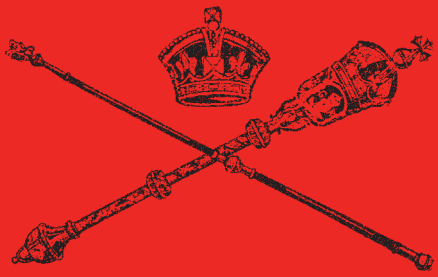

The Table

THE JOURNAL
OF THE SOCIETY OF
CLERKS-AT-THE-TABLE
IN
COMMONWEALTH PARLIAMENTS

VOLUME 87
2019

£15.00

The Table

THE JOURNAL OF
THE SOCIETY OF CLERKS-AT-THE-TABLE
IN
COMMONWEALTH PARLIAMENTS

EDITED BY
LUKE HUSSEY

VOLUME 87
2019

THE SOCIETY OF CLERKS-AT-THE-TABLE
IN COMMONWEALTH PARLIAMENTS
HOUSE OF LORDS
LONDON SW1A 0PW

The Table 2019

ISBN 0-904979-44-X
ISSN 0264-7133

CONTENTS

EDITORIAL

This year's edition of *The Table* first sees Colin Lee, a Principal Clerk in the UK House of Commons, consider the challenges faced at Westminster in the 1880s of reforming Supply proceedings (the method by which the House of Commons made provision for the statutory authorisation of public expenditure subject to annual control). In a period of great reform for other aspects of House of Commons procedures, the article considers why reforms to Supply faltered, and why they were needed in the first place. This is done by way of the analysis of the problems and the contributions to the response to them by Archibald Milman, Second Clerk Assistant in the Commons from 1871 and Clerk Assistant from 1886, in his fifth appearance in this publication.

Andrew Makower, Clerk of Legislation in the UK House of Lords (and a former editor of this Journal), writes about Queen's Consent. Last considered in *The Table* for 1952, the article provides a welcome update on what happens when a bill approaches Third Reading and Clerks have to determine whether it touches The Queen's prerogative or interests in such a way that She should be asked to place them at Parliament's disposal for the purposes of the bill. The article considers the procedure, the practicalities and whether Consent is simply now a formality.

Jocelyn McCauley, a Committee Clerk in the Ontario Legislative Assembly, provides an article about the attempts by the government of Ontario to change the City of Toronto's electoral structure during the campaign period for elections to that City's council. Toronto's municipal election is the fourth largest in North America, behind Los Angeles, Mexico City and New York, and larger than most provincial and territorial elections in Canada, and this article considers the legislative attempts to change the number of wards during the campaign, the role of the Speaker, the interpretation of the Canadian Charter of Rights and Freedoms, and the court cases instigated as a result of the government's approach.

In a prelude to this year's comparative study, Michael Tatham, Clerk of the Legislative Assembly of the Northern Territory of Australia, writes about the challenges faced in that Assembly of who could form an official Opposition. The 2016 General Election in the Northern Territory returned more non-party Members who could not form a government than Members of a political party who also could not form a government. The article considers the role of the Opposition in the Assembly, the benefits of being deemed the Opposition, and

the steps taken to determine who should be considered it.

William Wong, Deputy Parliamentary Counsel in the Ontario Legislative Assembly, writes about the history of the provision of security for the Assembly in Ontario, and the evolution from the use of the Ontario Provisional Police to the establishment of the Legislative Protective Service, moving responsibility for its operations from the Executive to the Legislature. The article considers the incidents, reviews and case for changing how the Assembly was protected, as well as the evolving responsibilities of the Speaker in this regard.

Catherine Cornish, Clerk Assistant (Procedure) in the Australian House of Representatives, discusses the impact of section 44 (i) of the Constitution of Australia on the House of Representatives as it brought about five by-elections in 2018, on the back of two in 2017 (as reported in last year's edition of *The Table*). Section 44 (i) forbids any person who is subject or citizen of a foreign power from being chosen or sitting as a senator or a member of the House of Representatives. The provision had been rarely engaged until mid-2017, and Catherine considers why it has now become such an issue, the impact of the by-elections on the House of Representatives, and the steps that have since been taken to address the problem.

Linda Kolody, Deputy Clerk in the Yukon Legislative Assembly, writes the final article of this year's journal recounting the curious incident of the Government Caucus in the Yukon Legislative Assembly voting as a bloc to defeat the motion for Second Reading of a Government Bill, and explores why they ended up taking such a step.

As ever, this edition also includes the usual interesting updates from jurisdictions and the comparative study on the role of the official Opposition in assemblies, the definition of such a group, the rights of the Opposition and the support—financial or otherwise—provided to the official Opposition by parliamentary authorities. It also includes reviews of books which, in their own way, explain the history and practices of the UK Parliament. Charles Robert, Clerk of the Canadian House of Commons, considers in detail *Essays on the History of Parliamentary Procedure, in Honour of Thomas Erskine May* (edited by Paul Evans), a collection of seventeen essays by current and former Westminster clerks, as well as academics, which explore Erskine May's career, the history of the Treatise which bears his name, the history of the Standing Orders of the House of Commons and the reform and development of parliamentary practices during May's professional life and beyond. Matthew Hamlyn, a clerk in the UK House of Commons, reviews *Exploring Parliament* (edited by Cristina Leston-Bandeira and Louise Thompson), and Ayeesha Bhutta, a clerk in the UK House of Lords, reviews the eighth edition of *How Parliament Work*s by Robert Rogers and Rhodri Walters (edited by Nicolas Besly, former editor of *The Table*, and Tom Goldsmith). Both books are designed to be textbooks

aimed at explaining how Westminster works to students of British politics, as well as to all who need, and want, to know more about both the House of Commons and House of Lords in the UK.

I am grateful to all those who have contributed articles, updates and reviews from the Commonwealth and hope it makes for interesting reading.

MEMBERS OF THE SOCIETY

Australia

Senate

John Begley was appointed Usher of the Black Rod/Chief Operating Officer on 17 September 2018. The former Usher of the Black Rod, Brien Hallett, commenced a period of leave on 31 July 2018 pending his retirement on 22 January 2019.

Australian Capital Territory Legislative Assembly

Max Kiermaier retired as Deputy Clerk and Sergeant-at-Arms. **Julia Agostino** was appointed in January 2018 as his replacement.

Hamish Finlay was appointed to the position of Manager, Committee Support Office, replacing **Andrew Snedden.**

New South Wales Legislative Assembly

In February 2017 **Helen Minnican** was appointed as Clerk of the Legislative Assembly. **Leslie Gonye** was appointed as Deputy Clerk, after acting in those roles since September 2016.

South Australia House of Assembly

Paul Collett retired in October 2018, having joined the House of Assembly in 1995, and served in multiple roles including Serjeant-at-Arms since 2005 until his formal retirement in January 2019.

Victoria Legislative Council

Andrew Young, Clerk of the Legislative Council, became Clerk of the Parliaments after a period as Acting Clerk of the Parliaments. This occurred upon the end of a period of accumulated leave for the former Clerk of the Parliaments and Clerk of the Legislative Assembly, **Ray Purdey**.

Canada

House of Commons

On 8 February 2018, **Maxime Ricard** was appointed Acting Deputy Principal Clerk (without Table duty) in the Parliamentary Information Directorate until 29 June 2018.

On 12 February 2018, **Michelle Tittley,** Acting Deputy Principal Clerk (without Table duty) assumed new responsibilities as Manager, Planning and Advisory Services, with Finance Services.

On 3 July 2018, **Suzie Cadieux** was promoted to the role of Acting Deputy Clerk (without Table duty). Ms. Cadieux is currently assigned to the Committees and Legislative Services Directorate for the period of one year.

Senate

Nicole Proulx, Interim Clerk of the Senate and Clerk of the Parliaments, retired in January 2018, and was replaced in that role by **Richard Denis**, who had served as Deputy Law Clerk and Parliamentary Counsel in the House of Commons.

Marie-Ève Belzile, who was previously a Procedural Clerk in the Committees Directorate, was appointed Deputy Principal Clerk, Committees Directorate in March 2018.

Dr Heather Lank, formerly Principal Clerk of the Chamber Operations and Procedure Office, was appointed Parliamentary Librarian in June 2018.

Catherine Piccinin, who was previously Acting Principal Clerk, Table Research, was appointed Principal Clerk, Chamber Operations and Procedure Office following Dr. Lank's departure from the Senate.

Till Heyde, formerly Deputy Principal Clerk, Chamber Operations and Procedure Office, became Acting Principal Clerk, Table Research.

Adam Thompson, formerly a Procedural Clerk in the Committees Directorate, became Acting Deputy Principal Clerk, Chamber Operations and Procedure Office.

Jacqueline Kuehl, the Senate Law Clerk and Parliamentary Counsel, left the Senate in July 2018, returning to the Department of Justice.

Michel Bédard, who was previously the Assistant Law Clerk and Parliamentary Counsel, was appointed Acting Deputy Law Clerk and Parliamentary Counsel following Ms. Kuehl's departure. Subsequently, in early 2019, Mr. Bédard accepted the position of Deputy Law Clerk and Parliamentary Counsel at the House of Commons.

Suzie Seo, Assistant Law Clerk and Parliamentary Counsel, left the Senate in September 2018, taking a position of Legislative Counsel, Ministry of Attorney General, Government of British Columbia.

Gérald Lafrenière, formerly the Principal Clerk, Parliamentary Exchanges and Protocol, was appointed Acting Director, Governance and Strategic Planning, in the Office of the Chief Corporate Services Officer in July 2018.

Jodi Turner, previously Chief of Staff to the Clerk of the Senate and Clerk of the Parliaments, was appointed Acting Principal Clerk, Parliamentary Exchanges and Protocol.

Alberta Legislative Assembly

Robert Reynolds, Q.C., Clerk of the Legislative Assembly, retired at the end of September 2018. Mr. Reynolds was the seventh Clerk of the Legislative Assembly of Alberta. Prior to his appointment, Mr. Reynolds had served the Assembly and Members through various roles in the Parliamentary Counsel Office since 1993.

British Columbia Legislative Assembly

Craig James, Clerk of the Legislative Assembly, was placed on administrative leave with pay and benefits by the Legislative Assembly on 20 November 2018.

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees, was appointed Acting Clerk of the Legislative Assembly by the Legislative Assembly on 22 November 2018, until further notice.

Prince Edward Legislative Assembly

Charles MacKay, Clerk of the Legislative Assembly of Prince Edward Island, announced in August 2018 his intention to retire 30 March 2019. On 28 November 2018, **Joseph Jeffrey** was appointed as the new Clerk of the Legislative Assembly, effective 30 March 2019. Mr. Jeffrey has worked at the Legislative Assembly since 2012, most recently as the Director of Corporate Services.

India

Lok Sabha

The term of **Snehlata Shrivastava** as Secretary General of the Lok Sabha came to an end on 30 November 2018.

Rajasthan Legislative Assembly

Dinesh Kumar Jain replaced **Prithvi Raj** as the Clerk-at- the-Table till 30 April 2018.

West Bengal Legislative Assembly

Jayanta Koley, Secretary of the Legislative Assembly, was promoted to become a District Judge on 7 December 2018. **Abhijit Som** was appointed Secretary of the Assembly on 10 December 2018.

New Zealand House of Representatives

In December 2018 **Rafael Gonzalez-Montero**, former Deputy Clerk of the House of Representatives, was appointed as the General Manager of Parliamentary Service. The role commenced on 28 January 2019.

United Kingdom

House of Lords

Lieutenant-General David Leakey CMG, CVO, CBE retired as Gentleman Usher of the Black Rod in February 2018. He was replaced by **Sarah Clarke OBE**.

National Assembly for Wales

Siwan Davies was appointed as the new Director of Assembly Business in February 2019. She has been a clerk-at-the-table at the Australian House of Representatives, the Queensland Parliament, and National Assembly for Wales.

ARCHIBALD MILMAN AND THE FAILURE OF SUPPLY REFORM, 1882–1888

COLIN LEE
Principal Clerk, UK House of Commons

Introduction

The 1880s saw more wide-ranging and enduring reforms to the procedure of the House of Commons than any decade before or since. However, Supply proceedings—the method by which the House of Commons made provision for the statutory authorisation of public expenditure subject to annual control—were largely by-passed by reform. The one reform directly concerned with Supply failed to curb the potential for Supply to be used for time-wasting. The more imaginative proposals for reform by delegating responsibility for Supply from a Committee of the whole House to subordinate committees were rejected. This article examines the barriers to reform, why Supply was in need of reform in the 1880s and why reform proposals failed, focusing particularly on the analysis of the problems and the contributions to the response to them by Archibald Milman, Second Clerk Assistant from 1871 and Clerk Assistant from 1886.

"The core and kernel of the work of the House of Commons": the mystique of antiquity

Both John Hatsell in the late eighteenth century and Thomas Erskine May in the middle years of the nineteenth traced the process by which the House of Commons secured control over public expenditure. Hatsell saw control over expenditure through appropriation as integral to "that new system of government" established through the Glorious Revolution "for the better securing the rights, liberties, and privileges of the people of this country".[1] Erskine May also described the "progressive influence of the Commons in granting Supplies" and saw the function of the Commons in controlling expenditure as integral to political liberty.[2] The procedures by which the House of Commons exercised such control reflected this sense. An order of

[1] J Hatsell, *Precedents of Proceedings in the House of Commons … Vol III Relating to Lords, and Supply* (London, 1785), p 147

[2] T E May, *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (hereafter *Treatise*) (1st Edition, London, 1844), pp 316–20; C Lee, "May on Money: Supply Proceedings and the Functions of a Legislature", in P Evans, ed, *Essays on the History of Parliamentary Procedure in Honour of Thomas Erskine May* (Oxford, 2017) (hereafter "May on Money"), pp 171–87, at p 172

1667 had established that each stage of the process needed separate notice and must begin first with discussion in a Committee of the whole House. Hatsell considered these rules "wise and prudent" because in such a Committee "every Member may speak as often as he finds it necessary; and is not confined, in delivering his opinion, by those rules which are to be observed when speaking in the House, and which, in matters of account and computation, would be extremely inconvenient, and would necessarily deprive the House of much real and useful information."[3] The ability to speak more than once was considered integral to the role of the Committee of Supply in getting to the bottom of details of expenditure. Milman argued in 1888 that the continuing possibility of conversational exchanges was "very often very useful".[4]

The Crown's request for Supply was embodied in the speech from the Throne at the start of each session, usually in late January or early February, which was followed by a formal motion to grant Supply and the establishment of the Committees of Supply and Ways and Means.[5] The Army and Navy Estimates were then presented to the House within 10 days of the conclusion of the debate on the Address, with the Civil Estimates following "somewhat later" in the Session.[6] The Budget, which usually took place in April, embodied a single plan for the planned expenditure and proposed taxation for the financial year just begun, reflecting the procedural requirement that the taxation authorised not exceed the amounts granted by way of Supply.[7]

The Committee of Supply proceeded by consideration in turn of each Vote, with priority accorded in debate to amendments to reduce expenditure, which could identify reductions as being in respect of individual items of expenditure set out in the Estimates.[8] Once resolutions were reported from the Committee of Supply, there was a further opportunity for debate and amendment on report, although debate at this stage was seldom lengthy.[9] The resolutions on expenditure were then mirrored by resolutions of the Committee on Ways and Means to authorise releases from the Consolidated Fund, and then embodied in

3 Hatsell, *Precedents*, p 127

4 *Report from the Select Committee on Estimates Procedure (Grants of Supply)*, HC (1888) 281, Q 558.

5 *Treatise* (8th Edition, 1879), pp 326–27; HC (1888) 281, QQ 159–160, 225

6 House of Commons, Papers of the Clerk of the Journals (hereafter PCJ), Miscellaneous Precedents and Memoranda on Procedure, Volume 4, p 174; HC (1888) 281, QQ 147–48 and p 65

7 HC Deb, 24 March 1863, col 1860; Hatsell, *Precedents*, p 143; *Treatise* (8th Edition), p 618

8 HC (1888) 281, QQ 3, 448, 452. This was the result of a change introduced in 1857 and modified in 1868 and still referred to in 1888 as "the new rules": see "May on Money", p 176; *Treatise* (8th Edition), p 621; HC (1888) 281, Q 453

9 *Treatise* (8th Edition), pp 630–33; *Report from the Select Committee on Public Business*, HC (1878) 268, QQ 25, 39; HC (1888) 281, QQ 203–05

Ways and Means Bills, the last of which appropriated expenditure to specified purposes.[10]

In addition to the main financial business to be concluded before the end of a session, there were three additional elements of Supply proceedings which had to be completed at an earlier point. First, before the end of March, the House approved the votes on Army and Navy personnel numbers and Votes 1, which covered pay, which were generally an occasion for debates on each force.[11] These Army and Navy pay votes, once authorised, could be used for all expenditure on the respective services pending approval of the remaining forces Votes later in the Session.[12] The second additional element comprised Supplementary Estimates, also requiring approval before the end of March, for additional expenditure arising in the financial year about to end. The use of Supplementary Estimates was frequently criticised, but became an ever-present feature of Supply by the 1880s and a further opportunity for debate.[13] The third additional element consisted of the Civil Votes on Account to authorise an advance of money prior to approval of the Estimates.[14] Although a necessity of the financial timetable, they too gave rise to sometimes wide-ranging debate. Milman observed that "As a matter of rule, sanction should not be sought for a new policy in a Vote on Account, and as a matter of tactics, it is most unwise to include any strenuously opposed Vote therein".[15]

These complex and deep-rooted procedures were treated with great reverence in the House, with Supply sometimes referred to as the "peculiar", "great" or "main" function of the House.[16] In 1872, Robert Lowe, the Chancellor of the Exchequer, claimed that "the business of Supply was the core and kernel of the work of the House of Commons".[17] William Gladstone, Prime Minister from 1868 to 1874 and again from 1880, frequently expressed similar views and followed Hatsell and Erskine May in his conviction that "the finance of the

10 *Treatise* (8th Edition), pp 633, 637; HC (1888) 281, QQ 78–80

11 HC (1888) 281, QQ 23–24; *Report from the Select Committee on Business of the House*, HC (1871) 137, QQ 201–02. On the use of other Votes for this purpose; HC Deb, 13 March 1882, cols 851–52

12 HC (1888) 281, QQ 2, 163; HC Deb, 13 March 1882, cols 852, 856. A Vote on Account for the Army and Navy was exceptionally required before a dissolution: see The National Archives (hereafter TNA), T 168/25, Papers of Sir Edward Hamilton, Financial Procedure before a Dissolution (1895)

13 PCJ, Miscellaneous Precedents and Memoranda on Procedure, Volume 4, p 174; "May on Money", p 177

14 "May on Money", p 177; HC (1888) 281, Q 2

15 A Milman, *Decisions from the Chair, 1895*, pp 100–01

16 "May on Money", p 173; *Report from the Select Committee on the Business of the House*, HC (1854) 212, Q 152

17 HC Deb, 26 February 1872, col 1060

country is intimately connected with the liberties of the country" and lay "at the root of English liberty":

> "if the House of Commons can by any possibility lose the power of the control of grants of public money, depend upon it your very liberty will be worth very little in comparison".[18]

On an earlier occasion, Gladstone argued that "Supply was the most important Business of the House; and, therefore, it ought to be the last to be submitted to gagging laws".[19]

Writing in the 1960s, Gordon Reid observed how the "antiquity" of financial procedures "evoked profound respect, even awe" and, when coupled with rulings, precedents and technical jargon, "produced a curious mystique".[20] This attitude towards the machinery of Supply was arguably already in place by the late nineteenth century and served as an important barrier to reform.

"Parliamentary superstitions": grievances before Supply

Another barrier lay in what May termed "the ancient constitutional doctrine that the redress of grievances is to be considered before the granting of supplies".[21] This doctrine was historically associated with a demand of the Commons for the consideration of petitions (and later legislation) prior to the completion of Supply, as Milman noted:

> "The Edwards and the Henrys only summoned Parliament in their extremity, as soon as the subsidies were voted grievances were forgotten. Parliament was dissolved, and who could tell when the next Session would be? So the Commons insisted on their Petitions being first entertained by the Crown, and until satisfactory answers had been accorded, the grant of Supply was withheld."[22]

In the nineteenth century, however, the doctrine was, in May's words, "represented by the practice of permitting every description of amendment to be moved on the question for the Speaker leaving the chair, before going into the committee of supply, or ways and means".[23]

This practice had originated in 1811, as a direct response to a proposal by

18 "Mr Gladstone at Hastings", *The Times*, 18 March 1891, p 11. On the context of this speech, see C Lee, "Archibald Milman and the 1894 Finance Bill", *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments* (2018), pp 10–39, at pp 20–21.

19 HC Deb, 26 October 1882, col 260

20 G Reid, *The Politics of Financial Control: The Role of the House of Commons* (London, 1966), p 13. See also "May on Money", p 187

21 *Treatise* (8th Edition), p 613

22 PCJ, Miscellaneous Precedents and Memoranda on Procedure, Volume 4, pp 98–99, "Origins, in 1811, of the Practice of Moving Amendments on Going into Supply", February 1896, at p 98

23 *Treatise* (8th Edition), p 613

Spencer Perceval, the Chancellor of the Exchequer and Leader of the House, to secure precedence for orders of the day, including Orders for Committee of Supply, over notices of motions on Mondays, Wednesdays and Fridays. Notices of motions had by then assumed priority over orders of the day and, while the distinction between orders and notices by no means equated to the difference between Government and backbench business, it was a barrier to the progress of Supply. After the proposal was agreed to in respect of Mondays and Fridays, the Whig Thomas Creevy "as a protest against the change, and as a proof that the new Rule could be evaded, moved the first recorded Amendment to the Question that Mr. Speaker do leave the Chair on going into Supply".[24] The consequence of this approach was that, in May's words, "every Supply night throughout the Session may, if a Member thinks fit, be converted into a Notice night".[25]

The use of amendments on going into Supply increased gradually from the 1820s to the early 1870s, so that, in Milman's words, "It had now become impossible to predict on any day at what hour the Committee of Supply would be allowed to commence its labours, or whether it would be allowed to begin them at all".[26] The use of the device often meant, as Lowe put it, that "Supply got postponed till the fag-end of the Session, when hon. Members were fatigued with their labours, and little disposed to watch the Votes with jealousy".[27] Erskine May's long campaign to remove or at least to curb the mechanism of delaying the start of the Committee of Supply in order to debate miscellaneous matters under the guise of grievances has been charted elsewhere.[28] After halting efforts to limit such amendments from 1872 through sessional orders, a Report from a Select Committee in 1878 held out hope for what Milman termed "the appropriation of Monday to the unimpeded consideration of the Estimates, and the relegation to Friday of miscellaneous amendments on Supply".[29] However, the Government was forced to make concessions to secure agreement to change, which blunted its effectiveness.[30] It was only in 1882,

[24] P Fraser, "The Growth of Ministerial Control in the Nineteenth-Century House of Commons", *English Historical Review*, Vol 75, No. 296 (1960), pp 444–63, at pp 446–47; "May on Money", pp 172–73; "Origins, in 1811, of the Practice of Moving Amendments on Going into Supply", pp 98–99; P Seaward, "Orders of the Day", in Reformation to Referendum: Writing a New History of Parliament, available online at historyofparliamentblog.wordpress.com.

[25] HC (1871) 137, Q 285

[26] "Origins, in 1811, of the Practice of Moving Amendments on Going into Supply", p 99

[27] "May on Money", p 180

[28] *Ibid*., pp 171–75, 179–84

[29] A Milman, "The Block in the House of Commons", *Quarterly Review*, Volume 146 (1878) (hereafter "The Block"), pp 181–202, at p 198

[30] "May on Money", p 181

in the light of the wider problems of obstruction considered previously,[31] and examined later in this article in the specific context of Supply, that a Standing Order was agreed effectively limiting such amendments.

Milman, writing in the 1890s, did little to disguise his frustration at how the mantra of "grievances before Supply" had held back reform and perhaps also with what it showed about the attitudes of Members' towards procedural change more generally:

> "Few Parliamentary superstitions were more deeply rooted than the dogma that, on every occasion on which the House should be invited to go into Committee of Supply, every Member had an indefeasible right, if he chose to insist on it, to bring forward any alleged grievance by moving an Amendment to the Question 'That Mr. Speaker do now leave the Chair', no matter how urgent might be the demands on the Exchequer, or for how many years that particular expenditure had been already sanctioned by Parliament … It was an article of the popular faith that this privilege had been asserted since the days of Simon de Montfort, and had been established from the very dawn of Constitutional Government. Like some other statements of doctrine, it contained a core of truth wrapped round with many curious developments and strange misapprehensions."[32]

Milman argued that efforts "to obtain regularity in business" such as those agreed in 1811 and 1882 were "denounced as fatal to freedom of debate … in exactly the same strain of exaggerated fear" and observed of the 1882 limitations:

> "These changes, although moderate and practical, were each and all actively combatted, and no coercion less terrible than the knout of obstruction would have compelled the House to loose its grip on a practice that had in some way come to be regarded as founded on an acknowledged constitutional principle."[33]

"Inability to prevent waste of public money": Supply and the concern over public expenditure

Supply also lay at the intersection of two central preoccupations of late Victorian politics—control of public expenditure and control over time in the House of Commons. Public expenditure remained remarkably low for much of the nineteenth century. Detailed financial scrutiny including in the

[31] C Lee, "Archibald Milman and the procedural response to obstruction", *The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments* (2015) (hereafter "Procedural response"), pp 22–44, at pp 30–33, 37–39; "May on Money", pp 181–84

[32] "Origins, in 1811, of the Practice of Moving Amendments on Going into Supply", p 98

[33] *Ibid*., pp 98, 99

Committee of Supply, pioneered by Joseph Hume, was seen as playing a role in constraining expenditure in the period after 1815.[34] Reformers continued to believe that franchise reform would exert further downward pressure on public expenditure through a new generation of more disinterested MPs, and that spirit informed the partially successful retrenchment of Gladstone's first administration from 1868 to 1874.[35] It also affected perceptions of the role of Supply proceedings, Gladstone believing that the House's "primary duty" was "considering, criticizing, and curtailing, if they could, the demands made by the Government for the Public Service".[36]

This constraint took place alongside sustained economic growth, so that central government expenditure fell as a proportion of gross national product from 12 per cent in 1830 to six per cent in 1880, a period of constraint that enabled the United Kingdom to remain a lightly-taxed nation when public spending in other advanced European countries was rising.[37] However, there was a marked reluctance to view increasing national prosperity as a basis for increased public expenditure or increased taxation. In his 1864 Budget speech, Gladstone contended that "public economy now remains just as much the bounden duty of this House as it was before we commenced our commercial legislation, or reaped the benefit of our vast railway system, or before the country achieved the vast material, and the considerable social and moral progress, of which we are now the rejoicing witnesses".[38]

In these circumstances, the increase in public expenditure which took place particularly after 1874 was greeted with dismay. In 1881, Gladstone pointed out that between 1859 to 1873, the revenue had increased by three per cent per annum and expenditure by 1.33 per cent per annum, whereas thereafter expenditure increased at over two per cent a year while revenue was often falling. The period from 1874 to 1877 he characterised as "the setting sun of our prosperity—the last years of rather fading brilliancy, as compared with

34 W McCullagh Torrens, *Reform of Procedure in Parliament to clear the Block of Public Business* (London, 1881), pp 8–9; V Cromwell, "The Problem of Supply in Great Britain in the Nineteenth Century", *Études sur l'Histoire des Assemblées d'États* (Paris, 1966), pp 1–12, at pp 5–6; P Harling, *The Waning of 'Old Corruption': The Politics of Economical Reform in Britain, 1779–1846* (Oxford, 1996), pp 12–14, 172–73.

