tr>
<tr>
<td>Seventh Assembly</td>
<td>1 (Asst Speaker) negatived 1 resolution of confidence</td>
<td>1 (Dep Speaker) negatived 1 (Asst Speaker) withdrawn 5 negatived</td>
</tr>
<tr>
<td>Eighth Assembly</td>
<td>–</td>
<td>1 withdrawn</td>
</tr>
<tr>
<td>Ninth Assembly</td>
<td>–</td>
<td>1 negatived</td>
</tr>
<tr>
<td>Totals</td>
<td>3</td>
<td>25</td>
</tr>
</tbody>
</table>

**Speaker can ‘name and shame’**

Unlike many other Australian legislatures, the Speaker does not have the power to suspend Members for short periods (often called the “sin bin”), this power being reserved for the Assembly itself. The Speaker does have the power to “name” a Member, and it is the normal practice that, after being named, the Assembly resolves to suspend the named Member for three sitting hours or, if it is the second naming that calendar year, for a sitting day.

As can be seen in Table 2, this power has been used sparingly over the last 29 years, with a total of 35 Members being named and suspended.

**Table 2: Members named and suspended – 1989-2018**

<table>
<thead>
<tr>
<th>Assembly</th>
<th>No of Members named</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Assembly</td>
<td>5</td>
</tr>
<tr>
<td>Second Assembly</td>
<td>5</td>
</tr>
<tr>
<td>Third Assembly</td>
<td>4</td>
</tr>
<tr>
<td>Fourth Assembly</td>
<td>3</td>
</tr>
<tr>
<td>Fifth Assembly</td>
<td>1</td>
</tr>
<tr>
<td>Sixth Assembly</td>
<td>11</td>
</tr>
<tr>
<td>Seventh Assembly</td>
<td>4</td>
</tr>
<tr>
<td>Eighth Assembly</td>
<td>2</td>
</tr>
</tbody>
</table>
Interestingly, over the life of the whole Legislative Assembly, the Assembly that recorded the highest number of Members named by the Speaker was the only Assembly in which a government majority prevailed (the Sixth Assembly). And the Member who was named the most (five times) went on to become a successful Speaker, serving for two terms.

Speaker’s art advisory committee selects art for the Assembly

In the Third Assembly, Speaker McRae inaugurated an art advisory committee the role of which was to advise the Speaker in relation to the acquisition, display and maintenance of artworks in the Assembly building.

The committee is chaired by the Speaker and comprises representatives from government, opposition and crossbench MLAs, as well as three ACT arts community representatives, and staff of the Office of the Legislative Assembly (the Office).

The committee administers a $30k budget which it uses to acquire artworks from local artists for display within the building. The committee is supported by a curatorial adviser who is responsible for providing expert advice to the committee and the Speaker on the acquisition, storage, maintenance and display of artworks.

During the 2016-17 financial year the committee acquired eight artworks. New acquisitions are usually displayed in a prominent public space within the Assembly building for a period of time before being relocated to other parts of the building such as internal hallways and Members’ offices.

*Listening Tree*, Clay, slips and glaze, by Bev Hogg

Artist’s précis: The *Tree* is an allegory of the political process in its ideal state. Politics draws its substance from the community and politicians, as they undertake their duties, listen to the voices of the people of Canberra.

Speaker controls access to the precincts

Like most parliaments, the Assembly passed legislation in 2001 (the *Legislative Assembly Precincts Act 2001*) that established the precincts of the Assembly and conferred on the Speaker a number of powers in relation to them. The two precincts are the Assembly building and separate office accommodation for staff of the Office of the Legislative Assembly. Amongst other matters, the Speaker may:

- issue licences for the use of the Assembly precinct (s 7A) (numerous community groups use certain rooms within the building);
- direct that a person who is not a Member is to leave or to not enter the Assembly precincts (s 9(1));
- arrange for the removal or exclusion of a person from the Assembly precincts (s 9(2));
delegate his or her powers to remove a person to certain senior officers of the Office of the Legislative Assembly (s 9(5)); and
determine fees in relation to the Act (s 11A).

It is a long-standing parliamentary convention that when police officers wish to enter parliamentary precincts for the purposes of interviewing a Member of Parliament or effecting a search warrant, they notify the presiding officer. Since 9 November 2006, there has been a Memorandum of Understanding (MOU) in place between the Speaker and the Chief Police Officer for the ACT setting out more detailed arrangements concerning access to the precincts by police officers in the performance of their official duties. This memorandum was recently updated.

**Speaker chairs Standing Committee on Administration and Procedure**

The Speaker chairs the Standing Committee on Administration and Procedure which is responsible for determining the order of private Members, Assembly and executive Members business, as well as advising the Speaker on the operation of the Assembly library, Member’s entitlements (including facilities and services) and the operation of Hansard. It also advises the Speaker on the budget for the Assembly.

