

DWH Brief in Opposition

Exhibit 3 - 3

(excerpts)

Standard Code of Parliamentary Procedure
Alice Sturgis – 4th Ed.

Chapters 1 and 2
Significance and Principles of
Parliamentary Procedure
(pages 1-10)

Chapter 1

THE SIGNIFICANCE OF PARLIAMENTARY LAW

Procedure is more than formality. Procedure is, indeed, the great mainstay of substantive rights. . . . Without procedural safeguards—liberty would rest on precarious ground and substantive rights would be imperiled.

William O. Douglas¹

The history of liberty has largely been the history of observance of procedural safeguards.

Felix Frankfurter²

Thus two justices of the Supreme Court of the United States voice this vital fact—both our freedom and our rights can exist only if they are safeguarded by sound procedures, rigidly enforced.

Parliamentary Law Safeguards Rights

When Winston Churchill, during the abdication crisis in 1936, rose before a shocked House of Commons to discuss the constitutional question before a final decision was made, the House was in a hostile temper. A burst of disapproval greeted the great statesman. Churchill set his pugnacious jaw and, as the uproar subsided, declared:

“If the House resists my claim [to speak] it will only add more importance to any words that I may use.”

Here in the mother of parliaments, which has lent its name to the system of rules by which assemblies are conducted, we see at work procedural safeguards and the fundamental principles of democratic discussion. Here is the right of free and fair debate, the right of the majority to decide, and the right of the minority to protest and be protected. Here also is a demonstration that

the violation of rights in assemblies lends weight to the cause of the suppressed.

Here is the essence of the democratic procedure of a free assembly, whether a professional society, a political organization, a labor union, or a social club—a procedure based on what Thomas Jefferson called “equal and exact justice to all.”

Any right is only as strong as the procedures that enforce it. To vote by secret ballot is a fundamental right, but it is meaningless unless supported by procedures that ensure equal opportunity to vote, freedom of choice, absolute secrecy, and honesty in counting. Even though this right to vote has procedural safeguards, it still is meaningless if they are not observed.

Parliamentary law is the procedural safeguard that protects the individual and the group in their exercise of the rights of free speech, free assembly, and the freedom to unite in organizations for the achievement of common aims. These rights, too, are meaningless, and the timeless freedoms they define can be lost, if parliamentary procedure is not observed.

One of the basic concepts of freedom is the right of people to join together to achieve their common purposes. This concept includes the right to assemble and to organize, to propose ideas, to speak without fear of reprisal, to vote on proposals, and to carry out the decisions of the group. Parliamentary law provides the procedures that give reality to these democratic concepts. Parliamentary procedure is not an end in itself. It is, rather, the guardian of the freedom to band together, to discuss, to decide, and to act.

What Is Parliamentary Law?

Parliamentary law is the code of rules and ethics for working together in groups. It has evolved through centuries out of the experience of individuals working together for a common purpose. It provides the means of translating beliefs and ideas into effective group action. It is logic and common sense crystallized into law, and is as much a part of the body of the law as is civil or criminal procedure. The rules of parliamentary procedure are found both in common law and in statutory law.

The common law of parliamentary procedure is the body of principles, rules, and usages that has developed from court de-

isions on parliamentary questions, and is based on reason and long observance. The common law of parliamentary procedure applies in all parliamentary situations except where a statutory law governs.

The statutory law of procedure consists of statutes, or law, relating to procedures that have been enacted by federal, state, or local legislative bodies. These rules of parliamentary procedure apply only to the particular organizations covered by the law.

Parliamentary procedure is easy to learn, because it is essentially fairness and common sense. It gives confidence and power to those who master it, and it enables members and organizations to present, consider, and carry out their ideas with efficiency and harmony.

It is true that parliamentary law can be used to obstruct the will of the majority as well as to implement it—but this can happen only when a majority of the members are ignorant of their parliamentary rights.

What Organizations Must Observe Parliamentary Law?

Deliberative bodies, such as business, cultural, religious, social, fraternal, professional, educational, labor, civic, scientific, medical, and governmental organizations, are subject to the principles of common parliamentary law. All profit and nonprofit corporations and associations and the boards, councils, commissions, and committees of government must observe parliamentary law.