35 M Taylor, *The Decline of British Radicalism, 1847–1860* (Oxford, 1995), pp 30, 344–46; E F Biagini, *Liberty, Retrenchment and Reform: Popular Liberalism in the Age of Gladstone, 1860–1880* (Cambridge, 1992), pp 93–95, 106–07

36 HC Deb, 24 November 1882, col 74

37 M Daunton, *Trusting Leviathan: The Politics of Taxation in Britain 1799–1914* (Cambridge, 2001), pp 63–66, 105–08. See also Sir Norman Chester, *The English Administrative System 1780–1870* (Oxford, 1981), pp 72–74

38 HC Deb, 7 April 1864, col 587

the economical results of former periods".[39] In his 1886 Budget, Sir William Harcourt admitted that the upward trend had continued. He contrasted the lack of growth in Civil Service expenditure with the dramatic expansion in spending on the Navy and the Army, which together had grown by £4.8 million in two years, and also with the upward path of education spending.[40] For 1886–87, he proposed a further increase in Army and Navy expenditure of £1.5 million.[41] However, he also used his Budget statement, in his own words, to "enter my protest" against the pace of "expenditure on the Army and the Navy" which "is going on, not in arithmetical, but in geometrical progression, and with the sort of accelerated velocity like that of a falling body".[42]

There was to some extent a recognition that expenditure increases were driven by policy, and that—contrary to the hopes of reformers—an expanding electorate increased spending pressures. The marked increases in Army and Navy expenditure in the later 1870s, from an annual average around £26 million to one around £32 million, and the associated sense of a Government playing fast and loose with the nation's finances, may have been instrumental in the Conservative defeat in the 1880 general election.[43] However, thereafter, politicians were struck more by the electoral pressure for increased spending. As the Conservative Lord George Hamilton was later to note, from the mid-1880s, the domination of middle-class parsimony was overcome by the influence of newly-enfranchised voters who favoured large defence establishments.[44] W H Smith thought that his ability to secure value for money in Army expenditure was limited in part by "popular clamour": "We are governed by this Democracy and we must somehow make these masses, these rulers of ours, know what the Army is wanted for, what strength ought to be maintained and what the Men, the Officers & the Materiel really cost".[45] Reginald Palgrave, Clerk Assistant until 1886 and Clerk of the House thereafter, thought that "the yearly estimates are not … the creation of the brain of a Chancellor of the Exchequer, or of a

39 HC Deb, 4 April 1881, cols 581–82

40 HC Deb, 15 April 1886, cols 1650–51

41 *Ibid*, col 1652

42 *Ibid*, col 1704

43 HC Deb, 28 April 1879, cols 1277–78; H W Lucy, *A Diary of Two Parliaments: The Disraeli Parliament* (London, 1886) (hereafter Lucy, *Disraeli Parliament*), pp 478–81; "The Tories were beaten on finance first and foremost": E F Biagini, "Popular Liberals, Gladstonian finance and the debate on taxation, 1860–1874" in E F Biagini and A J Reid, eds, *Currents of Radicalism: Popular Radicalism, organised labour and party politics in Britain, 1850–1914* (Cambridge, 1991), pp 134–62, at p 162.

44 Lord George Hamilton, *Parliamentary Reminiscences and Reflections, 1886–1906* (London, 1922), p 60

45 Reading University Special Collections, HAM PS12/32, Papers of W H Smith, copy of letter from Smith to Sir Lintorn Simmons, 30 January 1887

permanent officer of the Treasury; but of public opinion—a power even more despotic".[46] Expenditure increasingly reflected multi-year capital commitments, often inherited from the previous administration. As Palgrave put it, "the Opposition which had denounced the design of a monster ironclad may, after all, have to superintend its completion".[47]

Faced with what was routinely portrayed as a rising tide of public expenditure, the House of Commons was often seen as at fault for failing to check it.[48] May shared this view, considering that the Commons had "laid itself open to the charge of too facile an acquiescence in a constantly-increasing expenditure".[49] The former Financial Secretary to the Treasury Henry Fowler argued in a letter to *The Times* in January 1888 that "inability to prevent waste of public money" was one of "the pre-eminent characteristics of Committee of Supply."[50] A supportive editorial in that newspaper the same day stated that "It is a matter of common knowledge" that Parliamentary control over public expenditure "is exceedingly defective, and that the attempts occasionally made in the House of Commons to give it reality end generally in great waste of public time, achieving no economy of public money".[51] When Palgrave was asked by Fowler during proceedings of the select committee subsequently established whether the current practice of the Committee of Supply "secures an effective financial supervision by the House of Commons over the expenditure of the Government", he replied "I can hardly say that it does", adding that "the House cannot effectively criticise the details of expenditure".[52]

The procedures of the House were seen as contributing to this failure: "All that the House tries to do is to squabble over amounts, and as that needs no ability of any kind, but simply a peremptory and dogmatic disposition, the whole business falls into the hands of mere talkers."[53] Amendments to reduce expenditure were seldom passed. As Palgrave put it, "Amputation even of a single limb from the gross body of the estimates, is a most rare operation in the

46 R Palgrave, "Parliament and the Public Moneys", *Quarterly Review*, Vol 141 (1876), pp 224–50, at p 229.

47 R Palgrave, *The House of Commons: Illustrations of its History and Practice* (2nd Edition, London, 1878), p 100; Palgrave, "Parliament and the Public Moneys", p 229. See also the perceptive analysis by Arthur Balfour in respect of Army expenditure in 1889: *Salisbury–Balfour Correspondence: Letters exchanged between the Third Marquess of Salisbury and his nephew Arthur James Balfour 1869–1892* (Hertfordshire Record Society, 1988), pp 281–84.

48 Cromwell, "The Problem of Supply", pp 10–11

49 T E May, *Constitutional History of England* (1912 Edition, 2 Volumes), Volume 1, p 376

50 *The Times*, 18 January 1888, p 7

51 *The Times*, 18 January 1888, p 9

52 HC (1888) 281, QQ 273, 280

53 *The Times*, 18 January 1888, p 9

House of Commons".[54] In 1888, Milman identified 14 successful amendments to reduce expenditure over the preceding 20 years.[55] He nevertheless suggested that this was not the whole story: "The effective reductions made by the Committee are few; but the great influence of the Committee is the impression that its debates make upon the Government", with Departments reacting in subsequent years by reducing items of expenditure that had given rise to objections previously.[56] Milman's position was endorsed to some degree in the select committee's conclusions that the agreed reductions "by no means represent the full economical effect of the examination to which the Votes are subjected and … discussion in the Committee of Supply has had a considerable effect in preventing increases in expenditure."[57]

"The favourite playground and arena of the parliamentary obstructive": Supply and parliamentary time

Some small gains in bearing down on public expenditure might have felt worthwhile were it not for the sense that Supply was integral to another great preoccupation of late Victorian politics, namely the misuse of what Milman termed "that precious commodity—Imperial Time".[58] Proceedings in the House were pervaded by the sense among Members, encapsulated by Joseph Cowen in 1877, that compared with the past, "they had more work, more talk, and no more time".[59] The House was nevertheless reluctant to reach decisions about the competition for time this created. As Lord Hartington noted in 1879:

> "much of the delay in the progress of Public Business is owing, undoubtedly, to the fact that this House undertakes to do a great deal more Business than it is possible for it to do … Until the House very seriously considers the manner in which it conducts its Business, and is willing to undertake a much greater control over the Business which comes before it, we shall find this a constantly increasing evil."[60]

Palgrave described how a parliamentary session fell into three phases: the first

54 Palgrave, "Parliament and the Public Moneys", p 225

55 HC (1888) 281, pp 66–68

56 *Ibid.*, QQ 435, 493, 538–40, 547, 549

57 *Ibid.*, p iii

58 A Milman, "The House of Commons and the Obstructive Party", *Quarterly Review*, Volume 145, No. 289 (1878) (hereafter "The Obstructive Party"), pp 231–57, at p 233. For an excellent exploration of this theme, see R A Vieira, "The Time of Politics and the Politics of Time: Exploring the Role of Temporality in British Constitutional Development during the Long Nineteenth Century" (2011, PhD Thesis, McMaster University); R A Vieira, *Time and Politics: Parliament and the Culture of Modernity in Britain and the British World* (Oxford, 2015)

59 HC Deb, 23 July 1877, col 1677. For other examples of such views, see Vieira, "The Time of Politics and the Politics of Time", pp 56–58

60 HC Deb, 14 July 1879, cols 332–33

phase to the end of March was dominated by the debate on the Address and then the essential financial business to be concluded by that time; the second phase centred on the Government legislative programme; only in the third concluding phase did the House turn its attention to Supply for the new financial year.[61] Robert Lowe had claimed in 1872 that "it was not legislation, but Supply, which lengthened the Session".[62] A former Chairman of Ways and Means later wrote that "the machinery of our financial system … practically determines the period of the session".[63] This may have been true in a formal sense—passage of the Appropriation Bill was the closing act of a session[64]—but in reality the length of a session and of sittings within a session, as well as a session's productivity, were the result of the interplay between Supply proceedings and Government legislative business, and between both those types of Government business and the time available for non-Government business.

Monday and Thursday were set aside for Government business on Orders of the day, covering legislative business and the Committees of Supply and Ways and Means, with the other three days in effect reserved for independent Members.[65] Supply was notionally set down for Fridays, but it was assumed that no substantive progress would be made, with priority accorded to backbenchers, which, as Milman put it, "made Friday practically a notice day".[66] This use of Fridays was another expression of what Henry Lucy termed "the constitutional maxim which concedes to Englishmen an opportunity of grumbling when they are about to pay money".[67] It was a regular source of Ministerial complaint that only two days each sitting week were set aside for the transaction of Government business. Lowe, for example, stated in 1872:

> "The nation expected the House to look after the public finances and keep the expenditure within bounds; it expected the House, which had gathered to itself almost all power in the country, to exercise that power for the good of the country, and that not merely by cross-examining and tormenting Ministers, but by passing the laws which public opinion and the exigencies of the present times imperatively demanded. Those were the duties which the country expected from the House of Commons … They threw on the Government the whole of their legislation and the whole of their finance, and

61 HC (1888) 281, QQ 5–7

62 HC Deb, 26 February 1872, col 1061

63 L Courtney, *The Working Constitution of the United Kingdom and its Outgrowths* (London, 1901), p 157

64 HC (1888) 281, Q 80

65 HC (1871) 137, Q 3

66 "Origins, in 1811, of the Practice of Moving Amendments on Going into Supply", p 99

67 H Lucy, *A Popular Handbook of Parliamentary Procedure* (London, 1886), p 67

allotted to them only two-fifths of the available time."[68]
Gladstone later remarked that "Independent Members had Question time on five days of the week, Tuesdays for Motions, Wednesdays for Bills, and Fridays for Notices on going into Supply … The result was that two days a-week were given to the Government, and more than three days to independent Members."[69] In 1878, Milman echoed this position, writing that "the poor Government are allowed but two days a week to transact all the business of this mighty nation, and out of this scanty allowance they have to find opportunities for every regular attack on their policy, and to receive every minor assault that can be made upon them on Supply".[70]

The restriction of Government business to two days a week did not last throughout a Session. It was quite routine for Governments to seek precedence on additional days, and sometimes all days, in the latter part of a parliamentary session, serving as a death sentence for Private Members' Bills, a step that was met with ritual condemnation matching the ritual complaints of Ministers about the initial division of time.[71] It was also not uncommon for precedence to be granted earlier in the Session for particular Government business. However, the competition was not simply between Government time and the time for independent Members, but also about the use of Government time. This was an era when Government Bills were far from assured of adequate time to progress. As Milman noted in 1878, "It is many years since the full tale of measures submitted by the Government has been completed".[72] In seeking precedence to conclude Supply, the Government was also expected to provide a list of its own measures with which it would not proceed. Thus, extending Supply was frequently about delaying Government Bills. When in April 1877, Charles Stewart Parnell spoke at length about the costs of feeding deer in Richmond Park, his real interest lay in preventing the next item of business—the Public Health (Ireland) Bill—from being reached.[73] Milman referred to "the tactics commonly pursued of raising trivial Amendments to non-contentious Votes with the object of throwing back the consideration of contentious Votes to the end of the Session in order to squeeze out Government Bills".[74]

68 HC Deb, 26 February 1872, cols 1093–94
69 HC Deb, 24 November 1882, col 63
70 "The Obstructive Party", p 232
71 See, for example, HC Deb, 7 August 1876, col 705. For consideration of this trend, see P Seaward, "Standing Order No. 14", in Reformation to Referendum: Writing a New History of Parliament
72 "The Obstructive Party", p 231
73 Lucy, *Disraeli Parliament*, pp 203–04
74 PCJ, Miscellaneous Precedents and Memoranda on Procedure, Volume 3, p 155, "Procedure (Draft Rules 1889)"

During an era when it was said that "the main object of the Opposition was to waste Government time",[75] Supply proceedings lent themselves to such time-wasting. They were prone to "guerrilla" action or skirmishes by Members even before the onset of obstruction.[76] The detail of the Estimates provided ample material for orderly contributions, as Palgrave noted:

> "The estimates for our Civil Departments alone form a volume of 600 pages, closely packed with figures, dates, and names, arranged in heads and sub-heads, and studded with every species of typographical symbol, conducting the eye to a phalanx of foot-notes and side-notes".[77]

Thus, as Milman conceded, "debate upon the supplies for the current year might easily be carried on, without any breach of order, into the middle of the next century".[78] If debate flagged, an amendment for reduction could be tabled, which was treated as a new proposition simply if it proposed a reduction for a different item or by a different amount.[79] A Home Rule Member wrote:

> "The estimates … are the favourite playground and arena of the parliamentary obstructive … Every official, from the Lord Chancellor down to the office-boy and the char-woman have to be mentioned in the ponderous estimates; and on each of these items a debate can be raised which may last for any length of time, and which may raise the loftiest and most complicated questions of general policy."[80]

This arena was used to the full during the first three sessions of the Parliament elected in 1880. Obstruction by the Irish Home Rule party was motivated by the desire, in words of one of its practitioners, to assert that "if the House of Commons would not give its attention to the Irish national claims and the Irish agricultural grievances, the House should not be allowed to go on with any other business".[81] But the Session of 1880 also saw the emergence of an "ominous combination" between the so-called Fourth Party—in effect a rival unofficial Opposition under the leadership of Lord Randolph Churchill—and the Home Rule party to obstruct Supply proceedings.[82] In the following Session, the

[75] Earl of Midleton, *Records & Reactions 1856–1939* (London, 1939), p 57. The statement related to the Conservative Opposition to Gladstone's second administration

[76] See W White, *The Inner Life of the House of Commons* (London, 1898, 2 Volumes), Volume 2, pp 1–4, 43 (with reference to the Commons career of the future Lord Salisbury)

[77] Palgrave, "Parliament and the Public Moneys", p 243

[78] Milman, "The Block", p 185

[79] HC Deb, 26 October 1882, col 259; "The Obstructive Party", p 256

[80] T P O'Connor, *Gladstone's House of Commons* (London, 1885), p 308

[81] J McCarthy, Preface to W White, *The Inner Life of the House of Commons* (London, 1898, 2 Volumes), Volume 1, p xv

[82] O'Connor, *Gladstone's House of Commons*, pp 74–77. The Estimates being delayed in 1880 were those of the previous Conservative administration, leading to accusations of "rank hypocrisy": *The Scotsman*, 18 August 1880, p 6

House had only considered 50 of 193 Votes by 1 August, leading one Member to claim that "there was not a Session for the last quarter of a century or more where Supply had been so hopelessly in arrear".[83] Gladstone noted in 1882 that "there had been frequent occasions of difficulty in Committee of Supply, and it would be in the recollection of the House that 'All-Night Sittings' had to be held in consequence of the disposition which had been shown to retard Business."[84]

"Impossible to prevent debate": the limitations of the 1882 reforms

The sustained and systematic obstruction of the early 1880s led to Gladstone's Government, and then the House, finally agreeing a wide-ranging series of procedural reforms.[85] The functions and procedures of the Committee of Supply were almost completely untouched by these reforms. Gladstone followed May in seeing the solution to the problems of Supply in limiting the possibility of amendments to the question on the Speaker leaving the chair prior to the Committee of Supply. Gladstone contended that such amendments had led to "an invasion" of the time for Supply "which has crippled and obstructed the House in the performance of its greatest duty—namely, that of careful examination and criticism of the Government proposals in Supply".[86]

Any hope that repelling that invasion might allow for the efficient despatch of Supply was soon ended. The number of days spent in Committee of Supply increased, reaching 36 in 1884.[87] In that year, the House spent 233 hours in Committee of Supply, including 62 hours after midnight; this was one fifth of the total time used in the Session, and one-third of the time after midnight.[88] This expansion of time took place despite the fact that Irish Home Rule obstruction ebbed after 1882 in the absence of new coercive legislation for Ireland.[89] One Home Rule MP wrote at the time that "obstruction as a Parliamentary policy has passed from the Parnellites to the Conservatives",[90] and a Conservative later recalled that Churchill and the Fourth Party proved to be "unique masters of

83 HC Deb, 1 August 1881, col 375

84 HC Deb, 26 October 1882, col 259

85 The most thorough account of the reforms remains J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form* (3 volumes, London, 1908). See also E Hughes, "The Changes in Parliamentary Procedure, 1880–1882", in R Pares and A J P Taylor, eds, *Essays presented to Sir Lewis Namier* (London, 1956), pp 290–319; Vieira, "The Time of Politics and the Politics of Time", pp 175–202; C Lee, "Procedural response", pp 36–41

86 HC Deb, 27 November 1882, col 145

87 A A Taylor, *Statistics Relative to the Business and Sittings of the House* (House of Commons Journal Office, undated), p 226

88 HC (1888) 281, QQ 6–7

89 O'Connor, *Gladstone's House of Commons*, p 272

90 *Ibid.*, p 305

parliamentary obstruction".[91] The fact that Supply proceedings started earlier did not mean they finished earlier. Instead, those proceedings were strung out for even longer to ensure the Government did not have more time for legislating. As Joseph Chamberlain noted in 1884, "the Government gave more attention to Supply in the earlier part of the Session than had ever been given before; but what was the result? The more time they gave the more talking there was and the less work done; and so they might go on."[92] The same applied when the Conservatives were again in power from 1886 and when it was Liberals and Irish Home Rule MPs who were motivated to minimise the time available for legislation. In both 1887 and 1888, the number of days in Committee of Supply reached 38.[93]

The growth of time in Committee of Supply was not simply explained by the wish to delay Government legislation. There was also a displacement effect, whereby the debates which had taken place on motions or amendments relating to the Speaker leaving the Chair instead took place in the Committee of Supply itself, an effect which May had to some degree anticipated.[94] Debate in Supply became even more about policy rather than money, as Leonard Courtney, the Chairman of Ways and Means, noted in 1888: "There is extremely little financial criticism in Committee of Supply. The criticism is mainly as to the policy of the objects meant to be supported by the Votes asked for."[95] The 1888 Committee described how the Committee of Supply had itself become the repository of debate on "subjects of interest which might otherwise escape the attention of the House", including "much irrelevant and unimportant matter".[96]

The House was to some degree locked in a vicious circle, whereby the time spent on Supply was strung out to delay Government legislation, the Government took private Members' time to make progress with its legislation, and the loss of private Members' time meant that those Members were more likely to use Supply to debate other subjects.[97] The 1888 Committee concluded that the rapid increase in the time used on Supply "may be attributed to some extent to the continued encroachments upon the time of private Members owing to the growing pressure of Government business".[98]

Palgrave made a surprising proposal in response to these problems. Noting that the restrictions introduced in 1882 had "tended to increase the amount

91 Midleton, *Records & Reactions*, p 57
92 HC Deb, 4 July 1884, col 39
93 Taylor, *Statistics Relative to the Business and Sittings of the House*, p 226
94 "May on Money", pp 184–85
95 HC (1888) 281, Q 665. See also *ibid.*, Q 275
96 *Ibid.*, p iii. See also *ibid.*, Q 380
97 *Ibid.*, QQ 154–55
98 *Ibid.*, p iv

of political debate in Committee", he asked the select committee to consider "whether a return to the former practice of the House might not be advantageous, and that political Debate now so largely raised in Committee of Supply, should be taken, so far as possible, on the Motion that the Speaker should leave the Chair for that Committee". To make this proposal workable, he suggested that a Standing Order be introduced to provide "that subjects of Debate raised in the House shall not be re-debated in Committee of Supply", with the latter confined to expenditure.[99] In effect, he sought a return to the concept of debating grievances *before* Supply, rather than as part of debate *in* Supply.[100] Members of the Committee immediately picked up on the difficulty of drawing a line, and Palgrave conceded that "it is extremely difficult to exclude discussion of the intention for which money is granted, from discussion of the amount of that grant and of the way in which it is to be expended".[101] He then suggested that separation might be "reached by a business arrangement, rather than by precise rule".[102] Fowler bluntly suggested that the proposal was "retrograde", to which Palgrave responded that the change made in 1882 "was intended to accomplish a more prompt and business-like despatch of Supply".[103]

The Clerk of the House's proposal found its most vehement critic in the Clerk Assistant. Milman began his evidence by making plain his opposition to Palgrave's idea. He saw no meaningful line that could be drawn between policy and expenditure. For example, spending on the Irish Constabulary raised issues about the size of the force, and "that would involve the condition of Ireland and large questions of policy".[104] In Committee of Supply, "you cannot prevent questions being raised, and debate arising which involve the policy of the Vote as well as the financial fitness of the Vote; I think it is impossible to prevent debate, other than mere economical debate."[105] The "cross-over" between policy and spending rendered the two indistinguishable in debate.[106] Palgrave's proposal would also recreate the uncertainty over the timing of financial business which the 1882 change had been designed to end:

> "Of course the recent policy of the House has been to ensure the House getting into Committee at a fixed hour; and if we were to reverse that policy and multiply opportunities of debate of that kind on going into Committee, we should fall back into the old evil of the House meeting at three o'clock,

99 *Ibid.*, QQ 380, 382–85, 397–98
100 *Ibid.*, Q 399
101 *Ibid.*, Q 387
102 *Ibid.*, QQ 389, 405
103 *Ibid.*, Q 394
104 *Ibid.*, Q 434
105 *Ibid.*, Q 445
106 *Ibid.*, QQ 488–89

and being quite uncertain whether the discussion of the Estimates would begin at seven o'clock or 11 o'clock."[107]

Palgrave's proposal was not pursued by the 1888 Committee, which focused instead on another path to limiting the time taken on the floor of the House by the Committee of Supply.

"By devolving upon other bodies a portion of its overwhelming tasks": the first attempts to devolve Supply

One of the guiding precepts of procedural reform in the 1880s was "devolution", whereby some of the functions of the House or a Committee of the whole House would be devolved to a Committee meeting apart from the main sitting of the House. May had advocated grand committees or standing committees for the committee stage of certain bills since the late 1840s.[108] Drawing on private discussions with May and Speaker Brand, Gladstone produced a paper for his Cabinet in October 1880 making the case for devolution as the best response to obstruction: "By devolving upon other bodies a portion of its overwhelming tasks, the House of Commons may at once economise its time, reduce its arrears, and bring down to a minimum the inducement to obstruct; for obstruction will then be only the infliction of suffering, whereas now it is the frustration of purpose, the defeat of duty."[109]

As early as 1871, May had been asked whether his proposed subject Standing Committees might have the relevant classes of Estimates referred to them. He was firmly opposed to the idea: "I think a Committee of Supply should certainly be a Committee of the whole House, and nothing short of that".[110] However, in 1880, John George Dodson, a member of Gladstone's Cabinet, proposed that the functions of the Committee of Supply should be devolved to select committees, with the House considering only proposals to reduce Estimates made by those committees, and the remainder voted "*en bloc*".[111] This idea gained no support from Gladstone, perhaps reflecting May's influence and known opposition, although the case for the devolution of Supply to three Standing Committees so that "the House would be saved a great waste of time in Committee of Supply" was made in November 1884 by the Liberal

[107] *Ibid.*, Q 434

[108] W R McKay, "The Principle of Progress: May and Procedural Reform", in Evans, ed, *Essays on the History of Parliamentary Procedure*, pp 158–70

[109] TNA, CAB 37/3/60, pp 1–3, "Obstruction and Devolution", 23 October 1880

[110] HC (1871) 137, Q 98

[111] TNA, CAB 37/3/60, p 11: Dodson to Gladstone, 9 November 1880. See also C Lee, "A Road not Taken: Select Committees and the Estimates, 1880–1904" in Evans, ed, *Essays on the History of Parliamentary Procedure* (hereafter "A Road not Taken"), pp 269–84, at p 277

backbencher Henry Fowler.[112]

Alongside Fowler, Lord Randolph Churchill was developing his own ideas for consideration of the Estimates by select committees in 1884 and 1885. His main concern seems to have been to allow for scrutiny, rather than formal consideration, of the Estimates by such committees.[113] As a member of Salisbury's short-lived administration in late 1885 and early 1886, Lord Randolph pressed his colleagues to consider procedural reforms.[114] In January 1886, he met Palgrave and Milman to discuss possible reforms, and they prepared some draft rules.[115] These probably formed the basis for proposals considered by Cabinet, but if any reform proposals relating to Supply had been considered, they did not find their way into the Cabinet's final suggestions published on 1 February 1886 in the name not of Churchill but of Sir Michael Hicks Beach, the Leader of the House.[116] The "principal reform" in this paper was for all bills other than taxation and supply bills to stand referred to "Public Bill Select Committees" unless the House otherwise ordered.[117]

The Conservative administration fell within days, but Gladstone's incoming Government sought to build on its proposals. Gladstone hoped to develop a cross-party approach through the vehicle of an unusually large Select Committee and by emphasising procedural reforms rather than changes to disciplinary and penal powers.[118] With Gladstone preoccupied with Irish Home Rule, the more procedurally radical Chancellor of the Exchequer Sir William Harcourt took the lead in the Committee on behalf of the Government and was determined that "the question of how the Estimates should be dealt with" would be considered by the Committee.[119] The Committee's work was played out against the background of the Liberal schism over Home Rule: the Chairman was Lord Hartington, a former senior Liberal Cabinet Minister who had refused to serve in the new administration due to his opposition to Home Rule; in addition to Harcourt, Cabinet representation included Joseph Chamberlain, who remained active in the Committee after his resignation over Home Rule; the Conservative frontbench representation was led by Hicks Beach and W H Smith, with the more reform-minded Churchill not among the members. A Cabinet Committee

112 HC Deb, 17 November 1884, col 1881

113 "A Road not Taken", pp 273–74

114 TNA, CAB 37/18/19, Churchill to Cabinet, undated but early 1886

115 Cambridge University Library (hereafter CUL), Add Ms 9248/11/1268, Palgrave to Churchill, 9 January 1886; CUL, Add Ms 9248/11/1282, Palgrave to Churchill, 11 January 1886

116 TNA, CAB 37/18/48, pp 1–3

117 *Ibid.*, p 1; British Library (hereafter BL), Add MS 44200, fo 186, Harcourt memorandum for Gladstone

118 HC Deb, 22 February 1886, cols 921–26

119 HC Deb, 26 March 1886, col 47

met to draw up proposals for the Committee.[120] These sought to expand on the Conservative paper of 1 February, envisaging that "such portions of the Estimates as the House may direct" as well as Bills would be referred to much larger committees than had been envisaged in the Conservative proposals.[121] From the outset, Hicks Beach made clear to Harcourt that he "objected (1) To the idea of dividing the House into 5 great Bureaux, instead of appointing the Public Bill Committees which we had proposed (2) to the reference of the Estimates to one of those Bureaux."[122]

The Committee's formal minutes of proceedings and final report provided what Hartington later admitted was "a very imperfect impression of what took place to anyone who was not present", but fortunately he later provided a detailed account of the Committee's deliberations for Churchill.[123] Hartington recollected that W H Smith had immediately opposed the idea of referring Estimates to Standing Committees. Others were "more favourable to the principle", but thought the Cabinet's proposals were "too vague".[124] A proposal by Hicks Beach to remove the possibility of referring Estimates to Standing Committees was defeated by one vote, with two Conservatives supporting such referral, after which the Committee adopted a proposal from Chamberlain which kept the idea in play.[125] According to Hartington, "the subject did not come up again till very near the end of the proceedings of the Committee which were extremely hurried; and in fact the Committee had to a great extent lost all interest in the enquiry."[126] In part this may have been because of the distraction of the debate on the Irish Home Rule Bill, and the prospect of dissolution, but Harcourt also felt that the alterations made to the Cabinet's proposals had "destroyed their value" and made no proposals of his own.[127] It was left to Hartington himself to propose that any Army, Navy or Civil Service Vote other than the Army numbers vote could be referred to a Standing Committee and that "Resolutions of Standing Committee on such Estimates shall have the same effect as Resolutions of the Committee of Supply". This proposal was

120 The Parliamentary Archives, ERM 8, fos 264–65, Papers of Thomas Erskine May, Harcourt to May, 2 March 1886

121 TNA, CAB 37/18/48, pp 3–4. See also HC Deb, 26 March 1886, col 40

122 CUL, Add Ms 9248/12/1417, Hicks Beach to Churchill, March 1886. The proposals as provided on 22 March envisaged that all the Standing Committees could consider Estimates, rather than one of them.