In addition, it receives reports of the Assembly’s Commissioner of Standards (who reports on possible breaches by Members of the Assembly’s Code of Conduct or failures to declare interests) and is required to present reports to the Assembly on the matters raised with the Commissioner. So far the committee has had to consider four reports of the Commissioner in connection with alleged breaches of the code.6

In the current Assembly to date, the committee has inquired and reported on the following matters:

1. Commissioner for Standards referral process
2. Omnibus Bills
3. Code of Conduct for All Members of the Legislative Assembly for the Australian Capital Territory—Review
4. Review of Continuing Resolution 9—Senator for the Australian Capital Territory—Procedures for Election
5. Models for Estimates Inquiries
6. Review of standing orders for the Ninth Assembly

At the time of writing this paper, the committee is considering a comprehensive review of all of the Assembly’s 280 standing orders and 19 continuing resolutions, with a view to reporting in August 2018. It is a requirement under standing orders that such a review is undertaken in the third year of each Assembly term.

This is an initiative of the New Zealand Parliament which the ACT has replicated.

**Speaker chairs meeting of committee chairs**

Twice a year the Speaker convenes a meeting of committee chairs (this was the subject of a paper presented to the 39th Presiding Officers and Clerks Conference in 2008—*The Speaker’s meeting of committee chairs*). The purpose of the meeting is to provide an opportunity for chairs of Assembly committees to discuss the full range of procedural and administrative matters that arise during the course of committee inquiries and other committee business.

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6 No breaches were found to have occurred.
The meeting is attended by all Assembly committee chairs (there are currently eight standing and three select committees operating) as well as committee secretaries. Matters discussed include interaction between committees and ministers’ offices, resources for the operation of committees, use of technology, and promotion of committee work. The meeting provides a useful opportunity for the Speaker to keep abreast of the activities of committees and to assist them in the important work they undertake.

Speaker appoints officers of the Assembly

The Officers of the Assembly Legislation Amendment Act 2013 had the effect of establishing the Auditor-General, the Ombudsman (currently this role is performed by the Commonwealth Ombudsman but there is scope for the ACT to appoint its own Ombudsman) and the three Electoral Commission members as independent Officers of the Legislative Assembly. In addition, the Government has flagged an intention to introduce legislation to establish an integrity commission and there are indications that any commissioner/s would also be an Officer of the Assembly.

The Speaker has substantial powers in relation to the Officers of the Legislative Assembly, including:

- appointing the Auditor-General, members of the Electoral Commission and the Electoral Commissioner;
- appointing an acting Auditor-General, acting Clerk and acting Electoral Commissioner;
- suspending and retiring the Auditor-General, the Clerk and the Electoral Commissioner;
- ending the appointment of the Auditor-General, the Clerk and a member of the Electoral Commissioner (subject to certain actions of the Assembly); and
- engaging both a strategic reviewer and an independent auditor of the Auditor-General.

As part of the role in relation to these officers, the Speaker receives from each of them a declaration of their private interests.

In exercising these functions, the Speaker may receive advice from a number of sources, including the Clerk, the Solicitor-General or a private law firm, the Commissioner for Public Administration, the Ethics and Integrity Adviser and others. This advice is usually co-ordinated through the Office of the Clerk.

In addition, the Speaker appoints both the Ethics and Integrity Adviser and the Commissioner for Standards. These two positions are established though resolutions of the Assembly, with the Adviser providing confidential advice to MLAs on matters of ethics and integrity, and the Commissioner providing advice on possible breaches of the Assembly’s Code of Conduct for Members.

Speaker advocates for funding, remuneration and accountability

As part of a set of Budget protocols developed between the Executive and the legislature, the Speaker and the Clerk appear before Budget Cabinet each financial year. This gives the Speaker an opportunity to provide Budget Cabinet with details of the Assembly’s budget proposals and to advocate on behalf of the legislature. Under the provisions of the Financial Management Act 1996, where the Executive includes in the appropriation bill less than the amount requested by the Speaker, the Treasurer is required to table a statement of reasons as to why the amounts requested were not provided.

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7 Legislation enacted in 2012 created the Clerk of the Legislative Assembly as a statutory officer, and the Speaker also appoints that officer.
Following the tabling of the Office’s appropriation bill, a select committee on budget estimates is formed, and the Speaker, along with the Clerk and senior managers of the Office, appear each year to answer questions. Following the presentation of the Office of the Legislative Assembly’s annual report, the Speaker and relevant officers also appear as part of the Standing Committee on Public Accounts’ inquiry into annual reports. Both of these committee processes represent important opportunities for the Speaker and the Office to be accountable to the Assembly for the expenditure of public funds.

Under the Remuneration Tribunal Act 1995, the Remuneration Tribunal for the Territory must inquire into and determine remuneration, allowances and other entitlements to be granted to particular offices set out in the Act every year. These offices include the Speaker, Chief Minister, ministers and other Members of the Legislative Assembly, and the Clerk of the Legislative Assembly.