International and national parliaments, congresses, and state legislatures have developed complete sets of special rules to meet their own specialized needs, and most of these rules differ sharply from those of common parliamentary law. Therefore, these bodies are not subject to common parliamentary law.

Clarence Cannon, former member of Congress and parliamentarian of the House of Representatives, explains why the rules of Congress are not suitable for other bodies to use:

These rules of Parliament and Congress are designed for bicameral bodies, generally with paid memberships,

meeting in continuous session, requiring a majority for a quorum, and delegating their duties largely to committees. Their special requirements . . . have produced highly complex and remarkably efficient systems of rules peculiar to their respective bodies, but which are, as a whole, unsuited to the needs of the ordinary assembly.³

When Must Organizations Observe Parliamentary Law?

The courts hold that all deliberative groups, with the exception of state, national, and international governmental bodies, must follow general parliamentary law whenever they are meeting to transact business. If, however, a group meets solely for other purposes—for example, social or educational—it is, of course, not subject to parliamentary rules.

Even a small group—for example, a finance committee or a board of education—must observe parliamentary law. However, the procedure in such groups is usually more informal than it is in a large convention.

When a group meets for the purpose of presenting proposals, discussing them, and arriving at democratic decisions, parliamentary procedure is not only helpful but indispensable. In all organizations the rules of procedure must be observed if the actions of the assembly are to be legal.

Where Parliamentary Rules Are Found

The four basic sources of the parliamentary rules governing a particular organization, arranged in the order of their rank, are:

1. Law. The law, consisting of the common law of parliamentary procedure and the statutes enacted by federal, state, or local governments, is the highest source of parliamentary rules for any organization.

2. Charter. The charter granted by government to an incorporated organization ranks second as a source. The charter

granted by a parent organization to a constituent or component unit of the organization ranks next to its charter from government.

3. Bylaws and Rules. Any provisions of the bylaws of a parent organization that regulate the constituent or component units of the organization rank ahead of the bylaws adopted by the units. The bylaws, or the constitution and bylaws, and other adopted rules of an organization rank next.

4. Adopted parliamentary authority. The book adopted by an organization as its authority on all procedural questions *not* covered by the law or its charters, bylaws, or adopted rules completes the sources of the parliamentary rules governing an organization. A parliamentary authority is a compilation of the parliamentary rules from all of these sources, assembled and organized for convenient reference.

A parliamentary authority suited for adoption (*a*) explains the principles and procedures that are based on long-time parliamentary usages and accepted practices; (*b*) summarizes and interprets the common law of parliamentary procedure as determined by court decisions and the law contained in statutes applicable to particular organizations; and (*c*) presents practical ideas developed by leading organizations for efficient operation.

If there is a conflict between sources, the higher-ranking source prevails. For example, a charter must not conflict with the law; bylaws must not conflict with either the law or the charter.

Organizations also have the right to adopt rules that supplement or change the less fundamental provisions of parliamentary procedure. None of these adopted rules may conflict with any rule of higher rank. For example, a voluntary organization cannot adopt a rule requiring six months' notice for a resignation, because common law gives a member the right to resign at any time.

Requirements for a Parliamentary Authority

Each organization adopts, as a parliamentary authority, a code that governs the procedures of the organization in all situations

not covered by rules from a higher source. Because of its importance to the organization, the parliamentary authority should be chosen with great care.

A parliamentary authority should be so clear and simple that anyone can understand it. It should be organized so that reference to the rules is quick and accurate, and it should be so complete that no other book or research will be needed. It should omit needless or outmoded procedures but must include all current, practical, businesslike procedures. It must present parliamentary law so accurately that the courts will uphold any action taken according to the rules it states. If the rules of the adopted parliamentary authority do not conform to the law, the organization that follows it may find itself in legal difficulties.

This *Standard Code* has been written to meet these standards, drawing its strength and completeness from the broad experience and sound judgment of leaders in many fields. It is truly a cooperative effort, for it embodies and reflects the experience and wisdom of hundreds of organizations and innumerable individuals. These leaders and organizations have contributed to this code because of their conviction that voluntary organizations are the highest fulfillment of democracy.

Chapter 2

FUNDAMENTAL PRINCIPLES OF PARLIAMENTARY LAW

A knowledge of the basic principles of parliamentary law enables one to reason out the answers to most parliamentary questions. A thorough understanding of these principles clarifies the entire subject of parliamentary procedure. When one understands the basic principles, it is easy to become familiar with the rules because most of them follow logically from the principles.