123 CUL, Add Ms 9248/17/1993, Hartington to Churchill, 10 November 1886

124 *Ibid.*

125 *Report from the Select Committee on Parliamentary Procedure*, HC (1886–I) 186, p xi; CUL, Add Ms 9248/17/1993

126 CUL, Add Ms 9248/17/1993

127 *Ibid.*

defeated by 10 votes to 13.[128] Having in Hartington's words "failed to describe any manner in which Estimates should be referred, it became necessary to strike out all reference to Estimates" in the resolution of the Committee relating to Standing Committees.[129]

"That part … in which the breakdown … has been most complete": Churchill's renewed attempt to devolve Supply

On 7 June 1886, Gladstone's Government was defeated on the second reading of the Irish Home Rule Bill. The next day W H Smith wrote that "I hear there is to be a dissolution, but I also hear from Milman that the Gov. propose to take all the Supply remaining and pass some Bills, avoiding the necessity of bringing the House together in August, or of meeting before the Autumn".[130] The Conservatives were deeply concerned at the prospect of the Liberals staying in power until the autumn, and accordingly demanded an early election before Supply proceedings could be completed. The Conservatives emerged from that election as the largest party, but dependent on the support of the Liberal Unionists who had voted down Gladstone's Home Rule Bill, led by Hartington and Chamberlain, for a majority. There were two reasons, however, why Supply reform remained in prospect. The first was that Lord Randolph Churchill, the keenest advocate of such reform on the Conservative side, was now Chancellor of the Exchequer and Leader of the House of Commons.[131] The second was the peculiar ordeal of Supply proceedings in the Summer of 1886.

Having stymied Liberal plans to secure Supply before a dissolution, the Conservatives had to summon Parliament for an additional session starting in late August solely for that purpose. Churchill immediately gave notice of a motion to give precedence to the Committees of Supply and Ways and Means and proceedings on the Appropriation Bill and confirmed the intention to prorogue after that business was concluded.[132] The Conservatives hoped that the Estimates might gain a swift passage, because they reflected the policy proposals of the previous Liberal administration.[133] They were soon disabused, with both Gladstone's frontbench and the Irish Home Rule party determined to string out proceedings to gain clarity on the new Government's Irish policy.[134] The debate on the Address stretched over eleven nights. Churchill, who had so frequently

128 HC (1886–I) 186, p xxvi; CUL, Add Ms 9248/17/1993

129 *Ibid.*; HC (1886–I) 186, pp iii–vi, xxvii–xxix

130 Kent History and Library Centre (hereafter KHLC), U564/C25/6, Papers of Aretas Akers-Douglas, Smith to Akers-Douglas, 8 June 1886

131 "A Road not Taken", pp 273–74

132 HC Deb, 19 August 1886, col 90

133 *Ibid.*, col 92

134 *Ibid.*, cols 109–11

allied with Home Ruler MPs to inflict misery on Gladstone's ministry between 1880 and 1885, now professed himself appalled at their conduct, telling the Queen that "their one object is to hamper the Govt. on every question, and to degrade Parliament, & to render the transaction of public business impossible". He thought their bad behaviour was "out done, if possible" by the independent radicals, and was also strangely shocked at the behaviour of the ex-Ministers he had happily harried when he was in Opposition. Thus, "the Govt. have to contend against a kind of guerrilla warfare, sustained by different bands under different chiefs".[135] On 18 September, Churchill complained in Committee of Supply that "I am not in the least surprised that the Committee should begin to exhibit some considerable signs of impatience with the immeasurable amount of obstruction to the passing of these Estimates … all that protraction of proceedings which, I say, is almost unprecedented".[136]

Fresh from this experience, Churchill prepared a radical set of procedural reforms for consideration by the Cabinet, drawing on the proposals made in February by the previous Conservative administration, in March by Harcourt and in June by the Procedure Committee.[137] Hartington provided him with the account of the evolution of the position on Supply already cited and encouraged Churchill to pursue devolution: "I still think that my plan might be tried with some advantage; and at first in a sort of experimental way." Hartington did not think that "particular Estimates would be set apart for consideration in a Standing Committee"; he conceded that the "most important" Estimates would still be taken in Committee of Supply, but thought the remainder might be referred to Standing Committees. After an initial experiment, he thought the House could decide whether or not "it was satisfied with the delegation of Supply business to Committees and could either extend or restrict the delegation". He pointed out the value of a reserve power to refer remaining Estimates:

> "It might also be useful, in case of obstruction to have the power of moving, and with the Closure carrying, a Resolution to refer the remaining Estimates to Standing Committee."[138]

Churchill was supported in his pursuit of such a scheme by Milman, whom he met in early November while Palgrave was away.[139] Upon Palgrave's return, the Clerk and Clerk Assistant met Churchill together and continued to work on

135 CUL, Add Ms 9248/15/1739, draft letter from Churchill to Her Majesty, 31 August 1886

136 HC Deb, 18 September 1886, col 714

137 TNA, CAB/37/18/1886, Cabinet memorandum, 3 November 1886

138 CUL, Add Ms 9248/17/1993

139 CUL, Add Ms 9248/16/1963, Palgrave to Churchill, 7 November 1886: "My regret … is relieved by hearing from Milman, that he has so well supplied my place."

proposed rules, but it soon became evident that they had somewhat differing views on Churchill's scheme for devolution. While a memorandum from Palgrave to Churchill was being printed, Milman wrote directly to Churchill about his scheme for Grand Committees, stating that "I do not share Mr Palgrave's misgivings as to the practicability of establishing such bodies", but nevertheless questioning whether they would "produce useful results". Milman acknowledged the need for reform, stating that:

> "The Committee of the whole House is that part of the Parliamentary system in which the breakdown of recent years has been most complete. It is the very playground of Obstructers … Our old system worked well enough even in Committee; but now that the Parnells and the Conybeares look for support from outside, and absolutely strengthen their political position by outrages perpetrated in the House, the old practice offers too many opportunities for abuse."

However, he suggested that obstruction might also be a feature of the large Grand Committees Churchill envisaged: "The Hydra you fear, you are going to multiply by four". Milman favoured instead smaller committees, "a manageable body of men most fitted to deal with a particular branch of legislation, and not a representative microcosm with a specimen of every species in the House. You have to eliminate busybodies and get the constant and uninterrupted attention of good men."[140]

While Milman attempted to steer Churchill towards a select committee model, Palgrave launched a direct attack on the proposal that Estimates might be delegated to a subordinate committee of any kind. He shared Milman's doubts about Churchill's concept of four large Grand Committees, not least because "each Committee is to be a picture in little of the House itself". He was especially worried by the composition of the Committees and the proposed role of the Committee of Selection in nominating members, which "gives to a Committee of Selection *hostile* to the Government, a capacity for mischief of a most grave nature. The Grand Committees influenced by such a Committee might bring the Government to a standstill, especially if endowed with control over Votes of Supply."[141] Palgrave's letter to Churchill enclosing the memorandum reinforced his opposition: "Tempting as is the idea of referring Estimates to a Committee, still it contains a danger that cannot be guarded against; as 'Supply' is the life blood of the Executive, & control over the Estimates gives a hold upon the heart of a Government."[142]

140 CUL, Add MS 9248/17/2012, Milman to Churchill, 13 November 1886

141 CUL, Add Ms 9248/17/2019, Palgrave's Memorandum on Rules VI. and II. of the Draft Rules of Procedure, 12 November 1886

142 CUL, Add Ms 9248/17/2018, Palgrave to Churchill, 15 November 1886

Churchill persisted with the idea of Grand Committees and the two Clerks continued to provide assistance. On 22 November, he reported to Hartington that "Milman and Palgrave will be with me today with draft rules embodying what I should like to see carried. But I expect they will be sadly mutilated even before they reach the House of Commons."[143] His pessimism proved warranted, with his proposals largely rejected at a Cabinet meeting on 15 December. The next day Churchill confessed to the Chief Whip that a Cabinet decision had left him "desperately worried, vexed and personally embarrassed … Beach was most treacherous to me."[144] The agreed proposals on which he was then able to consult Gladstone on 17 December were thin indeed.[145] Harcourt's subsequent account to Gladstone probably helps to explain Churchill's sense of treachery by Hicks Beach, Harcourt observing that the scheme

> "substantially discards the principal reform recommended by Sir M Hicks Beach in his resolutions of Jan 86 adopted by us and carefully worked out by the Committee of the House of Commons for relieving the H. Of C. from the pressure of detailed work by the process of devolution through standing Committees … This is now apparently entirely thrown overboard by the Govt. and they simply revert to the Grand Committees of 1882 which were limited to Law and Trade the Govt. now proposing to add a third for Agriculture … the Govt. are content … to do nothing beyond that to relieve the congestion of Public business."[146]

Frustrations with his failure to make progress on procedural reform almost certainly contributed to Churchill's hasty decision to offer his resignation early in 1887.[147] Supply reform formed no part of the package of procedural reforms advanced by his successor as Leader of the House, W H Smith, that year.

"A great advantage, and a great saving of time": devolution and the 1888 select committee

From the backbenches, Churchill then led a successful campaign to establish a select committee to examine the Estimates in 1887.[148] One of his key allies in this enterprise was the Liberal Henry Fowler, who had advocated standing committees to take the place of the Committee of Supply in 1884. In January 1888, drawing on his experience on Churchill's committee, Fowler made a new proposal for three select committees which would in effect sift the Estimates

143 CUL, Add Ms 9248/17/2064, copy of Churchill to Hartington, 22 November 1886
144 KHLC, U564/C128/5, Churchill to Akers-Douglas, 16 December 1886
145 BL, Add MS 44499, fos 244–246v, Churchill to Gladstone, 17 December 1886
146 BL, Add MS 44200, fos 186–94, Harcourt Memorandum for Gladstone
147 "A Road not Taken", pp 274–75
148 *Ibid.*, pp 275–76

on an item by item basis, enabling each Class to be considered *en bloc* in the Committee of Supply.[149] The single committee of 1887 was replaced by separate committees on the Army, Navy and Revenue Departments in 1888,[150] but the proposals for reform affecting the Committee of Supply were remitted to a Select Committee on Estimates Procedure (Grants of Supply). Rather to Fowler's disappointment, few members with experience of Churchill's 1887 committee were appointed to the new Committee alongside Fowler himself and Churchill.[151] Other than Hartington, who again was Chairman, and Chamberlain, the new Committee had little continuity of membership with the 1886 Committee.

Fowler's switch of support from Standing Committees to take the place of the Committee of Supply to select committees to prepare the way for its activities foreshadowed the way in which the new Committee would face a bewildering variety of proposals from witnesses for different models of devolution. Courtney supported the Grand Committee model proposed to the 1886 Committee, at least for Civil Service Estimates, as the only way to cover both policy and expenditure and replace the Committee of Supply, but he confused the picture somewhat by suggesting the Grand Committees might hear from witnesses.[152] He did not oppose select committees to scrutinise the Estimates, but saw no hope that such smaller committees could replace the Committee of Supply.[153]

Palgrave was also supportive of select committees as a basis for scrutiny, suggesting that a select committee would be "far more effective than the Committee of Supply for economical purposes".[154] He held out some hope that select committee examination might discourage the Committee of Supply from considering expenditure matters in the same level of detail,[155] but he retained the fierce opposition to delegating the functions of the Committee of Supply previously evident in his correspondence with Churchill. Of the idea that select committees might assume those functions, he said: "Such a proposal is absolutely untenable. Lord Farnborough [Erskine May] and Mr. Speaker Denison have condemned in the strongest manner the proposal to submit, not the Estimates, but the actual Votes of Supply to any form of Select Committee."[156] He also restated publicly his opposition to Grand Committees performing those functions expressed privately to Churchill in 1886:

149 *The Times*, 18 January 1888, p 7
150 "A Road not Taken", p 276
151 CUL, Add Ms 9248/22/2838, Fowler to Churchill, 10 March 1888
152 HC (1888) 281, QQ 677–683, 694, 704, 731, 761–764
153 *Ibid.*, QQ 688–91
154 *Ibid.*, QQ 277, 281, 302, 306
155 *Ibid.*, QQ 297, 350, 351–52, 362–63
156 *Ibid.*, Q 408

> "It is my impression that the Ministers in charge of the Estimates would find that it was almost impossible to rely upon being able to carry the Votes, for which they were responsible, satisfactorily through such Committees, and that the proposal to distribute the grant of the Supply Votes among those four Committees would render that difficulty even greater."[157]

He saw "great constitutional danger" if those subordinate bodies delayed or withheld Supply and concluded, "Whilst it may be desirable to submit the Estimates to the scrutiny of a Select Committee, the actual grant of Supply should not be entrusted to any body subordinate to the House itself."[158]

It was left to Milman to offer a new case for delegating the functions of the Committee of Supply to a permanent select committee akin to the Committee of Public Accounts and which would be "carefully-nominated", an allusion to the concerns about larger grand committees he had expressed to Churchill in 1886.[159] Milman contended that "it would be a great advantage, and a great saving of time" if such a committee could consider Votes and propose those that could be agreed to without separate debate in Committee of Supply so that the decisions of the select committee would be "accepted as tantamount to a Vote in Committee of Supply".[160] The select committee would also sift the Estimates, and help focus the remaining work of the Committee of Supply on increases in expenditure or changes in responsibilities.[161] He pinpointed the weakness of the Committee of Supply judged on its ostensible purpose relating to expenditure:

> "My scheme is to save the tedium, and what seems to me the unnecessary burden of pretending to go through the whole Estimates which are voted every year in exactly the same way. The increments of the salaries of the clerks are fixed, and the number of inspectors of mines and other inspectors are fixed, but they go solemnly voting them every year."[162]

Although he allowed for the select committee's proposal to by-pass the Committee of Supply to be over-ridden by 20 Members acting in concert, he felt adoption of his proposal would save up to 15 days a session.[163] He envisaged the select committee developing a track record over several years so that its judgement on what merited further debate would be trusted by the House and "would create a confidence between the Treasury, the Departments, and the House of Commons, which would tend to facilitate business".[164] Members of the

157 *Ibid.*, Q 409
158 *Ibid.*, QQ 410–15
159 *Ibid.*, QQ 459–60
160 *Ibid.*, QQ 459, 466, 479, 537
161 *Ibid.*, QQ 459, 463–67, 469, 472
162 *Ibid.*, Q 506
163 *Ibid.*, QQ 459–72, 479, 506
164 *Ibid.*, Q 533

Committee in examining Milman, and later the Chairman of Ways and Means, were sceptical about Milman's proposals.[165] Milman acknowledged that some discussions that purported to be about expenditure were in fact "discussion for the purpose of obstruction",[166] but he did not resolve the problem that, in seeking better financial scrutiny, he ignored the reality that Supply debates were increasingly becoming a basis for wider debates on policy and administration. He offered no convincing basis for believing that the over-ride option would not be used to frustrate the operation of his scheme.

The final report firmly rejected Milman's proposal: "No examination of the Estimates by a Select Committee would be accepted by the House as sufficient or satisfactory, and as dispensing with the necessity of further discussion in the Committee of Supply." Essentially setting aside all of the options canvassed by witnesses, its final proposals almost exactly mirrored those which Hartington had outlined privately to Churchill in November 1886. The report suggested that "certain Classes of the Estimates or certain Votes" might be referred to a Standing Committee adopting the procedure of the Committee of Supply on a government motion decided by the House: "The experiment would be wholly of a tentative character, and it would depend on the confidence felt by the House in the Standing Committee, and on the duration and character of the subsequent debates in the House on the Resolutions of the Committee, whether the experiment should be extended, reduced or abandoned."[167]

Any possibility of implementation was effectively ruled out by W H Smith, Churchill's successor as Leader of the House, in March 1889:

> "No conclusion has been adopted which will be sufficient to justify the House in making any very considerable departure from the present form of procedure in Committee of Supply … It is very desirable, if possible, that questions involved in Votes of Supply should be considered by an authoritative body, which will aid the House and the Government at arriving at a satisfactory result. But no such suggestion has been made in any form that gives the slightest hope that it is likely to be accepted by the House, and, therefore, the Government are forced to fall back on the existing system."[168]

The proposals made to the Hartington Committee of 1888 found echoes in schemes prepared at various points up to 1902 by Milman and others, but none gained Government support or was put before the House.[169] A proposition very similar to Hartington's was to be tried by the Government in 1919 as

165 *Ibid.*, p 64 and QQ 677, 691
166 *Ibid.*, Q 461
167 *Ibid.*, p iv
168 HC Deb, 8 March 1889, col 1292
169 "A Road not Taken", pp 279–83

a single Session experiment, with the majority of Estimates being considered by Standing Committees, but, according to Sir Edward Fellowes, "the whole scheme soon became quite unworkable, and again and again the House had to take back into its own hands Estimates which had been referred to a Standing Committee, but which had never got reported. The experiment was not tried again after the Session of 1919."[170]

Conclusions

In February 1888, W H Smith said that he would be supporting the establishment of a select committee to examine Supply procedure "with the view of at once effecting an economy of the time of the House, and of securing a more regular and effective examination of the expenditure of the country than has taken place in recent years".[171] If these dual aims were to be achieved, some form of devolution of the functions of the Committee of Supply was probably necessary. The scheme proposed by Archibald Milman was certainly one of the most far-reaching. His solution mooted in 1888, if implemented, might have prevented the disconnect between select committees and the formal procedures for authorising expenditure that bedevilled financial procedure in the twentieth century.[172] However, the realism of his proposals can be questioned, and the very variety of different schemes for devolution suggested in the 1880s greatly vitiated their prospects for success.

More importantly, all the proposals for devolution were motivated to some degree by a proposal to improve the effectiveness with which the House of Commons or its subordinate bodies considered public expenditure, when the barriers to reform in the 1880s reflected the fact that Supply proceedings and business prefatory to it were very often about something else. In some cases, there was a genuine desire to raise policy or administrative issues. In others, the concern was to consume time to reduce time available for other things, usually Government legislation. The reform to limit amendments on going into Committee of Supply set the pattern for subsequent developments, whereby the House "changed the purpose of debate but not the procedures for it".[173] Put another way, the House sought to combine two distinct functions, and "in seeking to combine the function of scrutinising and authorising public expenditure with that of debating policy and grievances, the House of

170 HC Deb, 8 February 1919, cols 818–19; Sir Edward Fellowes, *History of the Standing Orders of the House of Commons relating to Public Business, 1833–1935,* edited by Simon Patrick, pp 103–04

171 HC Deb, 28 February 1888, cols 1655–56

172 On which, see Reid, *Politics of Financial Control*, pp 93–114; "A Road not Taken", p 284

173 Reid, *Politics of Financial Control*, p 149

Commons guaranteed dissatisfaction with the performance of both".[174]

The failure of Supply reform in the 1880s provided an essential element in the context for the very different path that was to be taken in the 1890s to overcoming the barriers that faced such reform, a different path to which Milman was to make a central contribution. Before turning to that, however, it will be important to consider another element of that context—namely, the transformation in the Conservative approach to procedural matters in the course of the 1880s and the role played by Palgrave and Milman in that transformation.

[174] "May on Money", p 187

QUEEN'S CONSENT

ANDREW MAKOWER
Clerk of Legislation, UK House of Lords

Consent in the spotlight

Recently a Private Member's Bill, passed by the Commons with cross-party support, approached Third Reading in the Lords. As usual at that stage, we considered whether it required Queen's Consent—that is, whether it touched The Queen's prerogative or interests in such a way that She should be asked to place them at Parliament's disposal for the purposes of the bill.

By this stage in proceedings this ought to have been a formal check but the Bill had been amended in both Houses and it turned out to be a real question on which different views were expressed in some swift correspondence between officials. We decided Consent was not required. A decision the other way would have had serious consequences for the Bill's passage, not because Her Majesty might have refused Consent but because of the time it would have taken to obtain it.

A few days previously, the House of Commons faced the possibility that the European Union (Withdrawal) (No. 4) Bill, a Private Member's Bill presented by the Rt Hon Yvette Cooper MP and, among others, the Rt Hon Sir Oliver Letwin MP, might be proceeded with despite Government resistance. Robert Craig, who teaches law in London and Durham, suggested in a blog post for the UK Constitutional Law Association that the Bill required Queen's Consent and that the Government could block the Bill by not seeking it. [1]

The No. 4 Bill did not in fact make any progress, in part because the Government made non-legislative concessions on some of its provisions, but these two incidents got me thinking about Queen's Consent. The topic is well documented in published guidance, including in *Guide to Making Legislation* (Cabinet Office, 2017), in a guidance note *Queen's or Prince's Consent* published by the Office of the Parliamentary Counsel (OPC) in 2018 and in *Erskine May*.[2] The OPC guidance was first published in 2013 following a Freedom of Information request; it prompted a report by the Commons Political and Constitutional Reform Committee, *The impact of Queen's and Prince's Consent on the legislative process* (2014—"the PCRC report"). And yet the topic has not

[1] R Craig, *Why Royal Consent Is Required for the Proposed Article 50 Extension Bill*, UK Law Blog (25 February 2019): https://ukconstitutionallaw.org/

[2] Sections 9.6 and 9.7, and 30.78–30.82, *Erskine May,* 25th edition (2019)

been the subject of an article in *The Table* since 1952.[3]

Consent procedure

Where a bill affects the prerogative or interest of the Crown, or the interest of the Duchy of Lancaster which is held by the Sovereign, the Consent of the Crown is required. This Consent places the Crown's prerogative, interest or both at the disposal of Parliament for the purposes of any such bill. It does not imply that the Crown approves the bill; it is distinct from Royal Assent and does not pre-empt it. Consent is required whether or not a bill was foreshadowed in The Queen's Speech: "If the Queen's consent has not been obtained or is not signified, the question on the relevant stage of a bill for which consent is required cannot be proposed".[4] The *Table* article of 1952 gave "the leading case on this subject in modern times, so far as the Lords are concerned," as the St Asaph and Bangor Dioceses Bill of 1844, which was found between Third Reading and passing to require Consent and as a result was withdrawn.

Whether Consent is required is determined by the Clerks of Legislation in the two Houses. For Government bills we are consulted by Parliamentary Counsel. The requirement for Consent may change as a bill is amended.

Consent is obtained by the Government and given on their advice. The OPC Guidance describes the process and says it takes at least 14 days. Government bills are expected to have received Consent before introduction.

Once obtained, Consent is signified to each House in turn on Third Reading. This is done normally by a Minister who is a Privy Counsellor, but occasionally in respect of a Private Member's Bill in the Commons by the Member in charge of the bill if he or she is a Privy Counsellor. In the Lords, the words used are:

> I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the ... Bill, has consented to place her [prerogative and/or interest], in so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

In the Commons the Minister merely nods when prompted by the Chair but the Votes and Proceedings record, "[Minister] signified Queen's consent, as far as Her Majesty's [prerogative and/or interest] is concerned."

A bill specially affecting the interests of the Duchy of Cornwall, which is held by the Sovereign's eldest son, requires separate Consent. When the Prince of Wales is of age, Consent is given by Him as Duke of Cornwall. The PCRC report cited a case in 1970 when the Prince of Wales gave Consent in respect of a private bill (Plymouth and South West Devon Water) and also petitioned

[3] RW Perceval and CASS Gordon, *The Queen's Consent*, Journal of the Society of Clerks-at-the-Table in Empire Parliaments (vol XXI for 1952)

[4] *Erskine May* (25th edition), p 189

against it. The Clerks of the two Houses commented that this showed "the distinction between the constitutional duty of the Prince of Wales to act on the advice of the Government in respect of his interest, and his personal position".

Consent is a Parliamentary procedure, not a legal requirement. Citing evidence from the Clerks of the two Houses, the PCRC concluded, "Consent is a matter of parliamentary procedure. If the two Houses of Parliament were minded to abolish Consent, they could do so by means of addresses to the Crown, followed by a resolution of each House. Legislation would not be needed."

There are analogous procedures in the Scottish Parliament and the National Assembly for Wales. Consent there is on a statutory footing, but not independently of Westminster. Consent is only required there if it would be required here.

The Scotland Act 1998 has this in Schedule 3:

Crown interests

7 The standing orders shall include provision for ensuring that a Bill containing provisions which would, if the Bill were a Bill for an Act of Parliament, require the consent of Her Majesty, the Prince and Steward of Scotland or the Duke of Cornwall shall not pass unless such consent has been signified to the Parliament.

Accordingly, Rule 9.11 provides that, for such a Bill, "the Parliament shall not debate any question whether the Bill be passed or approved unless such consent to those provisions has been signified by a member of the Scottish Government during proceedings on the Bill at a meeting of the Parliament.

Similar provisions apply to the National Assembly for Wales (Government of Wales Act 2006, s. 111(4), and Standing Order 26.67). There is no such provision for the Northern Ireland Assembly.