As part of its annual review, it has become practice for the Speaker and Clerk to appear before the Tribunal to discuss issues in relation to the matters being reviewed. It is not uncommon for the Speaker to make a submission to the Tribunal to outline issues that have arisen in relation to Members’ entitlements.

**Speaker presents petitions, introduces legislation and (occasionally) participates in debate**

In the House of Commons, the Speaker, once elected, leaves party political activities behind and, according to convention, faces future elections uncontested. In contrast, in Australia, Speakers remain party members (or independents) and have to recontest elections if they wish to remain a Member of parliament. In the ACT this means that some activities of a Member continue notwithstanding the Member may be Speaker. Although not common, several Speakers have presented petitions to the Assembly, recognising that they are still expected to represent their constituents.

Similarly, some occupants of the position have chosen to present legislation, although the majority of bills have related to the function of the Assembly (Table 3).

**Table 3: Bills presented by Speakers relating to administration of the legislature**

<table>
<thead>
<tr>
<th>Assembly</th>
<th>Bill Name</th>
<th>Act No</th>
<th>Introduced by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fifth</td>
<td>Legislative Assembly (Broadcasting) Amendment 2002</td>
<td>A2002-52</td>
<td>Speaker Berry</td>
</tr>
<tr>
<td>Fifth</td>
<td>Legislative Assembly Precincts Amendment 2002</td>
<td>A2002-53</td>
<td>Speaker Berry</td>
</tr>
<tr>
<td>Sixth</td>
<td>Public Sector Management Amendment 2005 (No 2)</td>
<td>A2005-42</td>
<td>Speaker Berry</td>
</tr>
<tr>
<td>Sixth</td>
<td>Legislative Assembly Precincts Amendment 2006</td>
<td>A2006-20</td>
<td>Speaker Berry</td>
</tr>
<tr>
<td>Sixth</td>
<td>Legislative Assembly (Members’ Staff) Amendment 2008</td>
<td>A2008-38</td>
<td>Speaker Berry</td>
</tr>
</tbody>
</table>
Speaker hosts citizenship functions

In the Sixth Assembly, Speaker Wayne Berry introduced a practice of inviting Canberrans who had recently received Australian citizenship, along with their families, to attend a function at the Legislative Assembly comprising light refreshments, a tour of the Assembly building and a question and answer session with MLAs and the Speaker.

These events are held up to four times a year and introduce new citizens to the workings of the Legislative Assembly. Last financial year, 183 new citizens participated in these events.

In addition, as part of a wider engagement strategy, the Speaker asks MLAs to nominate community groups within the ACT community who they consider would be interested in coming to the Assembly to learn more about its role and functions. Like the citizenship ceremonies, the Speaker offers light refreshments, a tour of the Assembly building and an opportunity to meet and discuss with all MLAs matters of interest to the community groups.

Speaker appoints legal arbiter

Under standing order 213A, the Assembly may order documents to be tabled in the Assembly, and where the Executive refuse to provide the document on the basis that they claim a privilege and a Member disputes such a claim, the Speaker is required to appoint an independent legal arbiter who will adjudicate on the competing claims.

Under the standing order, the Speaker must appoint a retired Supreme Court, Federal Court or High Court Judge. In this Assembly, the Speaker has appointed two independent legal arbiters. One of the arbiters was a retired Supreme Court Judge from NSW (who declined the Executive’s claim for privilege), and another was a retired Supreme Court Judge from the ACT (who upheld the Executive’s claim of privilege).

Conclusion

While the position of Speaker may be best known for calling the chamber to order and ejecting disorderly Members, as can be seen from the above, the Speaker performs a myriad of other important roles and functions. And this is in addition to all the activities s/he may do to represent his or her constituency.

In his book *Gavel to Gavel*, the former Speaker of the NSW Legislative Assembly, Kevin Rozzoli AM, also highlights another less heralded role—what he terms a ‘pastoral role’. This is where the Speaker, because of the level of experience and respect often held by the Speaker, is called upon to give confidential advice on personal matters where a Member is in need of objective and experienced advice that the Member may not wish to discuss with their party colleagues.

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8 In the Seventh Assembly, the then Speaker presented the Legislative Assembly (Office of the Legislative Assembly) Bill 2012 which provided for the establishment of the Office of the Legislative Assembly and gave greater effect to the separation of powers principle by clarifying the administrative and legislative framework that applies to the support agency of the legislature and to enshrine in law its independence from executive government.
Former speaker Rozzoli sums up what he attributes to be the characteristics of being a good Speaker. It is:

..a combination of intelligence, study, authority, compassion, diligence, patience, good humour, the ability to take advice and, above all, an innate sense of humanity, fairness, impartiality and respect for others.