These basic principles are so simple and familiar that we may fail to recognize their importance. They are the same principles on which democracies are based and seem almost self-evident.

The most important principles of parliamentary procedure are those that follow.

The Purpose of Parliamentary Law

The purpose of parliamentary procedure is to facilitate the transaction of business and to promote cooperation and harmony. The philosophy of parliamentary law is constructive—to make it easier for people to work together effectively and to help organizations and members accomplish their purposes.

Parliamentary procedure should not be used to awe, entangle, or confuse the uninitiated. Technical rules should be used only to the extent necessary to observe the law, to expedite business, to avoid confusion, and to protect the rights of members.

Two basic procedural rules have developed to assure that the simplest and most direct procedure for accomplishing a purpose is observed. First, motions have a definite order of precedence, each motion having a fixed rank for its introduction and its consideration. Second, only one motion may be considered at a time.

Equality of Rights

All members have equal rights, privileges, and obligations. Every member has an equal right to propose motions, speak, ask questions, nominate, be a candidate for office, vote, or exercise any other privilege of a member. Every member also has equal obligations.

The presiding officer should be strictly impartial and should act promptly to protect the equality of members in the exercise of their rights and privileges.

Majority Decision

The majority vote decides. The ultimate authority of an organization is vested in a majority of its members. This is a fundamental concept of democracy.

A primary purpose of parliamentary procedure is to determine the will of the majority and see that it is carried out. By the act of joining a group, a member agrees to be governed by the vote of its majority. Until the vote on a question is announced, every member has an equal right to voice opposition or approval and to seek to persuade others. After the vote is announced, the decision of the majority becomes the decision of every member of the organization. It is the duty of every member to accept and to abide by this decision.

When the members of an organization select officers, boards, or committees, and delegate authority to them, this selection and delegation should be by the democratic process of majority vote.

Minority Rights

The rights of the minority must be protected. Democratic organizations always protect certain basic rights belonging to all members. The right to present proposals, to be heard, and to oppose proposals are valued rights of all members, although the ultimate authority of decision rests with a majority, except when a higher vote is required. The members who are in the minority on a question are entitled to the same consideration and respect as members who are in the majority.

The minority of today is frequently the majority of tomorrow. A member of the majority on one question may be in the minority on the next. The protection of the rights of all members, minority and majority alike, should be the concern of every member.

The rights of absentees also must be protected.

The Right of Discussion

Full and free discussion of every proposition presented for decision is an established right of members. Each member of the assembly has the right to speak freely without interruption or interference provided that the rules are observed. The right of members to "have their say," or to "have their day in court," is as important as their right to vote.

The Right to Information

Every member has the right to know the meaning of the question before the assembly and what its effect will be. The presiding officer should keep the pending motion clearly before the assembly at all times and, when necessary, should explain it or call on some member to do so. Any motion and its effect should be explained if there are members who do not understand it. Members have the right to request information on any motion they do not understand so that they may vote intelligently.

Fairness and Good Faith

All meetings must be characterized by fairness and by good faith. Trickery, overemphasis on minor technicalities, dilatory tactics, indulgence in personalities, and railroading threaten the spirit and practice of fairness and good faith. If a meeting is characterized by fairness and good faith, a minor procedural error will not invalidate an action that has been taken by an organization. But fraud, unfairness, or absence of good faith may cause a court to hold any action invalid.

Parliamentary strategy is the art of using legitimately the parliamentary principles, rules, and motions to support or defeat a proposal. It includes, for example, such important factors as

timing, wording of proposals, choice of supporters, selection of arguments, and manipulation of proposals by other motions. Strategy, ethically used, is constructive; however, if it involves deceit, fraud, misrepresentation, intimidation, railroading, or denial of the rights of members, it is destructive and actually illegal.

In 1776 John Hatsell, the famous British parliamentarian, wrote, "Motives ought to outweigh objections of form." The interpretations of the courts make it clear that the intent and overall good faith of the group are of more importance than the particular detail of procedure used in a given instance. The effectiveness and, in fact, often the existence of an organization are destroyed if its officers or members condone unfairness or lack of good faith.