The Parliament of Canada has an analogous procedure called "Royal Consent". Consent is signified once to Parliament, rather than separately to each House.[5]

History of Consent

The practice of Queen's Consent can be traced back to the early 18th century. The Clerks of the two Houses told the PCRC, "We believe the first instance of the signification of royal consent to a public bill was on 27 February 1728", when George II in the first year of His reign gave consent in relation to a Suppression of Piracy Bill. This was only 20 years after the last time a

[5] I am grateful to colleagues in Edinburgh, Cardiff, Belfast and Ottawa for checking my facts here.

Monarch refused Royal Assent. Only six years later, on 13 Feb 1734, Samuel Sandys MP, supporting a Commons motion to prevent commissioned officers being removed by prerogative on advice of Ministers such as Robert Walpole, said: "I wish that those who now seem so tender of invading what they call the prerogative, would upon other occasions, appear as tender of invading the liberties of the people."

Dr John Kirkhope, in evidence to the PCRC, traced Prince's Consent back to the 19th century:

> "The first occasion when the consent of the Duke of Cornwall was signified was for the West of England and South Wales Drainage Company Incorporation Bill [in 1848] … It is probable that it began as a consequence of an initiative by Prince Albert who was in charge of the Duchy at the time and it was a means of protecting the financial interests of the Duchy of Cornwall."

The approach to seeking and signifying Consent has changed over the years. The article of 1952 records that prerogative Consent for a bill not in The Queen's Speech was usually sought by Humble Address, normally before introduction, though the article cited an exception from 1933 and a Ministerial statement from 1911 that "it is immaterial at what stage the assent [*sic*] of the Crown was given to a Bill". By 1989, according to the 21st edition of May, this procedure was confined to the Lords and to Private Members' Bills. Until 2014 Consent was signified at Third Reading "unless the interests involved, particularly those of the royal prerogative, are fundamental to the bill", in which case it was done at Second Reading.

The PCRC report recommended, and both Houses agreed, that Consent should always be signified at Third Reading. The PCRC argued that signifying at Third Reading would enable amendments to be accounted for. Also it would give Members longer to secure Consent and would reduce the impact of not receiving it.

Consent in practice

Queen's Consent is a matter of concern before a bill is introduced and as it approaches Third Reading. Before introduction of a government bill, I (as Clerk of Legislation in the Lords) discuss with the drafters in OPC, and with Commons colleagues, whether Consent is required. We usually reach agreement. If we could not, the casting vote would belong to the Clerk of Legislation for the House of introduction.

In the case of a Private Member's Bill, we would wait until it appeared possible that the bill would proceed as far as Third Reading and we would not necessarily consult OPC. If Consent is required, we assist the Member in charge of the bill to write to the responsible Minister, who then arranges for

Consent to be sought. The letter needs to say why Consent is required.

As each bill approaches Third Reading we check whether Consent was required. If it was, we brief a Minister, normally the Government Chief Whip, to signify it. In doing so, the Minister needs to say whether it concerns prerogative, interest or both, so we need to have established this in previous exchanges.

When is Consent required?

Consent is one of those procedures which require Clerks to engage with substance as well as process. In each case we seek to answer these questions:

- Are The Queen's prerogative or interests affected?
- Are the Prince of Wales' interests as Duke of Cornwall affected, in a way different from The Queen's?
- Are they affected sufficiently to require Consent? A remoteness test applies.
- Has Consent already been given in respect of another bill covering similar territory? If so, the previous Consent may cover the current bill, or it may not.

Cases of doubt are resolved in favour of requiring Consent.[6]

Prerogative and interest both require definition and there is much detail in the OPC Guidance and in *Erskine May*. In brief, *May* defines prerogative as "powers exercisable by the Sovereign for the performance of constitutional duties" and interest as "hereditary revenues, personal property or interests of the Crown, the Duchy of Lancaster or the Duchy of Cornwall". A significant distinction between the two is that, whereas interests may be personal to the Sovereign or the Heir, prerogative powers are mostly exercised on ministerial advice and, in effect, belong to the Government.

The EU (Withdrawal) (No. 4) Bill was not proceeded with but Yvette Cooper MP introduced a (No. 5) Bill which is now an Act, after proceedings which would warrant an article of their own when the dust has settled. Among many unusual happenings, the Speaker of the House of Commons told the House on 3 April 2019 that Consent was not required, and gave reasons. The *Table* article of 1952 was provoked by a previous instance of the same thing. On both occasions the Speaker was responding to a point of order.

Is Consent a formality?

The 22nd edition of *May* (1997) included a new paragraph in the section on Queen's Consent.

> "Modern practice is … for the Government to advise the granting of consent even to bills of which it disapproves." Consent did not imply approval; it

[6] *Esrkine May* (25th edition), section 30.80

left it open to Ministers to resist the bill and to The Queen, in theory, to refuse Royal Assent. The equivalent statement in the 24th edition (2011) is qualified, referring to "the Government's usual practice".

The PCRC cited several cases where the Government may have used Consent to block a bill:

- 1868 Peerage (Ireland) Bill, withdrawn from the Commons at second reading when Ministers made it clear that they would advise Queen Victoria not to grant her consent.
- 1964 Titles (Abolition) Bill, "killed" when the Home Secretary declined to recommend consent, on the ground that it was unlikely that the Bill would be debated. The bill did not proceed beyond introduction. A bill of the same name received Consent in 1967.
- 1970 Rhodesia Independence Bill, "refused Queen's consent". The parliamentary record does not go quite this far. The Commons Journal for Second Reading on 15 May says, "Notice being taken, That Her Majesty's interest is concerned therein, and that Her Consent had not been signified thereto, Mr Deputy Speaker declined to propose the Question." Commons Hansard simply records a Whip saying, "No, Sir."
- 1995 European Communities (Reaffirmation of Sovereignty of the United Kingdom Parliament) Bill, cited by the Leader of the House of Commons in evidence to the PCRC to illustrate the proposition that "The Government of the day has on occasion not sought consent for bills they opposed (and did not wish to be proceeded with), on the basis that there was no realistic opportunity for the bill in question to be debated." The parliamentary record shows only that the Second Reading was objected to.
- 1999 Military Action Against Iraq (Parliamentary Approval) Bill, refused Second Reading by the Chair for lack of Consent (16 April). The Bill's sponsor, Tam Dalyell MP, raised a point of order; the Deputy Speaker said, "The reason why Queen's consent has not been obtained is not a matter for the Chair." Mr Dalyell told the *Guardian* in 2013 that the Government had advised that Consent be refused.

(Wikipedia has two more cases of Second Reading being blocked: Palace of Westminster (Removal of Crown Immunity) Bill 1988 and Reform of the House of Lords Bill 1990. In the former case, on 8 July 1988, the Chair's refusal to put the Question led to protests from Members. The Deputy Speaker said, "It is no reflection on the Palace, as the hon. Lady knows. An application is made to a Minister …").

The PCRC recommended:

"If the House authorities decide that Consent is needed for a Private Member's Bill, the Government should as a matter of course seek Consent. This would remove any suggestion that the Government is using the Consent

process as a form of veto on Bills it does not support. Members should, in turn, make sure that they publish the text of their Bill in time for Consent to be sought."

The Government responded:

"It is not the Government's policy or practice to refuse to seek the Queen's or the Prince's Consent to a Private Member's Bill in order to block it. The Government will generally seek Consent for Private Member's Bills upon request, even where it opposes the Bill, on the basis that Parliament should not be prevented from debating a matter on account of Consent not having been sought. However, the Government will not generally seek Consent if it is clear from the parliamentary timetable that a Bill has no real prospect of making progress or the text of the Bill has been submitted without enough time to seek Consent."

Even if the outcome of Consent is a formality, the PCRC report indicates that the process of obtaining it is not. It is "informed consent" and is "taken seriously and duly attended to" by the Civil Service. One of their witnesses suggested that it was less a formality than Royal Assent. The PCRC said, "We have no evidence to suggest that legislation is ever altered as part of the Consent process"; but, since for government bills it is generally sorted out before introduction, one would not necessarily know.

Lord Berkeley's campaign

Lord Berkeley, a member of the House of Lords, has taken a close interest in Consent. In 2013 he introduced a Rights of the Sovereign and the Duchy of Cornwall Bill [HL]. Clause 3 provided:

Nothing in any rule of law, or the law, or practice of Parliament shall require a Parliament to seek the consent of the Monarch, the Prince of Wales or the Prince Regent to the consideration of public bills which pass through Parliament.

Second Reading took place on 8 November 2013. Lord Berkeley cited a further instance of a bill blocked by lack of Consent, Pig Husbandry at Commons Third Reading on 3 May 1991; but the bill's sponsor sought to withdraw it, so Consent would have been nugatory.

Lord Berkeley acknowledged that Clause 3 had been "overtaken by events", i.e. by the PCRC inquiry, and by the Clerks' evidence that changes to Consent procedure would not require legislation. Nonetheless Lord Teverson, speaking for the Liberal Democrats, supported it. Lord Wallace of Saltaire, a Liberal Democrat Minister in the Coalition Government of the day, said this:

"It is a long-standing parliamentary requirement that the consent of the Queen and the Prince of Wales should be given for certain Bills. The parliamentary authorities decide which Bills require that consent, not the

> Government. Signifying the consent of the Queen and the Prince of Wales for certain legislation is a parliamentary requirement and the Government will continue to do that for as long as Parliament requires it. The Government's role is to ensure that consent is sought for government and Private Members' Bills when it is required by Parliament. This requirement reflects the unique relationship between the sovereign and the legislature which is rooted in the historical royal prerogative and provides for a formal parliamentary process by which the sovereign can be informed of, and consulted on, legislation which affects the sovereign's prerogative and interests. The Government will generally seek consent for Private Members' Bills even when they oppose the Bill on the basis that Parliament should not be prevented from debating a matter on account of consent not having been obtained.

That final sentence echoes the 24th edition of *May* (2011), including the qualifier. The Bill went no further but Lord Berkeley has not lost interest. When on 17 January 2018 the Government Chief Whip signified Queen's and Prince's Consent to the Data Protection Bill [HL], for both prerogative and interest, Lord Berkeley asked what was the Prince's interest in the Bill. The Chief Whip said he would write. Lord Berkeley followed up with a written parliamentary question on 5 March; on 19 March a Minister replied, "The Prince of Wales's consent is required for the Bill in its entirety due to its express application to personal data processed by the Duchy of Cornwall."[7]

Later that year the Ivory Bill, banning sales of ivory, received Consent in respect of The Queen's interest. When this was signified by the Chief Whip, on 13 November 2018, Lord Berkeley said,

> "Will the Chief Whip say why it was necessary to get the consent of the Queen? Is it because she is worried about the value of the ivory that she might own if it were sold, or is she worried about elephants? They are both good causes, but it seems a bit odd. We should be pleased to have her consent, but does the Duchy of Cornwall own ivory? Why did we not seek the consent of the Duchy as well?"

The need for Consent is assessed by the Clerks, not by The Queen, as has been explained; and separate Prince's Consent arises only when the Duchy interest is distinct. The Minister gave no reply.

Conclusion

The PCRC report considered the constitutional justification for Consent procedure. It concluded:

> Consent serves to remind us that Parliament has three elements— the House

[7] HL5999, Session 2017-19

of Commons, the House of Lords, and the Queen-in-Parliament—and its existence could be regarded as a matter of courtesy between the three parts of Parliament. Whether this is a compelling justification for its continuance is a matter of opinion.

The Government response made no comment.

Consent consumes significant amounts of senior time, as illustrated by the anecdote with which this article began. If a bill which required Consent reached Royal Assent without this being spotted, it would be a "good and perfect Act of Parliament" regardless; Consent is overtaken by Royal Assent and is not recorded in the Act, any more than any other aspect of Parliament's proceedings in passing it. However, once the requirement has been noticed, Consent must be secured in timely fashion and signified to both Houses or the bill will be delayed.

It is not obvious that Consent generates any compensating benefit that cannot be otherwise obtained. It guarantees that the Royal Households are consulted and informed, as Lord Wallace said in 2013; but on a government bill this could be done as part of the normal good practice set out in *Guide to Making Legislation*, and recorded in the Explanatory Notes, without requiring special procedure. The information that a bill touches The Queen's prerogative or interest arrives too late to be of use to Parliament in debate and Lord Berkeley's interventions show that it can raise more questions than it answers.

Consent procedure sits in tension with another piece of Westminster *arcana*, the Outlawries and Select Vestries Bills, which are read a first time at the start of each Session before each House debates The Queen's Speech, "in order to assert their right of deliberating without reference to the immediate cause of summons".[8] Putting the two together, Parliament may consider a bill without The Queen's invitation but not in some cases without Her permission. And even on bills contained in The Queen's Speech, where Parliament has been invited to legislate, it may still require permission to do so.

Erskine May, Lord Wallace's statement in 2013 and the Government response to the PCRC report in 2014 all say that Ministers will not block a bill by declining to seek or recommend Consent. But these statements are all qualified: they apply "usually" or "generally", provided the bill has prospects and is submitted with enough time. The case of the EU (Withdrawal) (No. 4) Bill suggests that they have not dispelled suspicion.

The constitutional justification proposed by the PCRC does not cover the Prince of Wales, who ceased to be a member of Parliament under the House of Lords Act 1999 and has never been a "part" of it distinct from the Sovereign.

[8] *Erskine May* (25th Edition), section 8.35

May says, "The need for [Prince's] consent arises from the Sovereign's reversionary interest in the Duchy of Cornwall".[9] But this is less significant an interest than might appear since, if the Crown is receiving the income of the Duchy, the Sovereign Grant is correspondingly reduced (Sovereign Grant Act 2011, s. 9), and in any case it is an interest of the Sovereign, not of the Heir. The OPC Guidance cites the reversionary interest as a ground for requiring *Queen's* Consent but does not attempt to justify the involvement of the Prince Himself.

The absence of a Consent regime in the Northern Ireland Assembly may suggest that it is not essential. One day maybe the UK Parliament will dispense with Consent altogether, at least for government bills, or fold Prince's Consent back into Queen's Consent, or perhaps invite the Sovereign to give a blanket Consent at the start of a Session, a Parliament or a Reign. Until then it is one of many aspects of Clerks' work which is only noticed when it goes wrong, and one of not so many whose justification is less than obvious even from the inside.

I would be interested to hear from colleagues who have views on this matter or who can point to comparable procedures in other jurisdictions.

[9] *Erskine May* (25th Edition), section 30.81

UNCHARTED TERRITORY: ONTARIO AND THE NOTWITHSTANDING CLAUSE

JOCELYN MCCAULEY
Committee Clerk, Ontario Legislative Assembly

On 1 May 2018, the campaign period for municipal elections in Ontario began, with the election scheduled for 22 October 2018. Shortly after, the newly formed government of Ontario announced its intention to enact legislation to amend the City of Toronto's existing electoral structure. Introduced on 30 July 2018, by the Minister of Municipal Affairs and Housing Steve Clark, Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996, sought to introduce a 25-ward structure in place of the City's existing 47-ward structure. On 14 August 2018, Bill 5 received Royal Assent, altering the course of the municipal election. Shortly thereafter, three proceedings were filed with the Superior Court of Justice challenging the constitutionality of Bill 5.

The Superior Court of Justice's decision

On 10 September 2018, Justice Edward P. Belobaba released his decision, which deemed Bill 5 unconstitutional, finding that it infringed on the Charter of Rights and Freedoms, a bill of rights which forms part of the Constitution of Canada. Justice Belobaba found that Bill 5 "substantially interfered with both the candidate's and the voter's right to freedom of expression as guaranteed under section 2(b) of the Canadian Charter of Rights and Freedoms" and "that these breaches cannot be saved or justified under section 1."[1]

Justice Belobaba stated:

> …the Impugned Provisions breach s. 2(b) of the Charter in two ways: (i) because the Bill was enacted in the middle of an ongoing election campaign, it breached the municipal candidate's freedom of expression and (ii) because Bill 5 almost doubled the population size of City wards from an average of 61,000 to an average of 111,000, it breached the municipal voter's right to cast a vote that can result in effective representation."[2]

He ruled that the "Impugned Provisions" in Bill 5 were unconstitutional and therefore the 22 October election would proceed as scheduled on the basis of 47 wards, not 25. He noted however, that if the Province wished to enact a similar piece of legislation at a future date with respect to City elections, nothing in this

1 *City of Toronto et al v. Ontario (Attorney General)*, 2018 ONSC 5151 (CanLII)
2 *Ibid.*

ruling prevented the provincial government from doing so.[3]

A new Bill?

In response to Justice Belobaba's ruling, Premier Doug Ford announced his Government would appeal the decision before the Court of Appeal for Ontario. Further to this, Bill 31, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001, the Municipal Elections Act, 1996 and the Education Act and to revoke two regulations, was subsequently introduced on 12 September 2018. This second piece of legislation replicated, verbatim, parts of the Better Local Government Act. However, it also introduced a number of new provisions that were not present in Bill 5, the most significant of which being the invocation of subsection 33(1) of the Canadian Charter of Rights and Freedoms (the "notwithstanding clause") in all four of the Bill's schedules.

Under section 33 of the Canadian Charter of Rights and Freedoms, the Parliament of Canada or the legislature of a province may expressly declare that the Act or a provision thereof shall operate notwithstanding a provision included in certain sections of the Charter. Also known as the notwithstanding clause, section 33 allows governments to temporarily override the rights and freedoms enshrined in sections 2 and 7 to 15 of the Charter for up to five years, subject to renewal.

If passed, Bill 31 would invoke the notwithstanding clause, a first in Ontario's history. Responses to the Government's decision were varied. Members who opposed the Government's actions relied on a range of procedural tools to delay the passage of Bill 31, including the filing of a reasoned amendment, which had the effect of delaying consideration of the Bill for two sessional days. In response, the Government issued two Orders-in-Council convening the House to meet on Saturday 15 September 2018, beginning at 1 pm, and Monday17 September 2018, at 12.01 am.

On 15 September 2018, two points of order were raised challenging the orderliness of Bill 31. The first contended that, the fact of active litigation in the matter of the constitutionality of An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996 (Bill 5), invoked the *sub judice* convention and Standing Order 23(g), and therefore should prevent the Bill from being considered by the Legislature. Second, it was suggested that Bill 31 was so similar to Bill 5, which was passed by the House on 14 August 2018, that Bill 31 contravened the same question rule and should therefore not be permitted to proceed.

In the early hours of 17 September 2018, the Speaker delivered his ruling

[3] *Ibid.*

and in doing so addressed both points of order raised. First, the Speaker found that the *sub judice* convention, and the rule as it is codified in Standing Order 23(g), applied to debate only; that is, they can operate to restrict the scope of permitted debate on legislation, but do not operate to limit the superior and preeminent right of the Legislature to legislate in the first instance. Accordingly, he concluded that the *sub judice* convention and Standing Order 23(g) do not apply to prevent Bill 31 from coming before the House to be considered. Turning then to the second issue raised, the Speaker cited the applicable Standing Order, which states:

> 52. No motion, or amendment, the subject-matter of which has been decided upon, can be again proposed during the same Session.

This Standing Order captures an ancient parliamentary principle known as the "same question rule." After reviewing the Act passed by the House on 14 August 2018, and Bill 31, the Speaker found that while parts of the earlier legislation were replicated in Bill 31, the Bill also introduced a number of new provisions that were not present in Bill 5, the most significant of which being the invocation of subsection 33(1) of the Canadian Charter of Rights and Freedoms (the "notwithstanding clause") in all four of Bill 31's schedules and that the provisions of the Bill apply despite the Ontario Human Rights Code. The Speaker found that Bill 31 presented a significantly different inquiry for the Assembly to answer. He found that debate had substantially changed from the appropriate size of the City of Toronto Council, and instead focused on the legitimacy and advisability of the Government's willingness to invoke the Constitution's "notwithstanding clause" in response to the Court's ruling. The Speaker therefore ruled that Bill 31 was in order as it was sufficiently different from Bill 5 to comply with the requirements of Standing Order 52.

On 19 September 2018 the Government moved a motion providing for allocation of time on Bill 31.

The Court of Appeal

That same day, the Court of Appeal for Ontario stayed the lower court's decision on Bill 5, pending an appeal. A three-member panel found that:

> "The application judge's interpretation appears to stretch both the wording and the purpose of s. 2(b) beyond the limits of that provision. His decision blurs the demarcation between two distinct provisions of the Charter: the protection of expressive activity in s. 2(b) and the s. 3 guarantee of the democratic rights of citizens to vote and be qualified for office. The s. 3 right to vote and stand for office applies only with respect to elections to the House of Commons and the provincial legislatures…Section 3 does not apply to

municipal elections and has no bearing on the issues raised in this case."[4]

While the Court found that the government of Ontario's announcement of its intention to introduce Bill 5 significantly disrupted campaigns that were well underway, it held that the Bill in no way restricted or deprived candidates or voters of their freedom of expression:

> "While the change brought about by Bill 5 is undoubtedly frustrating for candidates who started campaigning in May 2018, we are not persuaded that their frustration amounts to a substantial interference with their freedom of expression."[5]

Finally, the Court ruled the Ontario Government did not interfere with the voter's right of freedom of expression through its decision to double, on average, ward population size. The Court found that: "The size of the City's electoral wards is a question of policy and choice to be determined by the legislative process subject to other provisions of the Charter."[6]

With this decision, Bill 5 remains in force and the Toronto municipal election went ahead as scheduled on 22 October 2018, with 25 wards. Bill 31, including its use of the notwithstanding clause, currently remains on the Orders and Notices Paper.

4 *Toronto (City) v. Ontario (Attorney General)*, 2018 ONCA 761
5 *Ibid.*
6 *Ibid.*

IS THE OFFICIAL OPPOSITION OFFICIAL? OPPOSING OPINIONS IN THE 13TH LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MICHAEL TATHAM
Clerk of the Legislative Assembly of the Northern Territory of Australia

As the election results came in after the 2016 General Election in the Northern Territory, it became clear that the 13th Legislative Assembly would contain more non-party Members who could not form a government than Members of a political party who also could not form a government.

Since this, Members of the Assembly have been asking questions about the status of the Opposition. As recently as 27 February 2019 a Member of the Assembly has, for the fourth time, asked questions on notice to the Government about it in the Assembly.

On 30 August 2016, in the context of preparing advice, the Clerk wrote to the Speaker:

> "The Government as the Executive should not choose its Opposition, the Assembly could consider the matter at its first sitting if it remains one of dispute and conjecture."

At the first sitting of the 13th Assembly there was no dispute or conjecture about the Opposition. The declaration of the polls had confirmed there was a cohort of two Members from a single political party to form an Opposition and no other party grouping apart from the Government (of 18 out of 25 Members) existed in the Assembly.

At the time, the question was asked if it was available for a grouping of non-party Members to seek recognition as 'the Opposition' for the purposes of attracting the staffing, travel and other resources which flow to the Members of an Opposition in the 25-member Legislative Assembly.

Advice from the Solicitor-General to the Government stated that in her opinion that approach was not available to the Assembly. No motion has been moved in the Assembly seeking to test the matter.

Indicators of an 'Opposition'

As is established in Westminster parliaments, the Leader of the Opposition is looked to for policy proposals or comment about, and criticism of, government policies and proposals.

The never previously disputed assumption in the Northern Territory has been that the Opposition Leader is the leader of a political party which has a numerical presence in the Assembly but not enough to form a government,

and is therefore the leader of the alternative grouping of Members who could potentially form a government.

The *Encyclopaedia of Parliament* states:

> "The importance of the Opposition in the system of parliamentary government has long received practical recognition in the procedure of all parliaments throughout the British Commonwealth. Both the name and the fact of 'Her Majesty's Opposition' date from the early days of the 19th century, and the expression has been constantly in use ever since...
>
> Regarded as a Parliamentary institution, it may be claimed for the Opposition that no better system as yet been devised for ensuring that the indispensable function of criticism shall be effectively coordinated and exercised in a constructive and responsible spirit."[1]

The notion of Her Majesty's Loyal Opposition is traced back to a quote in the UK Parliament in 1826 and relates to permitting differing positions to be taken on matters of state significance in a functioning democracy without being accused of treasonous intent.

Erskine May refers to the "Official Opposition" as "the largest minority party which is prepared in the event of the resignation of the Government, to assume office."[2]

House of Representatives Practice notes the evolution of the role of Leader of the Opposition[3] with specific remuneration, recognition in the Standing Orders and a place on the Commonwealth Table of Precedence (tenth there and seventh in the Northern Territory):

> "While all private Members are to some extent involved in such functions as petitions, grievances, questions and participation in committee work, the effective performance of the functions… is largely dependent on a vigilant, industrious and organised Opposition."[4]

In the Northern Territory, there is an additional salary allocated to the Leader and Deputy Leader and the Whip but no additional salary for a Shadow Minister.

The functions of an Opposition include unmaking the government. The Opposition, by definition, seeks to defeat a government or cause a government to resign. This is consistent with the experience in the Northern Territory. The Opposition during the 12th Assembly attempted two motions of no confidence in the Government and one such motion was moved during the 11th Assembly.

On two of the three occasions, non-party or independent Members of the

1 *An Encyclopedia of Parliament*, N Wilding and P Laundy, Cassel and Company (1961), p 428
2 *Erskine May* (24th Edition), Sir Malcolm Jack (ed.), p 49
3 *House of Representatives Practice* (7th Edition), DR Elder (ed.), p 79
4 *Ibid*., p 81

Assembly saved the Government from a successful motion of no confidence by either voting with the Government or abstaining from voting.

While this is no indication of an established pattern, the reality has been that the previous voting and behaviour of non-party Members with balance of power responsibilities in the Northern Territory has been to secure the Government rather than to defeat it.

If all non-party Members had voted as a bloc with the Opposition on 1 December 2015, the Government would have been defeated on the floor of the Assembly triggering an extraordinary general election.

Leader of the Opposition—procedural considerations

In the Northern Territory there is very little which formally recognises an office holder called the 'Leader of the Opposition'. The definitions contained in the Northern Territory Standing Orders do not extend to defining such a role: whereas the Chief Minister, a Minister, and the Speaker are defined, the Leader of the Opposition is barely mentioned.

Where the Leader of the Opposition is mentioned in the Standing Orders, it is for procedural convenience such as when a division is called pursuant to Standing Order 125, which states "a division called by the Chief Minister or Leader of the Opposition does not require the Speaker to hear a second voice of support." Other references to the Leader of the Opposition include Standing Order 66 which requires notification of a proposed discussion of a Matter of Public Importance to be communicated to a Minister and the Leader of the Opposition as soon as possible.

The first question in Question Time is normally allocated by the Speaker to the Leader of the Opposition and the following three questions from a non-government Member of the

Assembly usually also flow to the Leader if he or she seeks the call. This practice follows Westminster traditions and is described in *Erskine May*.[5]

Competing parties

If another party is formed by existing independents, will a newly formed party of two Members have the same claim? Does a consideration of the percentage of the vote arise where the Country Liberals could claim that with approximately 31 per cent of the vote at the 2016 election they should remain the opposition? [6]

Perhaps this might be raised in debate and given consideration by the Assembly when making a decision. In the first Australian Capital Territory

[5] *Erskine May* (24th Edition), p 370

[6] The NT Electoral Commission website advises that there were a total of 98 299 formal votes, 45 575 to the Labor Party, 31 481 to the Country Liberal Party and 15 427 to Independents.

Assembly in 1989, there was an equality of numbers from two political parties who were both unable to form a government. On that occasion the Assembly determined which one of those was to be the Opposition.[7]

If a newly formed party of three Members (or more) comes into existence, such a matter would not be at all relevant, the new party Members would assume the status of the Opposition by virtue of the accepted practice of the Assembly.

A coalition of Opposition?

Westminster practice points toward the achievement of governing being a reason for coming together in a coalition type arrangement.

Holding a government to account is arguably achieved just as well by non-party Members of the Assembly who are not part of the Government as it would be by a bloc of Members in the same party. While it is possible in the Westminster system for a grouping of non-party aligned Members to agree to form a grouping to achieve Government, arguably the same cannot be said for an Opposition.

While the Opposition has an evolved recognised practical status and purpose and it is acknowledged that its existence "is essential for the proper functioning of democracy. Its leader has possibly the most difficult job in Parliament";[8] its existence is not essential for the proper functioning of a parliament.

The first Northern Territory Legislative Assembly in 1974 contained no Members from any other political party. In that first Assembly of 19 Members, 17 were Country Liberal Party Members and two were independent, non-party Members. The Australian Labor Party had no Members. The Solicitor-General's stated opinion is "…in my view the Opposition cannot be formed by a coalition of Independent Members of the Assembly."[9]

Leader of the Opposition—entitlements

Remuneration Tribunal Determination Number One of 2018 (RTD) is the source of Members' entitlements and references the Opposition in clauses relating to travel and salary but leaves resourcing for an Opposition office and staffing to the government of the day.

At a meeting with the Tribunal during June 2016, the Clerk raised the issue of whether groupings of individual non-party aligned Members of the Assembly would be extended a specific travel entitlement for them to attend a caucus style

[7] See Standing Order 5B in the ACT Assembly.

[8] *House of Representatives Practice* (7th Edition), p 80

[9] *Formation of the Opposition by Independents: Solicitor General's advice Tabled in the Assembly* (30 August 2016), para 29.

meeting to discuss and consider Parliamentary tactics. The Tribunal advised at the meeting that no such entitlement would be provided. As such, it appears, for entitlement purposes at least, the Tribunal contemplates the Opposition being a grouping of party Members.

Leader of the Opposition—Electoral Act 2004

The Electoral Act 2004 makes no mention of an Opposition or a Leader of the Opposition, however for our purposes; it does define a political party:

> "Political party means an organisation (whether incorporated or unincorporated) an object or activity of which is the promotion of the election to the Legislative Assembly of a candidate or candidates endorsed by it."[10]

Party status and additional resources

From time to time the question of 'party status' comes up in the Northern Territory. Every party in whose name a Member has been elected to the Legislative Assembly is by convention recognised as a party for Assembly purposes.

For example, during the 12th Assembly, for a short period of time, the Palmer United Party had three Members of that party represented in the Legislative Assembly while the Australian Labor Party had between seven and eight and the Country Liberals had between 11 and 16 at different times.

There are requirements in a number of jurisdictions for a grouping to attain at least five Members to have 'party status' which triggers a flow of additional resources. This is not the situation in the Northern Territory. For example, following the 2016 General Election for Australia is was reported that "left with a majority of one seat, Malcolm Turnbull has made the decision to offer cross bench MPs… an extra three staff to help them get across legislation".[11]

During the 12th Assembly, when there were three Palmer United Party Members in the Assembly, their requests to the Government for additional resources were declined. Since 2016 in the Northern Territory the Government has provided the (previously five and now seven) independents two research staff located in the Department of the Legislative Assembly. These positions are funded until a month before the next Northern Territory General Election in 2020.

10 Electoral Act 2004

11 The Australian, *Pollies School is in Session for Newbies* (15 August 2016)

The Alliance

On 5 February 2019 three independent Members calling themselves 'The Alliance' contacted the Speaker asking her to afford them Opposition status. They did so notwithstanding that the Speaker had on 27 October 2018 written to all Members of the Legislative Assembly stating: "Let me make it abundantly clear—The Speaker has no individual role in determining what constitutes an 'Opposition' in the Legislative Assembly."

On Tuesday 30 October 2018 the Speaker gave a statement to the Assembly:

> "Honourable Members, on Friday last week and over the weekend I received a number of questions about the role of the Speaker and the status of the opposition in the Legislative Assembly. It has been claimed that the Speaker has a role in choosing the opposition.
>
> This is factually incorrect—as most of you would know—and I have sought advice from the Clerk. I table the Clerk's advice—which has attachments—and refer all Honourable Members to the content of that advice. If Members require further clarity I suggest they contact the Clerk of this Assembly.
>
> I do not intend to get caught up in a political fight over the resources of Opposition or the recognition of them in the Assembly. That is a matter for the Government in terms of resourcing and the Assembly in terms of status." [12]

The Alliance appeared to rely upon the Chief Minister's answer to Written Question 447 to the Member for Araluen which was received in the Assembly on Tuesday 27 November 2018.

Part of the answer to those questions said:

> "If the official Opposition party (or coalition Opposition) is not clear by virtue of numbers, it would be a matter for the Speaker of the Northern Territory Legislative Assembly to decide which group will be recognised as the official Opposition, and who will be recognised as the Chair (sic) as the Leader of the Opposition."[13]

In the context of that written response from the Government, the Clerk of the House of Representatives was asked by the Clerk of the Legislative Assembly to clarify the reference to a purported power for the House Speaker contained in an uncited reference on page 79 of *House of Representatives Practice* (which the Solicitor-General also referred to in her advice to the Government).

The Clerk of the House advised the Northern Territory Clerk on 29 November 2018 that this matter has never been tested in the House of Representatives:

> "My staff have had a good look into this and could not find any example of this having arisen in the Australian federal context.

[12] Debates Day 4 (30 October 2018), 4695

[13] Written Answer 447, 27 November 2018: https://parliament.nt.gov.au/__data/assets/pdf_file/0020/600536/Aqst-447-Lambley-Parliamentary-status-and-recognition.pdf

However, in their research they did note the situation did arise in the Canadian Commons ... In 1996 when a tie occurred between the two largest opposition parties mid-parliament, the Speaker ruled that incumbency was the determining factor and that the status quo should be maintained.

The situation has also arisen in Canada's provincial parliaments in recent times with mixed precedents due to the different circumstances applying in each case. On one occasion where numbers were tied, for example, the Speaker chose to recognise a particular party as the official opposition because they had won a higher share of the popular vote."

The Speaker in the Northern Territory has expressed a view that these qualified Canadian examples are not similar enough to be a compelling reason for the Speaker in the Northern Territory to intervene and to choose an Opposition.

The February 2019 meeting with the Speaker resulted in 'The Alliance' featuring on the front page of the local newspaper the next day.

The Speaker in her public comments and in communication back to the Members has maintained a position that the existing arrangements arise as a matter of convention where the grouping of Members from the recognised political party with the most Members who cannot form Government are considered the Opposition in the Assembly.

A convention which does not require any active decision making by the Speaker

On Tuesday 12 February, the Speaker made yet another statement in the Assembly:

> "Honourable Members, before proceedings commence for 2019, in light of recent events, I reiterate my position that, as Speaker, I will not intervene to determine the status of who forms the opposition. It will either be numerically obvious or, if there is an equality of numbers, it will be a decision for the Assembly itself."[14]

The Speaker's position has remained that Members could always challenge the stated convention and seek to formalise other arrangements with the agreement of the majority of the Members of the Legislative Assembly. In the meantime the existing arrangements must follow convention.

On 17 February 2019 Professor George Williams, a well-known constitutional law scholar and commentator weighed in with an article in *The Australian* newspaper which claims that the Legislative Assembly is in "disarray as independents coalesce to claim opposition status." Professor Williams also

[14] Debates and Questions Day 1 – 12 February 2019, 5153

refers "to an impasse that threatens the ability of its parliament to hold the governing Labor Party to account."[15]

Conclusions

While questions have been asked of the Government at Question Time and through the Written Question Paper about the status of an Opposition and the resourcing of Independent Members, no Member of the Assembly has sought to have the Assembly determine as a whole to change its practice of recognising the party or group with the greatest number of non-government members becoming the Opposition.

The status of the Opposition in the 13th Legislative Assembly is therefore consistent with the established precedent that the party with the largest numerical representation after the Government is the Opposition. The Assembly is not required to take specific action or adopt any specific position when it is known that numerically there is a party or grouping of Members which can be identified as the Opposition.

By doing nothing more than following recognised precedent, the Assembly has in effect decided that the two Country Liberals Members in the Assembly were the Opposition.

The composition of the membership of the 13th Legislative Assembly was undoubtedly the collective result of the individual decisions of the electors of the Northern Territory who voted at the General Election in August 2016.

So who is the Opposition in the Northern Territory when there are now sixteen Government Members, seven independents and two Members of the 'Opposition party'? That one question to the Speaker, the Clerk or the Members is very likely to result in different answers.

[15] The Australian, *Territory's arm wrestle is unique (17 February 2019)*

THE PROVISION OF SECURITY IN THE LEGISLATIVE PRECINCTS IN ONTARIO

WILLIAM WONG
Deputy Parliamentary Counsel, Ontario Legislative Assembly.

Introduction

Parliamentarians need safe and secure precincts to discharge their democratic and constitutional responsibilities. Unfortunately, the era when an official armed with a mace could provide adequate security for the Legislature is long gone. Modern realities require a sophisticated, well-trained, and properly equipped service to protect and secure the precincts. Traditionally, the experience and expertise in providing specialised protection and security services has rested exclusively with the police—an arm of the Executive. Consequently, most Canadian legislatures rely (at least in part) on the police to provide protective services within their precincts. The Legislative Assembly of Ontario ("LAO") differs in this respect by having a stand-alone protective service with exclusive responsibility for security within the precincts and answerable only to the Speaker and the Sergeant-at-Arms. In late 2018, the unique function and role of the Legislative Protective Service ("LPS") was crystallised in statute via an amendment to the Legislative Assembly Act ("LAA").

This paper traces the evolution of the security service at the LAO in order to demonstrate why this unique service was established.

Protection by police and police controlled entities

Prior to 1973, provincial government buildings—including the Legislative Building—were protected by police officers from the Ontario Provincial Police ("OPP").[1] In 1973 protection services for government buildings were transferred to the Ontario Government Protective Service ("OGPS"). The OGPS was composed of special constables and managed by the head of the OPP detachment in the government complex. The transfer from the OPP to the OGPS was not without problems. Soon after the establishment of the OGPS, OPP officers were reintroduced to complement the OGPS special constables in response to concerns that the OGPS could not provide the specialised services required within the legislative environment. Furthermore, it was determined that officers equipped with firearms were needed for the protection of the Legislative Building and special constables were ineligible to carry firearms

[1] Historical records do not identify when the OPP assumed protection of the Parliamentary precincts.

during the course of their duties. This further necessitated the return of the OPP.

The Speaker gained authority over security for the Legislative Building in 1974 via amendments to the LAA. The Speaker was granted the power to establish security guidelines for the Legislative Building. However, while the Speaker had *de jure* authority over security, the head of the OPP detachment maintained operational control over the OGPS special constables and OPP officers. Decision-making authority over staffing of OGPS and OPP officers was vested in the relevant Minister. This tripartite relationship was governed by a series of overlapping Memorandums of Understanding.

1995 protest and lockdown

Several incidents in Ontario and other Canadian jurisdictions in the 1980s and 1990s led to a tightening of security measures in the Legislative Precincts. These measures, and the tripartite relationship, were put to the test at the commencement of the 36th Parliament of Ontario on 27 September 1995. Approximately 5,000 individuals gathered on the South Lawn of the Legislative Building to stage a demonstration. The demonstration, which started out peacefully, became violent when a small group of protestors pushed past the barricades erected in front of the main doors and attempted to breach the building. The Legislative Building was placed under lockdown and the municipal policing service's riot squad was called in to disperse the protestors. As a result of the lockdown, several Members of Provincial Parliament were prevented from attending the Chamber by security personnel and were delayed in arriving for the Speech from the Throne.

The lockdown and the actions by security personnel that prevented Members from entering the Legislative Building were the subject of intense debate in the House. The Speaker subsequently referred the matter of security of the Precincts to the Standing Committee on the Legislative Assembly ("SCLA").

The Standing Committee on the Legislative Assembly

The SCLA commenced its study in January 1996 and reported back to the House in March of that year. The SCLA study found security forces inconsistently applied the security guidelines and policies, innocuous occurrences were subject to disproportionate responses, and the chain of command and accountability for reporting security incidents were unclear. The OPP recommended that security services be consolidated under the control of the Speaker by the creation of a stand-alone security service for the Legislative Building. The SCLA recommended that the Legislative Security Service ("LSS") be restructured under the direction of a professional security chief.

1996 Riot

During the SCLA's study, the OGPS/OPP regime was put to the test again by protestors. On 18 March 1996, striking members of the Ontario Public Service picketed the Legislative Building. The protestors physically blocked government Members (including Ministers) from entering the Legislative Building. Several Members were physically assaulted when they attempted to enter the Building to attend a session of the Assembly. Municipal police and the OPP used force against the protestors in order to permit Members and essential staff to enter the Legislative Building. An injunction was obtained by the Speaker to prohibit the protestors from obstructing Members and essential staff from entrance to or egress from the Legislative Precincts.[2]

The 1996 riot, like the 1995 protest, led to significant debate in the House on the issue of security within the Legislative Precincts. Members had concerns over whether excessive force had been used against the protestors. The question of whether the Speaker should be answerable for the actions of the police eventually led to a public inquiry, headed by former Supreme Court of Canada Justice Willard Estey.

Estey inquiry—turning toward an independent service

The inquiry's terms of reference included the events of 18 March 1996, and the circumstances leading up to them, including:

- The actions, rights and responsibilities of all participants;
- The effect of those events on the operation and security of the Legislative Assembly, and on access to public buildings;
- The policies and responses of the Ontario Provincial Police, the Metropolitan Toronto Police and the Ontario Government Protective Service; and
- Such other matters related to these events as the Commission considers appropriate.

The inquiry held 24 days of testimony and concluded, *inter alia,* that the use of two separate police forces, the lack of coordination between the forces, and the absence of a clear line of command and common understanding contributed to the "melee" on the Legislative Precincts. The inquiry recommended that the municipal policing service (and not the OPP) provide security to the Legislative Precincts.

Creation of an Independent Legislative Security Service

After considering the reports from the Estey inquiry and the SCLA, the Assembly decided to sever legislative security from any policing service and to

[2] *Ontario (Speaker of the Legislative Assembly) v. Casselman*, [1996] O.J. No. 5343.

create a stand-alone service under the control of the Speaker and Sergeant-at-Arms. The new security apparatus, known as the Legislative Security Service ("LSS"), originally comprised of former OGPS Special Constables who had been assigned to the Legislative Precincts. However, the main change was that the command was transferred from the OPP to the Sergeant-at-Arms and the Speaker.

The creation of an independent LSS did not sever all ties between the police and the provision of security in the Legislative Precincts. The LSS required statutory powers reserved for the police in the discharge of its duties. Consequently, all LSS officers were appointed Special Constables under the sponsorship of the OPP. This arrangement meant that the OPP retained a degree of oversight over the Special Constables. Furthermore, the OPP continued to provide personal security for the Premier and the Lieutenant Governor. The LSS and the municipal police service agreed that the latter would provide routine and special policing services for events and emergency situations. This ensured that the small LSS force could rely on backup when necessary.

A call to arms

Security incidents at legislatures across the world and the 2014 attack on the federal Parliament Building in Ottawa led to another security review in Ontario. The review was completed in early 2015 and several measures were implemented to enhance security in the Legislative Precincts. One of the measures was the creation of an Armed Response Unit ("ARU") within the LSS. The ARU would be a small group of LSS officers who would carry firearms during the course of their duties. However, since it was untenable for LSS officers to both carry firearms and retain their appointments as Special Constables, the appointments were disclaimed and LSS officers assumed the position of Peace Officers. After substantial training, the ARU became operational in 2016.

The LSS was renamed in 2018 to the Legislative Protective Service ("LPS") in order to better reflect its purpose and operation. At the same time, preparations were made to crystallise the status of the LPS in statute. The LAA was amended in December 2018 to provide statutory authority for the Speaker to designate LPS employees as Peace Officers and carry firearms during the course of their duties. The amendment also granted police powers to LPS Peace Officers in the Legislative Precincts.

Conclusion

The provision of security and protective services for Ontario's Legislature evolved from being provided exclusively by the police to an independent stand-alone service answerable only to the Sergeant-at-Arms and the Speaker. As an entity with policing powers and responsibilities without being an agency of the

Executive, the LPS is unique. This unique legal position was recently enshrined in statute but, undoubtedly, the LPS will continue to evolve to respond to the needs of the Legislature and its Members.

FOREIGN ALLEGIANCES AND THE CONSTITUTIONAL DISQUALIFICATION OF MEMBERS

CATHERINE CORNISH
Clerk Assistant (Procedure), Australian House of Representatives

For the Australian House of Representatives, 2018 brought to a peak the consternation caused by a provision of the Constitution of Australia that disqualifies Members and Senators with a foreign allegiance from being elected or from sitting. Even though almost half of Australians were either born in another country or have a parent born elsewhere, this provision had rarely been engaged, until July 2017. Then, and through 2018, a chain reaction followed the resignation of two Australian Greens Senators who had just discovered their dual citizenship status. One held New Zealand, the other Canadian, citizenship, as well as Australian citizenship. Both had Australian parents and neither had had contact with these other countries since their very early childhood.

Section 44 (i) of the Constitution provides:

> Any person who …is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power … shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.[1]

Some Constitutional provisions can be amended by an Act that simply makes other provisions but this is not one of them. Any amending law would require an absolute majority in each House and then a referendum at which a majority of electors in a majority of States approve the amendment.[2] This explains why a provision so likely to cause uncertainty had not been updated.

Following an election in 2016 for the House of Representatives and the full Senate, the Liberal-Nationals coalition Government was returned in the 45th Parliament with a majority of one in the House of Representatives and a minority in the Senate. This article traces the impact of section 44 (i) on the House as it brought about five by-elections in 2018, on the back of two in 2017. The impact on the Senate, which was similarly serious, is not considered except to the extent that it is relevant to the House.

1 Section 44(i), Commonwealth of Australia Constitution Act 1900
2 Section 128, Commonwealth of Australia Constitution Act 1900

Election for the 45th Parliament and the path to the High Court

The resignations of the two Australian Greens Senators in July 2017 triggered a flurry of checks on family ties and the adequacy—or otherwise—with which any additional citizenship status had been cast off. Because of the finely balanced numbers in the House, the potential impact of the issue was treated seriously there, too. The major parties, at least, contended they had for many years managed this issue rigorously with their candidates and so they did not anticipate difficulties.

But, the Deputy Prime Minister and Leader of the Nationals, the Hon Barnaby Joyce MP, made an unexpected announcement to the House of Representatives on 14 August 2017. He had discovered he might be a New Zealand citizen: one of his grandfathers had been born in New Zealand and had come to Australia in 1947 as a British subject. Mr Joyce was confident he would not be disqualified:

> "On the basis of the Solicitor-General's advice, the government is of the firm view that I would not be found to be disqualified by the operation of section 44 (i) of the Constitution from serving as the member for New England. However, to provide clarification to this very important area of the law for this and future parliaments, I have asked the government to refer the matter, in accordance with section 376 of the Commonwealth Electoral Act, to the High Court, sitting as the Court of Disputed Returns. Given the strength of the legal advice the government has received, the Prime Minister has asked that I remain Deputy Prime Minister and continue my ministerial duties."[3]

The same day, the Leader of the House moved that the House refer to the Court of Disputed Returns (the High Court) four questions: whether by reason of section 44(i) the place of the Member for New England had become vacant; if 'yes', how the vacancy should be filled; what directions and other orders the Court should make to hear and dispose of the reference; and any orders for costs.[4]

This was the first such referral by the House. It was significant for many reasons, not least because of the Government's one seat majority in the House. Earlier in August 2017, the Senate had referred to the Court the circumstances of the two former Senators who triggered the questions on family ties. The situations of a number of other Senators, including Ministers, were referred in later weeks. These referrals culminated in decisions by the Court that would have a serious impact on members of the 45th Parliament and candidates for parliaments of the future.

While the pathway to the Court of Disputed Returns is the same for both

[3] H.R. Deb. (14 August 2017) 8185

[4] VP 2016-18/958. See *Commonwealth Electoral Act* 1918, s. 376

Houses, the filling of any vacancies is not. In the House of Representatives, when a vacancy arises because of the ineligibility, resignation, death, or absence of a Member, the Speaker issues a writ for the election of a new Member.[5] If a Senator dies or resigns before their term expires, the relevant State Parliament chooses the successor. If the person was incapable of being chosen at the election, the vacancy is filled by a recount of ballots from that election.[6]

The Court decides on the eligibility of one Member and six Senators

On 27 October 2017 the High Court sitting as the Court of Disputed Returns held that Mr Joyce's seat had become vacant and that a by-election should be held. The Court had also considered the status of six Senators or former Senators, including the two whose resignation began the uncertainty. It found that a person's status as a foreign subject or citizen is determined by the law of that 'foreign power' and that a candidate's knowledge of any foreign citizenship is not necessary for disqualification to occur. A person might be protected from disqualification in certain circumstances:

> A person who, at the time that he or she nominates for election, retains the status of subject or citizen of a foreign power will be disqualified by reason of s 44 (i), except where the operation of the foreign law is contrary to the constitutional imperative that an Australian citizen not be irremediably prevented by foreign law from participation in representative government. Where it can be demonstrated that the person has taken all steps that are reasonably required by the foreign law to renounce his or her citizenship and within his or her power, the constitutional imperative is engaged.[7]

The decision made clear that any foreign status needs to have been renounced at the time of nomination or, at least, the candidate needs to have taken all reasonable steps to renounce by then. Previously, there had been a view that the steps to renounce might be effective if carried out at any time up until the election. What might amount to 'all steps that are reasonably required' was clarified by the Court on 9 May 2018, in *Re Gallagher*.[8] Before then, though, it was plain that Parliament needed to take its own steps to address uncertainty over the status of many Members and Senators whose family situations were known to involve links to other countries.

[5] D Elder (ed.), and P Fowler, *House of Representatives Practice* (7th edition), 2018, pp 158–9. See also sections 33 and 38 of the Constitution.

[6] R Laing (ed.), *Odgers' Australian Senate Practice* (14th edition) 2016, pp 33–4 and p. 171. See also section 15 of the Constitution. The High Court provided in the recent cases for a single Justice to make orders for the special count.

[7] Re Canavan [2017] HCA 45 at 23

[8] [2018] HCA 17.

The parliamentary response: Citizenship Registers for Members and Senators

Following the Court's decision on Mr Joyce and the Senators in October 2017, the issue of citizenship status became even more urgent, even though the major parties continued to insist that their own Members and Senators' status was secure. An amendment to the Constitution to soften the dual citizenship disqualification, however necessary, was even more impractical in these circumstances.[9]

A pragmatic solution was reached. Each House would resolve to require its members to provide a statement in relation to their Australian citizenship and any possible citizenship of another country. The House of Representatives adopted the resolution on 4 December 2017.10 The composition of the Senate and slight majority in the House (that had wavered with Mr Joyce's disqualification) made the situation even more febrile. Soon after the resolutions, all Members' and Senators' details were available online and, naturally, subject to close scrutiny by parliamentary colleagues, the media, and the public. The information included the member's birth and citizenship details, citizenship status at the date of nomination for the 45th Parliament, and steps they had taken to renounce additional citizenship.

What amounts to 'reasonable steps' to renounce other citizenship

On 9 May 2018 the Court of Disputed Returns answered questions referred by the Senate regarding the qualification of Katy Gallagher for election. She had begun to renounce United Kingdom citizenship on 20 April 2016, nominated for election on 31 May 2016, and her renunciation was registered by the Home Office on 16 August 2016.

The Court considered that disqualification by section 44(i) is subject to an implicit qualification: an Australian citizen cannot be irremediably prevented by foreign law from participation in representative government. The imperative would be engaged if two circumstances were present: the foreign law must operate irremediably to prevent an Australian citizen from participation in representative government; and the person must have taken all steps reasonably required by the foreign law and within his or her power to free himself or herself

[9] The Joint Standing Committee on Electoral Matters, *Excluded. The impact of section 44 on Australian Democracy*, 2018, recommends a referendum on sections 44 and 45 and other mitigation measures, p. 105

[10] VP 2016–18/1235 (4 December 2017); J 2016–18/2179-80 (13 November 2017). The Registers are available online at https://www.aph.gov.au/Senators_and_Members/Members/Citizenship and https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/CitizenshipRegister

of the other nationality. The procedures required here were not onerous, they simply had not been undertaken early enough.[11]

Overall, seven Members were incapable of being chosen or resigned because of section 44(i)

Between July 2017 and May 2018, section 44 (i) claimed seven Members: Mr Joyce (Nationals), Mr John Alexander (Liberal Party of Australia), Mr David Feeney (Australian Labor Party), Ms Justine Keay (Australian Labor Party), Ms Susan Lamb (Australian Labor Party), Ms Rebekah Sharkie (Centre Alliance), and Mr Josh Wilson (Australian Labor Party).

Following his disqualification by the Court, Mr Joyce was elected at a by-election on 2 December 2017. On 6 December he returned to the House.[12] He was also sworn in by the Governor-General that day as Deputy Prime Minister and Minister for Agriculture.

Mr John Alexander resigned from the House on 11 November 2017 having discovered he was a British citizen by descent. He was re-elected at a by-election on 16 December and returned to the House on 5 February 2018.[13]

The next Member to resign was Mr David Feeney. He remembered signing renunciation documents but could not find evidence of this. His circumstances were referred to the Court in December 2017,[14] he resigned on 1 February 2018, and the Court found on 23 February 2018 that the seat was vacant by reason of section 44(i).[15]

The final four Members to resign in 2018

Following the clarification of what would amount to 'reasonable steps' to renounce citizenship in *Re Gallagher*, four more Members announced their resignations.

On 9 May 2018 Ms Justine Keay announced to the House she would resign.[16] She had taken steps to renounce her additional citizenship before the 2016 election but did not receive confirmation of her renunciation until shortly after the election.

On the same day Ms Susan Lamb announced to the House her intention to resign because of her British citizenship and to recontest her seat. She had

11 [2018] HCA 17

12 VP 2016–18/1271 (6 December 2017). Mr Joyce later resigned as Deputy Prime Minister and from the Ministry for personal reasons.

13 VP 2016–18/1297 (5 February 2018)

14 VP 2016–18/1274–5 (6 December 2017)

15 The Speaker reported to the House on the Court's finding on 26 February (VP 2016–18/1398–9).

16 H.R. Deb (9 May 2018) 3429

earlier informed the House she could not renounce her citizenship because she could not obtain her parents' marriage certificate. In May 2018 she received confirmation that her citizenship was effectively renounced, even without the certificate.[17]

Mr Josh Wilson also told the House that day that he had been born in London to Australian parents who were on a working holiday. He returned to Australia when he was one year old. He was selected as a candidate late in the campaign for the 2016 election, and lodged the necessary papers to renounce British citizenship immediately. His renunciation became effective after nominations had closed and shortly before the July 2016 election.[18]

Ms Rebekah Sharkie resigned shortly after the *Gallagher* decision. She had been born in England and took steps to renounce her citizenship but had not received confirmation of renunciation before she nominated for election.

On 10 May 2018 the Speaker told the House that he had received letters of resignation from Ms Keay, Mr Wilson and Ms Lamb. On 21 May he announced he had received Ms Sharkie's resignation. By-elections were held on 28 July 2018. These four former dual citizens were all returned and sworn or affirmed on 13 August 2018.[19] Mr Feeney did not re-contest but his seat was won by a member of his party so, after all the turbulence, the balance of numbers did not change because of section 44(i).

More pragmatism: Electoral and Referendum Amendment (Eligibility) Regulations 2018

Prospective members were put on notice after May 2018, when Electoral Regulations added a checklist to the nomination forms for election candidates to demonstrate their eligibility under section 44. Completion of the checklist was, however, voluntary. (In 2019, Parliament amended the *Commonwealth Electoral Act 1918* to make completion of the eligibility checklist compulsory.)

How could so many be so ineligible?

Until the cases of 2017 and 2018 there had been little guidance on the meaning of section 44 (i) because there were so few High Court cases in which it had been canvassed. In Sykes v Cleary20 it was held dual citizenship did not necessarily

17 H.R. Deb (9 May 2018) 3432

18 H.R. Deb (9 May 2018) 3431

19 VP 2016–18/1687 (13 August 2018)

20 (1992) 109 ALR 577. Section 44(i) was not the primary aspect of the decision. See discussion in D Elder (ed) and P Fowler, *House of Representatives Practice* (7th edition), 2018, pp 137–9. The more recent cases of course made the timing of those 'reasonable steps' a matter for more careful consideration.

lead to a disqualification under section 44 (i) provided that a person had taken reasonable steps to renounce the other nationality. Given that the main ways in which citizenship can be acquired are by birth in a country, or by descent, or by immigration, and that almost half of Australia's population was born overseas or has a parent who was born overseas, it is surprising that dual citizenship has taken so long to cause difficulties.

Indeed, the House of Representatives Standing Committee on Legal and Constitutional Affairs identified the issues in 1997:

> Subsection 44 (i) expresses the principle that members of parliament must have a clear and undivided loyalty to Australia and must not be subject to the influence of foreign governments. The language in which the principle is expressed is archaic. It was drafted before the concept of Australian citizenship developed and the scope of the subsection is uncertain.
>
> The exclusion from federal politics of persons who have dual or multiple citizenship is problematic. First, there is a question whether the many Australian citizens who are dual citizens should be excluded from the political process. Second, the steps necessary to renounce other citizenships may be cumbersome or uncertain. Third, many Australians may be unaware that they are dual citizens.
>
> The principle is as fundamental today as it was in the nineteenth century. The Committee concludes that the community would be better served if the current provision were to be deleted and the constitution recognised the primacy of Australian citizenship in the parliamentary system. The Committee also considers that safeguards to prevent divided loyalty or foreign influence should be included in legislation.[21]

The Constitution and section 44: a home-grown problem

The Australian Constitution was drafted at Constitutional Conventions held in Australia in the 1890s and came into force as an act of the UK Parliament.:

> "While in legal form an Act of the British Parliament, in all substance and important detail the Constitution was an Australian product".[22]

The Constitution was written when Australian citizenship did not exist and the allegiance required of members was to the British Empire.[23] Also, dual citizenship in those days was rare.

Australian citizenship was established with the Nationality and Citizenship

[21] House of Representatives Standing Committee on Legal and Constitutional Affairs, *Aspects of Section 44 of the Australian Constitution—Subsections 44 (i) and (iv)*, 1997, p. 10

[22] BC Wright, 'Against the odds—lessons from the framing of our Constitution', ANZACATT Professional development seminar for parliamentary staff, January 2013, p. 26.

[23] *Excluded. The impact of section 44 on Australian democracy*, p. xxv

Act 1948. Before then, Australians were British subjects. Over time, with Australian citizenship has come the notion that British subjects were the subjects of a foreign power.[24] The turbulence of 2017–2018 has caught Members and Senators with British, New Zealand and Canadian ties. Some were unaware of their additional citizenship status but, in most cases, had they known, they could have divested themselves in time by following steps that were clear and reasonable. Many others in the Australian population might wish to be representatives in their national parliament but face considerable uncertainty in ascertaining their status, and how to divest themselves of any additional status that may come from countries with more complex records, histories and legal systems that can be difficult to navigate, especially from Australia.[25]

Into the future

The resignations and disqualifications of 2017–2018 have had significant implications for the parliamentary institution, its representatives and electors.[26] The immediate disruption and uncertainty was to the 45th Parliament, but other problems linger. While the Court's decisions have provided clarity they have also made clear there are high and sustained demands on candidates, particularly those who might need to rely on the constitutional imperative that an Australian citizen not be irremediably prevented by foreign law from participation in representative government.[27]

The requirements imposed by section 44 as they are now understood, not to mention the scope for scrutiny of compliance by prospective candidates, seems likely to narrow the field of those who are willing and able to seek office. Now, for those with dual nationality, there is a requirement to divest themselves of that 'other' status, early, whether or not there is some prospect of election.[28]

While we have greater clarity about how section 44 (i) might be complied with, we also know that for some candidates, compliance will be much more difficult than for others. As the Joint Standing Committee on Electoral Matters

[24] Professor George Williams AO, quoted in 'Dual citizenship: Would any former prime ministers be caught up today?', ABC News, 4 November 2017. There is a degree of uncertainty about when British citizenship came to be considered citizenship of a 'foreign power' but this was certainly the situation by the time of the High Court decision in *Sue v Hill* [1999] HCA 30.

[25] The impact is canvassed in *Excluded. The impact of section 44 on Australian democracy,* pp 36–50.

[26] Fortunately no serious questions were raised about the Members and Senators who were ineligible and it was accepted that the Courts would not seek to interfere in Parliament's internal proceedings. See *House of Representatives Practice* (7th edition), p. 160.

[27] The majority judgment in *Re Gallagher*, [2018] HCA 17, in particular paragraphs 23–34. For some this will be a complex, time-consuming, and expensive process.

[28] See the remarks by Mr Josh Wilson MP on his late selection as a candidate, H.R. Deb (9 May 2018) 3431

has observed:

> "Section 44 is no longer operating to effectively ensure its principal intent of parliamentary integrity and national sovereignty. … To fully represent the diversity of those they represent in the Federal Parliament, Australians of all backgrounds must have an equal opportunity to nominate for election."[29]

In the short and medium-term, the Citizenship Register and checklist for candidates resolved the issue to an extent. The challenge for the long-term will be the country's willingness to take the difficult steps towards bringing this part of the Constitution into line with modern expectations of parliamentary representatives.

[29] *Excluded. The impact of section 44 on Australian democracy*, 2018, p. 102

THE ELECTORAL BOUNDARIES BILL IN YUKON

LINDA KOLODY
Deputy Clerk, Yukon Legislative Assembly

On 19 November 2018 an unprecedented occurrence took place in Yukon's Legislative Assembly.[1] The Government Caucus voted as a bloc to defeat the motion for Second Reading of a Government Bill—Bill No. 19, the Electoral District Boundaries Act.

Setting the scene

There are currently 19 ridings in Yukon, and a perennial challenge on the electoral boundaries front has been balancing the representation of ridings within the comparatively high-density, urban population of Whitehorse (78 per cent of Yukon's population is concentrated around the territory's capital)[2] with the sheer physical size of some of the rural electoral districts. The rural ridings typically have a low population base however cover vast, and often challenging to traverse, swathes of the territory. No other jurisdiction in Canada has such a high proportion of its population concentrated in one community.[3] Yukon's Elections Act 2002 provides that after every second general territorial election a Yukon Electoral District Boundaries Commission is established to issue a report making recommendations regarding boundaries. In May 2017 a new Yukon Electoral District Boundaries Commission ("the Commission") was formed following the 7 November general election. The Commission, an independent body, was comprised of Chair Mr Justice Ron Veale (Chief Justice of Yukon), then-Chief Electoral Officer Lori McKee, and three persons selected respectively by each of the three parties represented in the Legislative Assembly.

Tabled in the House on 20 November 2017 the Commission's interim report proposed changing the boundaries of nine of the territory's 19 electoral districts, as well as the names of five ridings, but leaving the total number of

[1] Responses to a 20 November 2018 query to the Association of Clerks-at-the-Table in Canada by the Yukon Legislative Assembly Clerk suggest that a government voting as a bloc to defeat its own legislation (versus choosing, for example, to let the bill die on the Order Paper) may be unprecedented in Canada).

[2] *Yukon Bureau of Statistics Population Report Third Quarter, 2018* notes that the estimated population of Yukon on 30 September 2018 was 40,606, while the estimated population of the Whitehorse area was 31,680: http://www.eco.gov.yk.ca/stats/pdf/populationQ3_2018.pdf

[3] As to the overall size of Yukon, at 482,443 km², Yukon is 1.99 times the size of the United Kingdom (242,900 km²).

ridings unchanged.[4]

In February and March 2018, the Commission held public meetings in 12 communities across Yukon, including Whitehorse, to receive feedback on the interim report's proposals. Written submissions were also accepted by the Commission until 10 March 2018.

Following the feedback that the Commission received on its interim report, the Commission produced a significantly revised final report, which Speaker Nils Clarke tabled in the Legislative Assembly in the final days of the 2018 Spring Sitting.[5]

The Commission's final report recommended a redistribution that would add a new riding, increasing the total number of electoral districts in Yukon to 20. The new riding would be situated in a rural area. For the first time, under the boundaries proposed in the final report, the variances in a majority of Yukon ridings would be greater than 25 per cent (i.e. either above or below) the average electoral district population.[6]

On 19 April 2018 (the same day that the Commission's final report was released) Yukon Liberal Party Caucus Chair Paolo Gallina issued a statement expressing concerns about the report's proposed addition of a twentieth riding:

> "We have done a preliminary review of the report and find the addition of a 20th riding concerning. This proposal differs significantly from those in the interim report that was presented.
>
> A change of this scale and consequence will require careful consideration.
>
> The Liberal Caucus MLAs plan to take the summer to speak with Yukoners about the Commission's proposed changes. This will come back to the legislative assembly for debate and our caucus looks forward to the discussion at that time."[7]

It is of note that the territory is governed by a Yukon Liberal Party majority.

While the Commission's final report is non-binding, historically, the process followed has been that the government of the day has introduced legislation that mirrors the Commission's recommendations. The resultant bill introduced in the House has customarily been passed without amendment. The language

[4] Yukon Electoral District Boundaries Commission Interim Report (November 2017): http://www.yukonboundaries.ca/docs/Interim%20Report%20Website-ENG.pdf

[5] Yukon Electoral District Boundaries Commission Final Report (April 2018): http://www.yukonboundaries.ca/docs/Final%20Report.pdf

[6] Note that the electoral district of Vuntut Gwitchin (which includes Yukon's only fly-in community, Old Crow) is not included in the calculation determining the average, as it is an outlier. Ibid., p. 24.

[7] "Statement on the Final Report of the Electoral District Boundaries Commission—A statement from Yukon Liberal Caucus chair Paolo Gallina on the Final Report of the Yukon's Electoral District Boundary Commission", 19 April 2018.

of section 418 of the Elections Act contemplates not just the introduction but also the passage of the resultant electoral boundaries bill: "The Act introduced pursuant to this section shall, once passed by the Legislative Assembly, come into force on the dissolution of the Legislative Assembly which passed it…". Nevertheless, the Act is only prescriptive as regards a government's need to *introduce* a bill.

Bill No. 19, the Electoral District Boundaries Act

Fast forward to the 2018 Fall Sitting. Bill No. 19, Electoral District Boundaries Act was introduced by Yukon's Premier, the Hon. Sandy Silver, on 4 October, early in the Sitting[8]. However, by the penultimate week of the Sitting, the Bill had still not been called for its Second Reading. In contrast, most of the Government Bills introduced that Sitting had seen some debate in the House, or else had been passed.

With the Sitting set to conclude on 22 November, the Leader of the Official Opposition, Mr Stacey Hassard, gave oral notice on 14 November of Motion No. 383: "THAT this House urges the Premier to move the motion for Second Reading of Bill No. 19, Electoral District Boundaries Act, during the 2018 Fall Sitting."[9]

On Monday 19 November Premier Silver moved the motion for the Second Reading of Bill No. 19. In his leadoff speech, the Premier said, "I do want to take a moment to sincerely thank the members of the Electoral District Boundaries Commission for all of their hard work"[10]—a sentiment that was reiterated by the other seven Members who participated in the debate. Silver went on to observe, "we are legally obligated to introduce the bill that represents the commission's recommendations. That is clearly stated in the act and we have fulfilled that obligation by introducing Bill No. 19."[11] Silver then outlined reasons that the Government would not be supporting the Bill. In delivering his closing speech later that afternoon, the Premier reviewed:

> "We've heard concerns that I will summarize as follows: a lack of consultation [about the addition of a new riding]; a reduction of the number of people per riding; additional costs as a result of an additional 20th MLA; and, quite simply, the lack of demand for more politicians...
>
> Anybody who is following the comprehensive consultation knows that the commission adapted the Canadian standards, established judicial decision—

[8] Bill No. 19, the Electoral District Boundaries Act (Second Session of the Thirty-fourth Legislative Assembly): http://www.legassembly.gov.yk.ca/pdf/bill19_34.pdf

[9] Yukon Legislative Assembly Hansard, 14 November 2018, p. 3580

[10] Yukon Legislative Assembly Hansard, 19 November 2018, p. 3646

[11] *Ibid.*

to a standard that allows for a variance of 25 percent above or below the average electoral district population.

In accepting the 20th riding, the commission rejects the acceptable variance of 25 plus or minus in 11 of those 20 proposed ridings…

To see such a recommendation so late in the game—one that flies against their own parameters so that other communities would not be as likely to even think of this option, were it on the table…this is a concern."[12]

On the subject of the acceptable variance, Premier Silver noted, "By comparison, there were only four of 19 ridings outside that variance in the 2008 report—the last time boundaries were reviewed."[13]

Mr Hassard, who represents the rural riding of Pelly-Nisutlin, was the first Official Opposition member to speak to the Bill at Second Reading. He said, "Am I personally in favour of having a growing government… by adding a 20th member? It's not my favourite thing to do, for sure, but at the same time…[i]t isimportant, especially for ruralYukon, to ensure that their voices are heard here in this Assembly."[14]

Mr Hassard went on to note, £This is a free vote from the Yukon Party. I know that there is at least one member of my caucus who doesn't necessarily agree with what the commission did for his own personal reasons. I respect that, and I am quite sure that he will stand up here today and explain that"[15]

The caucus member to whom Mr Hassard was referring was Brad Cathers, the member for Lake Laberge. The Commission's final report had proposed redrawing the boundaries of Mr Cathers' riding to reflect its rural nature and align with elector quotients, which manifested in an approximately 20 per cent smaller electoral population.

In speaking to the Bill, Mr Cathers said:

"There were significant changes that came forward in the final report that were not consulted on by the commission, with roughly 350 people in my riding…who would have been affected by them. It would also have a significant change to the reflective power of their vote if this legislation is to proceed and pass. On matters such as that, I believe that it is especially important to provide citizens with the opportunity to be directly consulted and have their views considered...

I would also state my strong personal view that the act should be changed to provide for and, in fact, clearly require additional consultation with the public if the commission comes forward with major changes that were not

12 *Ibid*., p 3657
13 *Ibid*., p 3658
14 *Ibid*., p 3647
15 *Ibid.*

included in the interim report, simply so that those potentially affected electors could have the opportunity to have their views on how their vote and the process by which they cast it and the area in which they cast it would be affected."[16]

Mr Cathers continued:

"I also want to emphasize my strong view that in future consultation processes, it should never be left to the MLA for an area to inform constituents of a potentially affected change. I believe the commission themselves should be clearly enabled by the legislation and required by the legislation to do that outreach with people when they are affected..."[17]

In her remarks on the Bill, fellow Official Opposition MLA Patti McLeod, the Member for Watson Lake, stated:

"The people spoke, the commission listened, and I thank them for that. I appreciate that they listened to rural Yukon when we spoke about the need for effective representation. I agree that the process of the electoral boundaries review may need some alteration. Certainly, it would have been desirable for the commission to have the time and mandate to re-engage with Yukoners in a second round of community meetings before presenting their report."[18]

The Leader of the Third Party, Elizabeth Hanson, in delivering remarks in favour of the Bill, commended the Commission,

"….for their diligence and for their willingness to accept that their initial assessment, conducted at a distance from the on-the-ground lived reality of people who live in various regions of our territory with respect to effective and representative representation in this Legislative Assembly…They came to this conclusion that the representation could and should be improved."[19]

Ms Hanson added, "the commission wasn't doing an ivory tower exercise. They were going out and talking to Yukon citizens where they live and hearing what they know on the ground about what is actually going to happen."[20]

After the debate on the motion for the Second Reading of Bill No. 19, the motion was defeated on division (seven yea: 11 nay)[21] along party lines, with one exception; as presaged by his remarks, the Official Opposition member Mr Cathers voted against the motion.

16 *Ibid.*, p 3652
17 *Ibid.*
18 *Ibid.*, p 3656
19 *Ibid.*, p 3648
20 *Ibid.*, p 3649
21 *Ibid.*, p 3658

Where things stand now

On 20 November 2019, the day after the motion for the Second Reading of the Bill was negatived, the Leader of the Third Party gave oral notice of Motion No. 391:

> THAT this House urges the Yukon government to clarify how, having rejected the April 2018 final report of the Yukon Electoral District Boundaries Commission and having defeated Bill No. 19, Electoral District Boundaries Act, the Government of Yukon intends to fulfill the obligations set out in Yukon's *Elections Act* to ensure fair representation of the Yukon electorate and to make proposals to the Legislative Assembly as to the boundaries, number and names of electoral districts for the next two Yukon general elections.[22]

As of the end of March 2019 (the Spring Sitting is expected to conclude on 30 April 2019), Ms Hanson's Motion No. 391 has not yet been called for debate, however it remains on the Order Paper.

[22] Yukon Legislative Assembly Hansard, 20 November 2018, p 3673

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

New Prime Minister appointed

In the midst of speculation surrounding the leadership of the Liberal Party of Australia and following the resignation of a number of ministers from the front bench, the House of Representatives adjourned early, at 12noon, on Thursday 23 August. The following day, Scott Morrison was elected leader of the Liberal Party and replaced Malcolm Turnbull as Prime Minister. Josh Frydenberg was appointed Deputy Leader of the Liberal Party, replacing Julie Bishop. A number of ministerial changes flowed from these events.

At the next sitting on 10 September, the Speaker announced that Turnbull had resigned his seat as the Member for Wentworth. The following week, the Speaker issued a writ for the election of a Member to fill the vacancy. The subsequent by-election was the ninth in the House's 45th parliament.

Minority government

At the by-election for the former Prime Minister's seat of Wentworth, Independent candidate Dr Kerryn Phelps was elected and was sworn in on Monday 26 November. Dr Phelps' election meant that the Liberal/National coalition Government became a minority Government, holding 75 out of 150 seats in the House.

On 27 November, Liberal Member Julia Banks announced in the House that she intended to serve as an Independent Member effective immediately. She stated that she would continue to support the Government on matters of confidence and supply. Following Ms Banks' move to the cross-bench, the composition of the House became 74 Government Members (including the Speaker), 69 Opposition Members and 7 Independent or minor party Members occupying the crossbenches.

Equality of votes

The provision for the Speaker to cast a vote in the House of Representatives is one of the rules of procedure in the House that is established in the Constitution. Section 40 provides:

> Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he [or she] shall have a casting vote.

In general, the Speakers in the House have followed the practice of Speakers

of the UK House of Commons in giving a casting vote. While the Commons' practice has not always been consistent, three main principles have emerged:

- that the Speaker should always vote for further discussion, where this is possible;
- that, where no further discussion is possible, decisions should not be taken except by a majority; and
- that a casting vote on an amendment to a bill should leave the bill in its original form.

Due to the close numbers on the floor of the House, Speaker Smith has been called on to exercise his casting vote five times in the current parliament, including twice in 2018. On 17 September, the House divided on a Second Reading amendment to the Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Bill 2018. The numbers for the 'Ayes' and the 'Noes' being equal, the Speaker gave his casting vote with the 'Noes' in accordance with the principle that a casting vote on an amendment to a bill should leave the bill in its existing form. The amendment was therefore negatived and the Bill passed through the remaining stages.

On 5 December, a message from the Senate was reported informing the House that the Senate had agreed to a resolution regarding live sheep exports and requesting the concurrence of the House. The Leader of the House moved that consideration of the message be made an order of the day for the next sitting. A Centre Alliance Member moved, as an amendment, that the message be considered immediately. During the debate, the Manager of Opposition Business moved that the question be put. The House divided on the closure motion and, the numbers for the 'Ayes' and the 'Noes' being equal, the Speaker gave his casting vote with the 'Noes', citing the principle that the Speaker should vote for further discussion, where possible. The closure motion was therefore negatived and debate continued.

House of Representatives Practice

The seventh edition of *House of Representatives Practice* was published in August 2018. It remains the authoritative text on the practice and procedure of Australia's House of Representatives. It was edited by Clerk of the House, David Elder.

National apology to victims and survivors of institutional child sexual abuse

The House's sitting on Monday 22 October was a special one, with the Prime Minister moving a formal motion of apology to victims and survivors of institutional child sexual abuse.

In June 2018, the Australian Government tabled its formal response to address the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, established by Prime Minister Gillard. The Royal Commission had delivered its final report to Parliament on 15 December 2017. The national apology formed part of the Government's response. Visitors, including Senators, filled the galleries to witness the apology. In speaking to the motion of apology, the Prime Minister acknowledged the role of the Royal Commission:

> "…The foundations of our actions are the findings and recommendations of the Royal Commission initiated by Prime Minister Gillard. The steady compassionate hand of the commissioners and staff resulted in 17,000 survivors coming forward and nearly 8,000 of them recounting their abuse in private sessions of the Commission. We are grateful to the survivors who gave evidence to the Commission. It is because of your strength and your courage that we are gathered here today. Many of the commissioners and staff are also with us today, and I thank them also. Acting on the recommendations of the Royal Commission with concrete action gives practical meaning to today's apology."

The Leader of the Opposition spoke in support of the motion before the debate was adjourned and resumption of the debate was referred to the Federation Chamber. The sitting was then suspended to allow Members to attend events in connection with the apology. When the sitting resumed at 2.30pm, the House, by agreement, did not proceed to question time. The motion of apology was further debated in the Federation Chamber and was returned to the House on 25 October, where the question on the motion was put and carried, with all Members present standing in silence as a mark of respect.

Foreign Influence Transparency Scheme Bill 2017

The Foreign Influence Transparency Scheme Bill 2017 was designed to provide for a registration scheme for persons who undertake activities that seek to influence Australian political systems and processes on behalf of a foreign government, a foreign business or foreign principals. In evidence to the Parliamentary Joint Committee on Intelligence and Security, which inquired into the Bill, concern was expressed about the interaction of the scheme with parliamentary privilege and its requirement that parliamentarians could be compelled by Executive Government (through the Secretary of the Attorney-General's Department) to produce information.

The Committee sought advice on these matters from the Clerks of the House of Representatives and the Senate. The Clerks stated that the concerns could be addressed by an explicit provision in the Bill making clear the scope of parliamentary privilege was not affected by the proposed scheme.

The Attorney-General addressed this issue by proposing to the Committee an amendment which, for the sake of clarity, made it explicit that nothing in the Bill affected the power, privileges and immunities of each of the Houses, their members and committees. In a subsequent submission, the Clerks of both Houses advised the Committee that the amendment addressed their concerns in respect to the interaction of parliamentary privilege and the scheme.

The Committee received further evidence to suggest that the proposed amendment, while a commendable step in the right direction, did not go far enough in dealing with all aspects of the activities in which parliamentarians engage outside parliamentary proceedings. Ultimately, the Committee recommended that the scheme not apply to Members and Senators and that instead the Houses develop a parallel foreign influence transparency scheme, imposing similar obligations on Members and Senators to the ones in the Bill, but appropriately adapted for the parliamentary environment. The Government accepted the Committee's recommendation.

On 25 October 2018 the House referred a number of matters to the Committee of Privileges and Members' Interests in connection with the development of a foreign influence transparency scheme to apply to parliamentarians, to operate in parallel with the scheme established under the Foreign Influence Transparency Scheme Act 2018.

Senate

Qualification of senators

As previously reported, six senators were disqualified as a result of referrals to the High Court of Australia (sitting as the Court of Disputed Returns) between November 2016 and September 2017 to determine the senators' eligibility under section 44 of the Australian Constitution to stand for election or continue to sit in the Parliament.

Developments in 2018 included the disqualification of a further four senators referred to the High Court in November and December 2017—Senators Parry (the President of the Senate), Lambie, Kakoschke-Moore and Gallagher—for being subjects or citizens of a foreign power at the time they nominated as candidates for election.

In relation to the matter of the eligibility of Senator Gallagher, the Court considered whether, by taking the steps necessary to renounce her British citizenship prior to nomination, Senator Gallagher avoided disqualification as a dual citizen, even though the renunciation was not registered until after the election.

The Court held in *Re Canavan* [2017] HCA 45 that section 44 (i) of the Constitution disqualifies a person who has the status of a foreign citizen, subject to a single exception—a 'constitutional imperative' that an Australian citizen not

be 'irremediably prevented by foreign law from participation in representative government'. In *Re Gallagher* [2018] HAC 17 the Court further detailed that exception. Where foreign law presents 'something of an insurmountable obstacle' to renouncing citizenship, a person taking all reasonable steps to do so may avoid disqualification. However, the procedure for renouncing British citizenship was held not to be onerous. The issue here was merely one of timing, and the reasonable steps exception could not apply. As Senator Gallagher remained a dual citizen at the time of the election, the court declared her incapable of being chosen as a senator.

Eligibility of Mr Culleton revisited

As reported in 2017, on 3 February 2017 the Court held that Mr Culleton had been incapable of being chosen as a senator at the time of the 2016 federal election as he was convicted and subject to be sentenced for an offence punishable by imprisonment for one year or longer. On 4 July 2018 Mr Culleton sought to reopen questions regarding his eligibility by filing a summons with the High Court. The summons was dismissed on 10 August on settled legal principles: the applicant had not demonstrated that exceptional circumstances existed which would warrant reopening the matter; and the arguments—essentially challenging the Court's jurisdiction—ought to have been raised when the matter was originally heard.

Filling vacant positions

All four vacancies resulting from disqualifications of Senate candidates by the High Court in 2018 were filled by a special count (recount) of the ballot papers. The following candidates were declared elected to fill vacant positions:

- Senator Colbeck (replacing former senator Parry) on 9 February 2018
- Senator Martin (replacing former senator Lambie) on 9 February 2018
- Senator Storer (replacing former senator Kakoschke-Moore) on 16 February 2018
- Senator David Smith (replacing former senator Gallagher) on 23 May 2018.

Section 44 (iv) of the Constitution, a provision intended to protect the capacity of Parliament to act as a check on the executive government, disqualifies any person who holds an 'office of profit under the crown' from being chosen or sitting as a senator. In the case of Senator Martin, a councillor and mayor of the city of Devonport, the court ruled on 6 February 2018 that his former positions did not constitute an office of profit under the Crown after consideration of the degree of control an executive government might exercise over those positions.

On 13 February 2018 the Full Court rejected arguments that Senator Kakoschke-Moore should be included in any special count on the basis that she

had since renounced her foreign citizenship.

Senators Martin and Storer were declared elected by the court notwithstanding that they had ceased to be members of the political parties they had run as candidates for in 2016.

On 21 March 2018 the Senate returned to a full complement of 76 senators for the first time since 14 July 2017.

Disorder outside formal proceedings

On 28 June 2018 an exchange occurred between two senators in the Senate chamber that was not heard by the President or drawn to the attention of the Senate at the time. After the matter was raised privately with the President he made a statement to the Senate on 13 August in which he observed that personal abuse had no place in the Senate and expressed the view that "it is the established practice of this chamber that the standing orders do not apply simply or strictly to formal proceedings or records in the chamber but to other interactions as well."

The President asked the Procedure Committee to give further consideration to procedural constraints on dealing with such matters. In its third report of 2018, the committee endorsed the approach signalled in the President's statement. The technicality that conduct alleged to be disorderly occurs alongside, but not as part of, formal proceedings, does not prevent the Chair dealing with it in accordance with the Standing Orders. However, the Committee agreed that it was generally undesirable to change the basis for dealing with disorder, which requires senators to raise points of order at the time of the incident to which they relate.

Powers of joint committees

The power of a parliamentary joint committee to summon witnesses was affirmed in the High Court on 22 November 2018. The judgment also reaffirmed the validity of Parliament's contempt powers and noted the extensive protections afforded witnesses before committees through the Senate's Privilege Resolutions.

The Joint Committee on Corporations and Financial Services had ordered the attendance of two witnesses after they had declined invitations to appear. Those witnesses sought to challenge the Committee's capacity to make those orders and applied for a stay or injunction to restrain their operation. The Court found that the witnesses' application lacked merit, and that the issues raised "should generally be resolved by the Parliament, not the courts".

From time-to-time there has been conjecture about the powers of joint committees. Parliament has long been alive to this concern, and now generally provides for the powers and procedures of joint committees through a

combination of statutory provisions and procedural resolutions. Of particular importance, joint committees are subsumed in the definition of committee in the Parliamentary Privileges Act 1987, dispelling any doubt about the protection of their proceedings before courts and tribunals.

The witnesses later appeared before the Committee, as required, apparently armed with advice that parliamentary privilege may not apply to the committee's proceedings, but could be invoked by incanting the word 'privilege' before each response. Thus was the word was uttered 422 times in a three and a half hour hearing. There is no magic in the word. As noted above, it is clear that privilege applies to proceedings of joint committees. However, if it did not, the incantation would be to no avail.

Australian Capital Territory Legislative Assembly

Composition of the Assembly

A countback was held on 11 December 2017 to fill the casual vacancy created by the death of sitting MLA Steve Doszpot in November 2017. Candice Burch was declared elect on 13 December 2017 and was sworn in to the Legislative Assembly on Tuesday 13 February 2018.

This takes the female membership of the Assembly to 14 of 25 members, or 56 per cent—the highest rate of female membership of any parliament in Australia.

Affirmation to Code of Conduct by new Member

The Assembly's Code of Conduct requires that a new member elected to fill a vacancy, before making their inaugural speech, must affirm that they will abide by the Code. On 13 February 2018, after having made her affirmation before a Judge of the Supreme Court, Candice Burch also affirmed her commitment to the principles, obligations and aspirations of the Code of Conduct for all members of the Legislative assembly for the Australian Capital Territory. She was the first such new member required to make the affirmation.

Procedures for the election of a territory Senator

On 15 February 2018, the Standing Committee on Administration and Procedures Committee reported on its review of Continuing Resolution 9—Senator for the Australian Capital Territory —Procedures for Election. This followed the High Court decision that led to the disqualification and resignations of Senators and Members of the Australian Parliament due to ineligibility to serve under clause 44 of the Constitution.

The Committee noted that it appears that the Assembly has one of the more robust procedures to select a senator when compared to practices in other State and Territory legislatures. It also found that, in many ways, the requirement

for a statutory declaration to be presented to the Legislative Assembly when choosing a senator mirrors the requirement of a candidate at a general election when that person must declare that they are qualified under the Constitution and the laws of the Commonwealth to be elected as a senator or member of the House of Representatives. The Committee noted that one could argue that the only changes that need to be made to the process are for the individuals and parties involved to undertake more rigorous checks before that declaration is made.

Possible models for examining estimates

On 15 February 2018, the Assembly resolved to refer to the Standing Committee on Administration and Procedure whether a Select Committee on Estimates was the best model to examine the annual Budget presented by the Treasurer. This follows the previous year's Estimates Committee report being tabled with 158 recommendations in a 287 page report.

On Thursday 22 February 2018 the Standing Committee on Administration and Procedure reported on the matter, and, noting that this matter had previously been examined in the 7th Assembly. The Committee resolved:

(a) that a decision on whether to establish a Standing Committee on Estimates 2018-2019 should be made at the March 2018 sittings; and

(b) that the matter be left in the hands of the Assembly, and to assist that consideration, attached to this report documents showing:

(i) a paper showing the practices in legislatures across Australian and New Zealand; and

(ii) the options paper prepared in 2010 listing six options to consider the estimates in the appropriation.

The Committee also agreed that it would further consider the matter at a future meeting of the Committee.

The Assembly subsequently established a five Member Select Committee on Estimates (two Government MLAs, two Opposition MLAs and one Crossbench MLA, with the Chair to be an opposition MLA) to report by the last day in July 2018.

Proposed censure of Chief Minister

On 20 March 2018 the Leader of the Opposition moved a motion that the Assembly censures the Chief Minister for expressing hatred of journalists and contempt for seniors. The Greens moved an amendment to the motion and a lengthy debate took place with contributions from Members on all sides. Ultimately, the Opposition motion was defeated and the amended motion was resolved in the affirmative.

Protocols for the operation of pairs to encourage and support Members who are nursing mothers or who have carer responsibilities

On 20 March 2018 the Speaker presented protocols for the 9th Assembly for the operation of pairs to encourage and support Members who are nursing mothers or who have carer responsibilities. The document had been signed by the Government, Opposition and Crossbench Whips.

Anti-Corruption and Integrity Bill 2018

On Wednesday 6 June 2018 the Leader of the Opposition presented a Bill for an Act to establish the Anti-Corruption and Integrity Commission. Subsequently the Chief Minister, by leave, moved a motion to establish a five member Select Committee on an Independent Integrity Commission 2018 to examine a draft Government Bill and the Leader of the Opposition's Bill. The Committee is chaired by a Greens Minister and is required to report by 31 October 2018.

Integrity Commission Act 2018

Following two select committee inquiries, on Tuesday 27 November 2018 the Chief Minister presented the Integrity Bill 2018 and, after Standing Orders were suspended on 29 November, the Bill was passed by the Assembly after considering (and agreeing to some) 100 amendments from the Opposition, Government and cross-benches. The Integrity Commissioner must now be appointed by the Speaker as an Officer of the Assembly, and on Thursday 29 November 2018 the Assembly resolved to appoint an Integrity Commission Standing Committee which has three members and, in accordance with the resolution of appointment, an opposition MLA as Chair.

The Act also provides that, in exercising a function under the Act, the Speaker may seek administrative support or advice from the Office of the Legislative Assembly or another entity that is able to provide impartial administrative support or advice.

On 29 October 2018 the Assembly amended Continuing Resolution 5AA to provide that the Integrity Commissioner established pursuant to the Integrity Commission Act 2018 may refer matters to the Assembly Commissioner for Standards via the Clerk of the Legislative Assembly about matters the Integrity Commissioner considers should be referred, and similarly that if the Assembly Commissioner for Standards considers that a complaint lodged with him is more properly the purview of the Integrity Commissioner, the Commissioner shall refer the matter to the Integrity Commissioner.

Lastly, the Assembly resolved to have a continuing resolution on dealing with claims of parliamentary privilege during the exercise of the ACT Integrity Commissions powers and functions. In essence the resolution provides that if a Member makes a claim of parliamentary privilege in relation to a document

held by a member, the Speaker must (after certain requirements are met) appoint an independent legal arbiter to adjudicate the claim of parliamentary privilege.

Appointment of an 8th Minister for the Territory and changes to Assembly Committees

On 24 August 2018 the Chief Minister appointed—for the first time—eight Ministers for the Territory. As a consequence, there were now only four government MLAs to serve on the Assembly's eight standing and two select committees. On 20 September 2018 the Assembly resolved to change the structure for Assembly committees. Instead of having six Committees with four MLAs and four committees with five MLAs (a total of 10 committees overall), they agreed to have just two committees with five MLAs (the Select Committees), two committees with four MLAs and the remaining six committees with three MLAs.

Of the 10 Committees, one is chaired by the Speaker, three are chaired by Opposition MLAs, one is chaired by a Crossbench MLA, and four are chaired by Government MLAs. The Government enjoys a majority on only three committees.

Budget Protocols tabled by Speaker

On Tuesday 18 September 2018 the Speaker presented the Budget Protocols Agreement for the Office of the Legislative assembly and the Officers of the Legislative Assembly. The protocols establish the principles to which the parties (i.e. the ACT Legislature represented by the Speaker) and the ACT Executive (represented by the Chief Minister) commit; the responsibilities of the participants in the budgetary process; and the protocols to be observed in developing and considering budget appropriations for the Office of the Legislative Assembly and the Officers of the Legislative Assembly (Auditor-General and Electoral Commissioner).

The protocols provide that the parties commit to advance the separation of powers doctrine as it relates to the mutually independent status of the legislative and executive branches of government. They further provide for the way that budget submissions are handled, including that the Speaker and Clerk will appear before the budget cabinet, and that any unspent appropriations will be retained by the Office of the Legislative Assembly (the Officers can retain up to ten percent of funds appropriated that are not spent).

Order to Territory Owned Corporation to produce documents

On 23 August 2018 the Assembly, pursuant to Standing Order 213A, ordered the tabling of Icon Water contracts with ActewAGL (Corporate Services

Agreement and Customer Services and Community Support Agreement). The Clerk communicated the order to the Government, and the Government wrote back to indicate that they did not possess the documents and would instead move a motion at a future sitting for the relevant company (Icon Water) to produce the documents.

On 20 September 2018 the Manager of Government Business moved a motion requiring Icon Water to produce the same documents requested by the earlier resolution, but providing for any objection by Icon Water to producing the documents to be determined by an independent legal arbiter. Icon Water duly informed the Clerk that it claimed public interest immunity and the Leader of the Opposition disputed that claim, which triggered a procedure where the Speaker appointed the Hon Richard Refshauge (a retired Supreme Court judge) to arbitrate the claim. The Arbiter upheld most of the claim made by Icon Water, but ordered that a redacted document be provided. That document was then provided to members, and tabled by the Clerk at the next sitting. The Independent Legal Arbiter's report was also tabled.

Land Tax (Community Housing Exemption) Amendment Bill 2018

On Tuesday 23 October 2018 the Speaker ruled that a private members bill that had been introduced by an Opposition MLA was out of order. The Bill proposed to create an incentive for residential housing owners to provide rental properties to the ACT community housing sector by exempting them from the obligation to pay tax under the Land Tax Act 2004. The Assembly has standing orders that deal with the financial initiative of the Crown, although none of those standing orders were relied upon by the Speaker in her ruling. Rather, the Speaker relied on Standing Order 275 which provides that, in the absence of any standing order or practice, the matter shall be decided according to the practice at the time prevailing in the House of Representatives in the Parliament of the Commonwealth of Australia. Relying partly on a paper authored by the Clerks' Office of the House of Representatives entitled *The law making powers of the Houses—Three Aspects of the financial Initiative—Updated notes for Members* (published in June 2012) the Speaker ruled the Bill out of order and withdrawn from the Notice Paper.

Subsequently the Opposition Whip moved that so much of the Standing Orders be suspended as would prevent the Bill being listed on the Notice Paper for the next day's sitting and proceeding with debate on the Bill. The motion to suspend Standing Orders was not agreed to after a division.

New South Wales Legislative Assembly and Legislative Council (joint notes)

Electoral Funding Act 2018

On 17 May 2018 the Minister for Planning, Minister for Housing, and Special Minister of State introduced the Electoral Funding Bill 2018. The object of the Bill was to make provision for the disclosure, capping and prohibition of certain political donations and electoral expenditure for state parliamentary and local government election campaigns, and for the public funding of state parliamentary election campaigns.

The Bill was developed in response to the Final Report on Political Donations by the Panel of Experts (known as the Schott Report), published in December 2014, the Report on the Inquiry into the Final Report of the Expert Panel—Political Donations and the Government's Response (published June 2016) and the Report on the Administration of the 2015 NSW Election and Related Matters (published November 2016). The latter two reports were prepared by the Joint Standing Committee on Electoral Matters.

The Bill passed both Houses on 23 and 24 May, with amendments, and was assented to on 30 May.

175th anniversary of the first elections in New South Wales

On 20 June 2018 the Parliament of New South Wales and the New South Wales Electoral Commission celebrated the 175th anniversary of the first elections in New South Wales.

The anniversary was marked by statements given by the Speaker of the Legislative Assembly and the President of the Legislative Council in their respective Houses.

The Parliament and the Electoral Commission also jointly hosted an event, which commenced with a Welcome to Country given by Uncle Charles 'Chicka' Madden, a Gadigal Elder, and featured speeches by the Presiding Officers and the New South Wales Electoral Commissioner, as well a display of historical items related to the first elections.

Review of Members' Codes of Conduct

During the year the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics tabled a discussion paper and a report as part of its remit to review a Code of Conduct adopted by the Legislative Assembly at least once every four years.

The Committee's role in reviewing the Code is set out by 72E(5) of the Independent Commission Against Corruption Act 1988.

The discussion paper outlined possible amendments to the Code and sought to stimulate discussion about how the Code might be strengthened and be

made more reflective of Members' and the community's expectations.

In its resulting report the Committee concluded that, overall, the Code was effective in assisting Members to act in the public interest and to avoid conflicts between their personal interests and their duties as Members of Parliament. However, the Committee recommended that minor changes be made to the Code which would improve its overall structure, as well as the construction of the clause dealing with conflicts of interest.

It is anticipated that the Assembly will consider the Committee's proposed changes to the Code in 2019.

The Legislative Council's Privileges Committee also produced a discussion paper and a report as part of its remit to review the Code of Conduct adopted by the Legislative Council (which is in the same terms as the Assembly's Code) at least once every four years.

The Council committee's role in reviewing the Code is set out in section 72C of the Independent Commission Against Corruption Act 1988.

In its report, the Committee noted that previous reviews had identified the need for changes to the Code but had not resulted in amendments partly as a result of differences between the two Houses on the nature of the reforms proposed.

Accordingly, to facilitate consensus, and taking into account the desirability of having a consistent Code for both Houses, the Council Committee recommended that the Council adopt the revised Code developed by the Assembly Committee, with some slight modifications.

Last sittings of the 56th Parliament

22 November 2018 was the last sitting day of the Legislative Assembly and Legislative Council before the Assembly is due to expire on Friday 1 March 2019, pursuant to section 24 of the NSW Constitution Act 1902. A General Election will be held on Saturday 23 March, pursuant to section 24A of the Act.

New South Wales Legislative Assembly

On 23 May 2018 the Deputy Speaker informed the House that the Speaker had received correspondence from the Counsel assisting the Coroner of Western Australia requesting access by officers of the Coroner's Court of Western Australia to the in camera evidence taken before the Legislative Assembly Select Committee upon Prostitution, which was in operation between 1983 and 1986. The Deputy Speaker advised that access to the in camera evidence had been requested to assist the Coroner's inquest into the death of Ms Shirley June Finn.

Immediately after the Deputy Speaker's statement the House resolved to grant leave to officers of the Coroner's Court of Western Australia to inspect the in camera evidence taken before the Select Committee upon Prostitution,

on condition that:

(1) The evidence is inspected in Parliament House.

(2) Any information obtained be used by the Coroner's Court of Western Australia to pursue appropriate further inquiry without revealing to any person other than the Coroner and officers of the Coroner's Court of Western Australia the contents of the in camera evidence, and its contents not be made public.

(3) Before adducing into evidence of the inquest any evidence taken before the Select Committee upon Prostitution, the Coroner seek leave of the Legislative Assembly.

Separation of cognate bills

On 24 October 2018 Standing and Sessional Orders were suspended to separate two cognate bills, the Government Sector Finance Bill 2018 and the Government Sector Finance Legislation (Repeal and Amendment) Bill 2018. The suspension motion was passed on the voices and without debate.

The suspension also permitted the Government Sector Finance Bill to be presented to the Governor for assent, prior to the Assembly concluding consideration of Legislative Council amendments to the Government Sector Finance Legislation (Repeal and Amendment) Bill and the Parliament passing that Bill.

The Government Sector Finance Bill, among other things, clarified the authority of the Treasurer to enter into agreements concerning financial services on behalf of the State and Government Sector finance agencies.

On 14 November the Legislative Assembly considered the Council's amendments to the Government Sector Finance Legislation (Repeal and Amendment) Bill, which the Assembly subsequently disagreed to. The motion to disagree to the Council's amendments was passed on the voices.

In a second motion to send a message to the Council advising it of the Assembly's resolution, which was also passed on the voices, the Treasurer gave reasons for the Assembly disagreeing to the Council's amendments, including:

- the constitutional primacy of the Assembly in relation to financial matters;
- the Assembly's significant and long-standing role in relation to the scrutiny of public finance; and
- the amendments being outside the scope of the bill.

The Council did not insist on its amendments and the Bill passed the Parliament that day and was assented to by the Governor on 22 November.

New South Wales Legislative Council

Orders for Papers and 'Cabinet information'

In 2018 a series of orders for papers brought to the fore the issue of the Legislative

Council's power to require the production of a class of documents which have been classified by the executive government as "cabinet information".

In March 2018 the House ordered that the Government produce documents relating to the Government's Sydney stadiums redevelopment strategy. The return did not include the business cases for the redevelopment of the stadiums, even though the government agency Infrastructure NSW had published summaries of the business cases on its website. In response to queries from members, the Government advised that the relevant agencies or ministers did not "hold any additional documents that are lawfully required to be provided in accordance with the terms of the resolution".

Two further orders for papers followed in April and May, relating to the relocation of the Powerhouse Museum and an independent report on the out-of-home-care system (the Tune report) respectively. Both orders were very narrow in scope, requesting only the draft and final business case for the relocation and the Tune report. The fact that these documents existed was public knowledge, but they had not been released publicly by the Government. In both cases, no documents were provided in the returns and the accompanying responses again stated that the agencies held no documents lawfully required to be provided.

In subsequent proceedings in the House the Leader of the Government in the Legislative Council stated that it was the Government's position that "the power of the House to compel the production of documents does not extend to Cabinet information. Accordingly, even if otherwise covered by the terms of an order, Cabinet documents are neither identified nor produced in response to an order".

This led, on 5 June, to the passing, after much debate, of a motion that noted the failure of the Government to comply with the previous three orders of the House and again ordered the production of the Tune report and the Powerhouse Museum and Sydney stadiums business cases by 9.30 am the next day. The motion also censured the Leader of the Government in the Legislative Council and ordered that if the documents were not provided the Leader of the Government would be required to attend in his place at the Table and provide an explanation.

The documents were not produced in compliance with the order. However, when the Leader of the Government was called on to provide an explanation, he stated that the documents would be provided by the Department of Premier and Cabinet by 5pm on Friday 8 June 2018.

When the documents were provided, the accompanying correspondence asserted the documents are Cabinet documents and that the Legislative Council has no power to require such documents to be provided, and that in this case the Government decided to produce the documents on a voluntary basis.

On 21 June the House agreed to a motion rejecting both the claim that the

documents had been provided voluntarily and the Government's apparent use of the Government Information (Public Access) Act 2009 definition of "Cabinet information" when responding to orders for papers, noting that reliance on this definition is likely to have led to a much broader class of documents being withheld from production to the House. The motion further stated that the House does have the power to require the production of Cabinet documents such as those produced on 8 June (i.e. business cases for capital projects and consultant reports on areas of government administration) and that the test to be applied in determining whether a document falls within this category, is, at a minimum, that articulated by *Spigelman CJ in Egan v Chadwick*.

Trial of Selection of Bills and Regulation Committees

At the end of 2017 two new committees were appointed, on a trial basis, for 2018: the Selection of Bills Committee and the Regulation Committee. The committees were appointed in accordance with the recommendations of the Select Committee on the Legislative Council Committee System, which reported in December 2016.

As at 12 November 2018 the Selection of Bills Committee had considered 115 bills, and members had submitted 12 proforma referral forms concerning 10 bills. The Committee recommended the referral of five bills for inquiry and the House resolved to refer four of the five bills for inquiry and report.

The Regulation Committee conducted two inquiries during 2018 into particular regulations. Although the resolution establishing the Regulation Committee provides for the Committee to inquire into and report on trends or issues that relate to regulations, the Committee did not conduct this type of policy based inquiry during the trial period.

Both Committees tabled reports evaluating the effectiveness of the trials and recommended that the committees be re-established in the next parliament.

Privileges Committee inquiry into procedural fairness for inquiry participants

On 25 October 2018 the House agreed to a motion of the Chair of the Privileges Committee that introduced procedures to ensure people who participate in committee proceedings receive fair treatment. In 2016, the Select Committee on the Legislative Council Committee System proposed that the Privileges Committee examine whether such procedures should be formally introduced. The Privileges Committee subsequently conducted an inquiry which recommended the adoption of the motion ultimately agreed to by the House.

The resolution, which has continuing effect unless amended or rescinded, is very similar to the procedures adopted by the Australian Senate (Procedures to

be observed by Senate Committees for the protection of witnesses), including protections such as the opportunity to request a private hearing, attend a hearing with a legal advisor or support person and providing witnesses with the opportunity to make a submission before giving evidence.

While many of the procedures were for a long time already adopted by committees, the formal adoption of publicly available procedures will strengthen the committee system by ensuring people are fully aware of their rights and responsibilities when participating in a committee inquiry, foster greater clarity and consistency in committee practice, ensure inquiries are conducted in a manner which is seen to be fair, and enhance public confidence in the committee system.

Northern Territory Legislative Assembly

Changes to petitions

Standing Order 121 (Action on Petition) was suspended and replaced by Sessional Order 17.

Standing Order 121 states: "On presentation of a petition, no debate upon or relating to it is allowed. It is laid upon the Table of the Assembly and a Member may move, without notice, a motion to refer the petition to a committee of the Assembly and may also move "that the petition be printed"."

Sessional Order 17 introduced new procedures which now mean after a petition has been read in the Assembly, any Member may move, without notice, that the petition be referred to either the Social Policy Scrutiny Committee or the Economic Policy Scrutiny Committee for consideration as to whether the petition should be debated.

If the committee recommends to the Assembly that the petition should be debated, the recommendation of the Committee will be notified to the Clerk who will read the recommendation to the Assembly at the commencement of the next meeting day, where any Member may, without notice, move the report be adopted.

If the motion is agreed, the debate on the petition will be set down on the Notice Paper as an order of the day on the following meeting day of the Assembly to be considered at the time in the Routine of Business made available at item 8 for Debates on Petitions and Responses to Petitions. When the order of the day is called on, the Member who moved that the Assembly adopt the recommendation will move that the Assembly note the petition. This motion cannot be amended.

The debate may comprise a maximum of two Members speaking for up to five minutes each and two other Members speaking for up to three minutes each.

Queensland Parliament

New Parliament

In the last edition of The Table (Volume 86), it was reported that Queensland's new electoral boundaries, which increased the number of electorates from 89 to 93, came into effect on 29 October 2017, when the writ was issued for the State General Election.

On 13 February 2018 all 93 members were sworn-in, including twenty-three new MPs (and one returning Member form the 54th Parliament). The new members included Queensland Parliament's first Torres Strait Islander member, Ms Cynthia Lui MP, Member for Cook.

Hon. Curtis Pitt MP, Member for Mulgrave, was nominated as Speaker by the Premier and, in a move away from tradition, the nomination was seconded by a cross bench member, Mr Robbie Katter MP (Katter's Australian Party). Mr Mark McArdle MP was also nominated by the Leader of the Opposition. There being two nominations, a ballot was held. Hon Pitt was duly elected 39th Speaker of the Queensland Legislative Assembly and was formally presented to the Governor on 13 February 2018. Mr Speaker has been a Member of the Legislative Assembly since 2009, and was Treasurer in the 55th Parliament.

The current 56th Parliament followed an extraordinary election with the next election to take place in October 2020. Fixed four-year terms will commence with the 57th Parliament.

Little strangers on the floor of the Chamber

During the swearing-in of members, the Member for Keppel brought her baby onto the Chamber floor: a technical breach of Standing Order 284(3) which provides that during a sitting of the House 'no member shall bring any stranger onto the floor of the Chamber.'

On 15 February 2018 Mr Speaker noted a collective will that the Standing Order not be enforced in the case of a parent and child when care is required. Provided there is no disruption to the House, the Standing Order will simply not be enforced.

Conscience vote on Termination of Pregnancy Bill

In October 2018 the Queensland Parliament held its eighth conscience vote to date, and the first since 2015, on the Termination of Pregnancy Bill.

On 22 August 2018 the Attorney-General and Minister for Justice introduced the Termination of Pregnancy Bill. The Bill removed sections of the Criminal Code which prohibited unlawfully attempting to procure a termination of pregnancy and established a framework for the legal provision of termination of pregnancy services. The Bill also provided for health practitioners to conscientiously object to terminations and established safe access zones around

facilities.

The Government and Opposition's decisions to grant a conscience vote resulted in divisions on the Bill being conducted via the personal vote process, rather than the usual party vote process where Government and Opposition members sit in their allocated seats and are deemed to be voting with the party unless they indicate otherwise.

The process for personal votes is set out in Standing Order 107. Once the bars have closed, the ayes move to the right of the Chair and members voting noes move to the left of the Chair. The Speaker appoints two tellers for each side who count the members voting on their side of the Chamber and report the results to the Speaker.

Divisions were held on the second reading (51 Ayes and 41 Noes), on amendments during Consideration-in-Detail and Third Reading (50 Ayes and 41 Noes). The divisions saw a number of members cross the floor and some members abstain by leaving the Chamber. The Bill was passed on 17 October 2018 and received Royal Assent on 25 October 2018.

Disruption during Question Time

On 4 September 2018 protestors in the public gallery disrupted Question Time by chanting and throwing confetti on to the floor of the Chamber.

Mr Speaker ordered the protestors be removed from the Parliamentary Precinct. Subsequently, the Queensland Police Service issued 'move on' directions to the individuals involved. The video footage of the disturbance was removed from the broadcast and archive. In addition, Mr Speaker issued a direction to cease the use of video recordings of the disruption and stated he took a very dim view of any members that aid, abet, encourage or congratulate inappropriate behaviour such as that witnessed during the disturbance.

In February 2019, the House amended the Standing Orders to include two new examples of contempt relating to disrupting the proceedings of the Legislative Assembly or its committees. Members or officers involved in planning or executing a disruption of the Legislative Assembly or a committee proceeding and anyone who makes public statements inciting or encouraging the disruption of the Legislative Assembly by bringing the proper proceedings of the Legislative Assembly or its committees into disrepute may face contempt proceedings.

South Australia House of Assembly

Chamber photography

On 2 August 2018 the Speaker made a statement regarding still photography in the Chamber. This statement set out the conditions applying to still photography in the Chamber and the House (outside of the Chamber). The conditions

included a requirement for fairness and balance in reporting, and prohibited the use of telephoto lenses to inspect or take photographs of members' or other persons' documents, computer screens, or other electronic devices. Specific permission from the Speaker was also required to photograph unusual or important events in the Chamber.

Live streaming of Question Time to Facebook

In the last sitting week for 2018, at the request of the Speaker, the House commenced live streaming of Question Time to the House of Assembly Facebook site. The House of Assembly's Facebook site is relatively new, having gone live in late November 2018.

The streaming of question time on the Facebook site is in addition to the live streaming of all proceedings on the Parliament of South Australia website.

Tasmania House of Assembly

Election of the Speaker

A General Election for the House of Assembly was held on 3 March last with the make-up of the 25 Member House of Assembly being 13 Liberal (down from 15 in the previous Parliament); 10 Australian Labor Party (up from seven); and two Tasmanian Greens (down from three). It is worth noting that for the first time, the number of women exceeded that of men in the House (13 to 12).

Having won a majority of the seats (and incidentally, 50.26 per cent of the primary vote) a Liberal Government was commissioned.

Opening Day was scheduled for 1 May and the Government's nominee for the Speakership was also announced. The nominee was Mr Rene Hidding, a Minister in the previous Government and the longest serving Member of the House, having been first elected in 1996.

On Opening Day, following the swearing in of the Members, the Clerk called for nominations of a Member to "take the Chair of this House as Speaker". The Premier sought the call and duly nominated Mr Hidding, the nomination was seconded by the Deputy Premier and such nomination accepted by the nominee. The Clerk then caller for "any further nominations?", and the Leader of the Opposition sought the call and nominated a Liberal Member for Denison, Ms Sue Hickey, who only moments earlier had been sworn in an as a Member of Parliament for the first time. The nomination was seconded by the Leader of the Greens and, to the surprise of many, was accepted by Ms Hickey.

A secret ballot was then conducted, with Ms Hickey receiving 13 votes and Mr Hidding 12.

Ms Hickey, was then conducted to the Chair, acknowledged the honour which the House had conferred upon her and took the Chair as the Speaker on her first day as a Member of Parliament. While Ms Hickey did not have

any knowledge of parliamentary procedure, she had experience presiding over meetings from her time as the Lord Mayor of Hobart.

This is not the first time the Government's nominee for the Office of Speaker has not been elected despite the Government holding a majority of seats, with a similar event transpiring in 1992. However, this was the first time since the House of Assembly was formed that a Speaker was elected on their first day as a Member.

Victoria Legislative Council

Opening of the 59th Parliament of Victoria

The Victorian State Election was held on 24 November 2018 and the Labor Government led by Mr Daniel Andrews was returned for a second term. The Government chose to hold the Opening of the new Parliament just prior to Christmas, on Wednesday 19 December 2018.

The Opening of the 59th Parliament of Victoria began with a Welcome to Country ceremony performed by an Aboriginal Elder, which was attended by Members and guests. This ceremony was followed by Members being sworn in by the Governor's Commissioners in the respective Chambers. The Legislative Council then elected a President (Mr Shaun Leane from the Australian Labor Party) and a Deputy President (Ms Wendy Lovell from the Liberal Party), while the Legislative Assembly elected a Speaker and Deputy Speaker.

In the afternoon the Governor of Victoria, Her Excellency the Honourable Linda Dessau AC, attended the Legislative Council Chamber to deliver the Governor's Speech to Members and guests. Once the Governor had departed Parliament, both Houses resumed proceedings with Question Time, formal business and the commencement of the Address in Reply debate to the Governor's Speech.

Breaking of pairing agreement at the Third Reading of a bill

A pairing agreement was broken during consideration of the Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017. Debate on the Second Reading of the Bill resumed on Tuesday 27 March 2018, following a pause so that the Bill could be considered by a Select Committee. Consideration of the Bill in Committee of the whole began on the afternoon of Thursday 29 March 2018, the day before Good Friday. Debate continued until midnight. A motion to extend the sitting past midnight was agreed to on division.

Soon after the midnight extension, a motion to report progress was put by an Opposition Member who objected to continuing the sitting on Good Friday. A second Opposition Member also objected to sitting on Good Friday. In response, the Government offered pairs to Members of the Opposition. The

motion to report progress was subsequently defeated and the House continued consideration of the Bill in Committee of the Whole Council.

The committee stage concluded at approximately 11am on Good Friday. The Bill passed the this stage with amendments and the report was adopted on division 18 to 17. During a division on the question that the Bill be read a third time, the two Opposition Members who had not attended the Chamber since midnight, as per the informal pairing arrangement, entered the Chamber to vote. Given that the paired Government Members were absent, the effect of the Opposition Members attending the Chamber for this final division was that the Bill was defeated 18 to 19.

During the division, the Government Whip raised a point of order that the pairs agreement had been broken. The President noted that pairs were not a formal procedure of the House and were not covered by Standing Orders. Accordingly, the point of order was dismissed.

CANADA

House of Commons

Investigation of the Conflict of Interest and Ethics Commissioner

On 10 January 2018 the former Conflict of Interest and Ethics Commissioner of Canada appeared before the Standing Committee on Access to Information, Privacy and Ethics in relation to "The Trudeau Report"—Committee's study on the Subject Matter of the Report of the Conflict of Interest and Ethics Commission. The report, which summarised the investigation of the Conflict of Interest and Ethics Commissioner into the conduct of the Prime Minister, Justin Trudeau (Papineau), following family vacations on a private island owned by the Aga Khan, concluded that the Prime Minister contravened sections of the Conflict of Interest Act. On 17 April 2018, Candice Bergen (Portage—Lisgar) moved that the report of the Ethics Commissioner tabled in the House on 29 January 2018, be concurred in. As debate was interrupted and the Government did not resume debate on the motion, the report was deemed concurred in at the expiry of 30 sitting days after the tabling of the report on 19 April 2018.

Anti-Harassment and Code of Conduct

On 1 February 2018 the Standing Committee on Procedure and House Affairs unanimously adopted a motion to establish a Sub-Committee on the *Code of Conduct for Members of the House of Commons: Sexual Harassment* to embark on a thorough review of the *Code of Conduct for Members of the House of Commons: Sexual Harassment*. Following its February 2018 review under section 51 of the Code, the Sub-Committee proposed a number of changes to the existing Code which were reflected in the 64th Report of the Standing Committee on

Procedure and House Affairs Code of Conduct for Members of the House of Commons: Sexual Harassment between Members, that was presented to the House on 4 June 2018, and deemed concurred in on 20 June 2018. As part of its recommendations, the Standing Orders were amended by replacing Appendix II, "Code of Conduct for Members of the House of Commons: Sexual Harassment" in June 2018.

Strangers on the Chamber Floor

On 26 March 2018, by unanimous consent of the House, it was agreed that Chief Joe Alphonse, Chief Russell Myers Ross, Chief Francis Laceese, Chief Victor Roy Stump, Chief Otis Guichon Sr., and Chief Jimmy Lulua of the Tsilhqot'in First Nation be permitted on the Chamber floor during Statements by Ministers. The Prime Minister, Justin Trudeau (Papineau), made a statement of apology for the actions of past governments against the Tsilhqot'in people. After hearing from other members, Peyal Laceese of the Tsilhqot'in First Nation performed a traditional drumming ceremony from the floor of the House. This represented an extraordinary occasion whereby the House did not resolve into a Committee of the Whole in order to welcome visitors to the Chamber floor.

Question of Privilege—Vote 40

On 25 May 2018 Daniel Blaikie (Elmwood—Transcona) rose on a question of privilege regarding the rights of members of Parliament to raise points of order if they suspect that proceedings of the House are breached. Earlier the same day, Mr. Blaikie rose on a point of order concerning Vote 40 of the Main Estimates 2018–19 during which the Speaker, following a lengthy intervention by Mr. Blaikie and repeated points of order yelled from the Chamber floor, interrupted the member to indicate that he had heard enough and would take the matter under consideration. In his question of privilege, Mr. Blaikie argued that the Speaker abrogated his privileges as a member of Parliament by not being granted the opportunity to complete his discourse, despite repeated efforts to be recognised in the House. On the same question of privilege, the House Leader of the Official Opposition, Candice Bergen (Portage—Lisgar), noted that Mr. Blaikie had five points to his point of order of which, only one was heard by the Chair before advancing to the next order of business. In his ruling of 4 June 2018, the Speaker explained that it is well established that members, in their interventions on points of privilege or points or order, are expected to make brief presentations on the issue being raised. It is not the practice of the House to raise new points of orders once the Speaker has ruled or determined that sufficient information has been given and the member has been informed accordingly. Moreover, the Speaker reminded the House that members may not raise a point of order to discuss a ruling on a question of

privilege or a point of order to ensure that the authority of the Chair is not casually nor repeatedly challenged.

Unusual Sittings

On 14 June 2018 the final supply day in the period ending 23 June, the House considered motions to concur in the main estimates for the fiscal year ending 31 March 2019. In an effort to encourage the Government to release a breakdown of the cost of carbon pricing to Canadians, the opposition parties put on notice 197 opposed items in the estimates. Similar to the events that transpired on 22 March 2018, the House continued sitting over two calendar days until such time that Mark Strahl (Chilliwack—Hope) sought and obtained unanimous consent that the remaining motions to concur in all opposed items be deemed adopted on division, and that the motion to concur in the unopposed Votes be deemed adopted on division. As per the usual practice, the House adopted the supply bill for the main estimates.

On 22 November 2018 the Minister of Employment, Workforce Development and Labour, Patty Hajdu (Thunder Bay—Superior North) introduced and read the first time Bill C-89, An Act to provide for the resumption and continuation of postal services, in response to rotating Canada Post strikes. Pursuant to an order respecting proceedings, made on 23 November 2018, the Bill was debated at Second Reading, read the second time and referred to a Committee of the Whole House, considered in Committee, reported without amendment, concurred in at report stage and read the third time and passed in a single sitting that extended over two calendar days, until 1am on 23 November 2018.

Removing accessibility barriers in Committees

On 2 October 2018 the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities commenced its study of Bill C-81, An Act to ensure a barrier-free Canada. The study was dedicated to hearing from Canadians, particularly individuals with disabilities or accessibility concerns, their advocacy groups and experts in the field of accessibility. In support of this study, the Committee explored ways to ensure that meetings were accessible to all Canadians by incorporating ASL and LSQ sign language interpretation services, simultaneous closed captioning in English and French, providing accessible document formats, and ensuring the ease of access of meeting rooms and spaces. Sign language interpretation was later added to the video recording of each of the nine meetings. In addition, all briefs were converted into an accessible e-text format.

Paper Petitions

On 29 October 2018 Diane Finley (Haldimand—Norfolk) rose on a point or

order regarding the format for paper petitions. Ms. Finley previously rose on a point of order on the same topic on 4 October 2017, in which she argued that she was prevented from representing her constituents as the petition she received on ledger sized paper could not be certified as it was larger than the "usual size" as permitted under Standing Order 36(1.1)(c). Ms. Finley noted that she raised the matter with the Standing Committee on Procedure and House Affairs as suggested by the Speaker in his ruling over one year ago; however no recommendations were put forth by the Committee. Following her point of order, Ms. Finley sought and received unanimous consent to table her petition. The Speaker delivered his ruling on 8 November 2018, the same date in which the Standing Committee on Procedure and House Affairs presented its 75th Report *Review of the House of Commons Electronic Petitions System*. The Speaker announced that the Report contained recommendations to amend the Standing Order that addresses the minimum and maximum size of a sheet of paper for paper petitions to include ledger sized paper. The Report was concurred in by unanimous consent on 29 November 2018.

Canadian NATO Parliamentary Association Annual General Meeting

On 30 October 2018, the Canadian NATO Parliamentary Association held a special Annual General Meeting to elect a new Chair, among other agenda items. The meeting was chaired by Leona Alleslev (Aurora—Oak Ridges—Richmond Hill), a former member of the Liberal caucus who had crossed the floor to join the Conservative caucus on 17 September 2018. Shortly after the meeting was called to order, a point of order was raised regarding the validity of the meeting and the rules of the Association with respect to the notice period for nominations and elections. Amidst the disorder, Ms. Alleslev ruled that the meeting was not properly constituted and adjourned the meeting to the objection of some members. After a few minutes, the meeting was called back to order by the Vice-Chair, Borys Wrzesnewskyj (Etobicoke Centre), as he believed that her decision to rule the meeting out of order contravened rules and procedures. The Association proceeded to adopt a motion to remove the Chair and to elect Mr. Wrzesnewskyj as the new Chair of the Canadian NATO Parliamentary Association.

The following day, John Nater (Perth—Wellington) rose in the House on a point of order to denounce the alleged unlawful and illegitimate meeting that failed to abide by the Association's constitution. Mr. Nater disputed the validity of the election as it took place after Ms. Alleslov had adjourned the meeting, and he urged the Speaker to direct the Clerk of the House to reverse the changes. Several members noted that they were not afforded the opportunity to vote, as they dispersed following the adjournment of the meeting. In his ruling of 6 November 2018, the Speaker reiterated that Associations, unlike

committees, are not "creatures" of the House. The work of parliamentary associations, while important in many aspects, falls outside of the Speaker's ability to enforce and interpret the rules and practices of the House as it relates to parliamentary proceedings. The Speaker concluded that the matter should be resolved through a general assembly of the Association or alternatively the Joint Interparliamentary Council which reports to the Board of Internal Economy.

Following the NATO Parliamentary Association Annual General Meeting the matter was raised at the meeting of the Joint Interparliamentary Council. A procedure was adopted for the consideration of non-confidence in the Chair by an association at a General Assembly, and an appeal process established by the Council in cases where provisions of the association's constitution have been breached in the event of non-confidence.

Indigenous Languages in the House and Committees

On 29 November 2018 the 66th Report of the Standing Committee on Procedure and House Affairs, *The Use of Indigenous Languages in Proceedings of the House of Commons and Committee*, was concurred in by unanimous consent. The Committee explored the feasibility of supporting simultaneous interpretation of approximately 60 different Indigenous languages when spoken during parliamentary proceedings and ultimately recommended that the use of Indigenous languages be recognised in the House. According to a process set out within the Report, members must inform the Clerk of the House of the Indigenous language to be used and provide reasonable notice to the Clerk as to when they will make an intervention in that language. These notices will permit the House Administration and the Translation Bureau to secure the required interpretation services, if possible, and translation services in a timely manner. Pursuant to this Report, the first instance of a member speaking in Inuktitut followed by a translation recorded in both the English and French versions of the Debates was on 5 December 2018 when Hunter Tootoo (Nunavut) made a statement in Inuktitut during Statements by Members.

Financial procedures

Although 4 December 2018 was the last allotted day in the supply period ending 10 December, pursuant to the order made unanimously by the House on 29 November 2018, the vote on the opposition motion and all other questions related to the Supplementary Estimates (A) 2018–19, were deferred until 5 December. The concurrence of estimates outside of the supply period is rare. Immediately thereafter, the House resolved itself into a Committee of the Whole to consider Bill C-90, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending 31 March 2019. The Committee reported the Bill to the House without amendment and

was adopted at all stages by the House. The Bill received royal assent on 13 December 2018.

Closure of Centre Block

On 13 December 2018 the House of Commons sat in the Centre Block building (the main parliamentary complex) for the last time before it undergoes extensive renovations. The newly renovated West Block now serves as an interim Chamber during the renovations of Centre Block. This is the first time that the building is closed for an extended period of time since the building was rebuilt following the fire in 1916.

Senate

Vacancies

Nineteen vacancies were filled in 2018. All new senators were selected using the Senate appointment process established by Prime Minister Justin Trudeau in 2015, which allows Canadians meeting the assessment criteria to apply for a seat in the Senate. The Prime Minister then selects individuals from a list of candidates recommended by the Independent Advisory Board for Senate Appointments.

With new appointments, and with senators who have resigned, retired or changed affiliation, standings in the Senate at the end of 2018 were as follows:

- 58 members of the Independent Senators Group (ISG),
- 31 Conservatives,
- nine Independent Liberals and
- seven non-affiliated senators.

The ISG, therefore, represented 55 per cent of the 105 seats. By the end of 2018, there were no outstanding vacancies in the Senate, marking the first time all 105 seats had been filled in eight years.

On 20 November 2018 a Sessional Order regarding committee membership was moved by Senator Woo (Facilitator of the Independent Senators Group) and adopted by the Senate. The motion had the effect of adjusting the membership on all Senate committees, with the exceptions of the Standing Committee on Ethics and Conflict of Interest for Senators and the joint committees, to more closely reflect standings in the Senate. The new Order also contained provisions for non-affiliated senators to retain their membership on committees.

Two previous Orders on the subject were adopted on 7 November 2017, and 7 December 2016.

Emergency debate request

On 6 February 2018, the Speaker ruled on a request for emergency debate by Senator Tkachuk, on the recent actions by the Government of British Columbia

to block the Trans Mountain pipeline expansion. The Speaker ruled that, given the latitude accorded under the Rules of the Senate, he would allow the emergency debate to proceed, the first such debate to occur since 1999.

British Columbia Legislative Assembly

Electoral Reform referendum

From October to December 2018 the province of British Columbia held a mail-in referendum to determine an electoral system for the province. The ballot asked British Columbians whether they would prefer to continue with the current first past the post system or to move to a system of proportional representation. A second question asked voters to select one proportional representation system from three choices. Referendum results released in December 2018 showed that 61.3 percent favoured the first past the post system, and 38.7 percent supported a proportional system.

New Human Rights Commissioner

In November 2018 the Human Rights Code Amendment Act 2018 received Royal Assent. The Act establishes the Office of the Human Rights Commissioner as an officer of the Legislature. The establishment of this position brings the total numbers of officers of the Legislature in British Columbia to nine. The Act provides that "[t]he Legislative Assembly may, by resolution, appoint as the Human Rights Commissioner a person who has been unanimously recommended for the appointment by a special committee of the Legislative Assembly." On 26 November 2018 the Legislative Assembly appointed a Special Committee to make such a recommendation for the consideration of the House.

Permanent Officers of the House

On 20 November 2018, the Legislative Assembly adopted a motion to place Craig James, Clerk of the Legislative Assembly, and Gary Lenz, Sergeant-at-Arms, on administrative leave with pay and benefits as a consequence of an outstanding investigation. In order to ensure continuity, the Legislative Assembly adopted a subsequent motion on 22 November 2018, appointing Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees, as Acting Clerk of the Legislative Assembly, and Randy Ennis, Deputy Sergeant-at-Arms, as Acting Sergeant-at-Arms, until otherwise ordered by the House.

New edition of Parliamentary Practice in British Columbia

In 2018 a dedicated team of three staff were assigned to work on updating the procedural authority of choice at the Legislative Assembly, Parliamentary Practice in British Columbia. The volume was last updated in 2008, when the

fourth edition was published. The team spent seven and a half months writing and updating the significantly revised upcoming fifth edition, and the project has now moved on to editing stages, with publication expected in 2019.

Manitoba Legislative Assembly

Chamber renovations and accessibility improvements

On 23 March 2018 Madam Speaker Myrna Driedger showed the improvements made to the accessibility of the Chamber to Rick Hansen, the founder and Chief Executive Officer of the Rick Hansen Foundation, a charity which campaigns for an inclusive world where people with disabilities can reach their full potential and not face barriers, physical or otherwise. The major renovation project making most of the Chamber accessible was officially unveiled in a ceremony on 2 October 2017, as the Assembly resumed its Fall sitting. The project cost $1.45 million as it involved raising the floor of the Chamber three-quarters of a metre and made all of the front and back benches, the Speaker's chair and the Clerk's table accessible to wheelchairs.

HeritageWinnipeg awarded the renovation project with the 2018 Preservation Award for Excellence for sensitively adding barrier-free accessibility within the Chamber, including the restoration of character defining elements such as marble flooring, bronze railings, the historic desks, and curtains. The original cork and marble floors were left intact underneath an identical new cork and marble floor, and the new railings along the ramp match the original railings elsewhere in the room. The final result of the renovations made the entire perimeter and floor totally wheelchair accessible. The installation of the new cork flooring made it possible for all Members to be provided with modern, ergonomic chairs, replacing the original (97-year-old) chairs which were bolted to the floor.

Security improvements

The Assembly took further steps to enhance the safety and security of the Chamber by installing metal detectors in the Public Gallery for the first time. The Government provided a room for the Assembly to use to store checked items and to house the metal detectors when not in use. All visitors are now required to walk through a metal detector, check their bags, hand luggage, coats and cell phones before entering the Chamber Gallery. This change was implemented as a result of an interruption to Chamber proceedings when a protest group was able to smuggle in banners and music staffs with bells under coats in order to make noise to disrupt proceedings.

Manitoba Girl Guides in the Chamber

On 10 March 2018, Speaker Driedger invited over 100 Manitoba Girl Guides,

age 10 to 12, to take their seats in the Chamber of the Manitoba Legislative Assembly. This was the first time in Manitoba history girls have filled all of the Chamber's seats. This full day event began in the committee room where Madam Speaker spoke to the importance of political engagement. The girls then prepared debate points with the Honourable Ms. Squires, the Minister responsible for the Status of Women, with Ms. Fontaine, Member for the constituency of St. Johns, and with Madam Speaker. The girls then discussed these topics on the floor of the Chamber.

Ontario Legislative Assembly

Independent members

Following the 2018 provincial election, seven members of the Liberal Party and one member of the Green Party were elected to Provincial Parliament. Although affiliated with established political parties, not enough Liberal or Green members were elected to form a "recognised party" under the Standing Orders and were, therefore, considered independent members. At the time, the Standing Orders defined a recognized party as a Party caucus of eight or more members of the Legislative Assembly. While these members were not able to exercise the privileges of members belonging to a recognised party, the Standing Orders did provide the Speaker discretion to permit independent members to participate in certain proceedings of the House.

In exercising his discretion to permit independent members to participate in the proceedings, the Speaker utilised a largely mathematical approach. He attempted to calculate the opportunities available to all members and then divided this by the number of eligible members in the House.

For example, during each daily question period there is time for 12 questions to be posed to Ministers by Members other than the Leader of the Official Opposition. This means that 101 Members must share 12 questions a day or that each Member can ask a question once every 8.4 days. The Speaker therefore recognised each independent member once every eight sitting days to ask a question during Oral Questions.

By using similar mathematical calculations the Speaker determined that each Independent Member was entitled to make a Members' Statement once every ten days and that each was entitled to three minutes of debate on substantive Government motions or Second and Third Reading of Government bills.

After some minor adjustments for sharing or banking of debate time, the system appears to be working and providing all Members with some certainty about the independent members participation in the House.

Saskatchewan Legislative Assembly

Anti-harassment policy

The Board of Internal Economy (BOIE) approved an anti-harassment policy for the Members of the Legislative Assembly (MLAs). The governing principle of the anti-harassment policy is that every member shall commit to contributing to an environment free of personal harassment and sexual harassment and will make every reasonably practicable effort to that end. As a result of the adoption of the anti-harassment policy, the Rules and Procedures of the Legislative Assembly of Saskatchewan were amended.

The anti-harassment policy includes a four-step resolution process. A member may report allegations of personal or sexual harassment by filing a formal complaint within 90 days of an incident. Whenever appropriate or possible, the parties to the harassment complaint will be offered the opportunity to attempt a resolution through voluntary mediation. If mediation is not pursued or is unsuccessful, the complaint will be examined by an external investigator. The results of the investigation will be provided to the BOIE which may recommend sanctions to the Legislative Assembly.

Sensitivity training was a requirement of the policy. Consequently, with the assistance of an outside consultant, the Legislative Assembly Service developed and provided sensitivity training courses to ensure that MLAs understand the policy and best practices. All members have completed the sensitivity training.

GUYANA NATIONAL ASSEMBLY

Motion of no confidence

At the 111th Sitting of the National Assembly on 21 December 2018 a motion of no confidence in the Government was moved in the National Assembly by the Leader of the Opposition, Mr. Bharrat Jagdeo. After a number of hours of debate, the motion was put and carried by a majority of one vote: 33 in favour and 32 against.

One member of the Government, the Honorable Charandass Persaud, voted yes and withheld his support from the governing APNU/AFC Coalition, of which he was a member.

Articles 106 (6) and (7) of the Constitution state:

106 (6) "The Cabinet including the President shall resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly on a vote of confidence."

106 (7) "Notwithstanding its defeat, the Government shall remain in Office and shall hold an election within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all elected members of the National Assembly determine and

shall resign after the President takes the oath of office following the election."

After the Speaker had declared the Motion carried he announced to the House that at the next Sitting of the National Assembly, which was scheduled for 3 January 2019, the National Assembly will meet to consider the consequences of the vote.

The Government subsequently, through the Attorney General and Minister of Legal Affairs, wrote to the Speaker of the National Assembly asking him to revisit and reverse his Ruling made on 21 December 2018 based *inter alia* on the following arguments:

- The requirement for the successful passing of a no confidence motion is a majority of the elected members of the National Assembly. That majority, it contented, was to be formed by a mathematical half of the elected membership of the National Assembly which is 65 plus the vote of one other member. Such a formula would require a majority of 34 votes instead of 33 by which the no confidence motion was declared carried.
- Honorable Member Mr. Charrandass Persaud was not qualified to be an elected member of the National Assembly and so entitled to vote in that he is a citizen of foreign country and has taken active steps to so exercise that status.
- Honorable Mr. Charrandass Persaud having been elected member to the National Assembly through a list could not abandon that list and support another and still retain the status of an elected member.

At the 112th Sitting of the National Assembly on 3 January 2019, the Speaker refused to reverse his ruling.

The matter was referred to the High Court and the Chief Justice ruled that the no confidence motion was validly passed. The matter was subsequently referred to the Court of Appeal. By a majority decision two to one, the Court of Appeal, on Friday 23 March 2019, ruled that the no confidence vote on 21 December 2018 was not validly passed since votes of 34 Members of Parliament were required, and not 33.

The status of the Government prior to the no confidence vote remains the same with the President, Cabinet and Government functioning legally. The Government has since indicated that Sittings of the National Assembly will resume.

The Leader of the Opposition has announced that the Opposition will appeal the Court of Appeal's ruling to the Caribbean Court of Justice (CCJ), and the People's Progressive Party (PPP) will not attend any Sitting of the National Assembly until the CCJ pronounces on its appeal.

INDIA

Rajya Sabha

Election of the Deputy Chairman, Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha from amongst its members. The election of the Deputy Chairman is held on such date as the Chairman may fix. The Secretary-General sends to every member notice of this date. At any time before noon on the day preceding the date so fixed, any member may give notice in writing addressed to the Secretary-General of a motion that another member be chosen as the Deputy Chairman of the Rajya Sabha. The notice is required to be seconded by a third member and accompanied by a statement of the member proposed that he/she is willing to serve as Deputy Chairman, if elected. A member cannot propose or second more than one motion. On 9 August 2018, motions for election of the new Deputy Chairman were moved. The Motions moved were put to vote and on that basis, the Hon'ble Chairman declared Shri Harivansh as the Deputy Chairman of the Rajya Sabha.

Introduction of an e-Notices Portal

As a part of the e-Governance initiative taken for the benefit of the Members of Rajya Sabha, on 23 July 2018, the Hon'ble Chairman made an announcement in the House regarding the introduction of an 'e-Notices Portal', a secure, web-based service to facilitate the Members to submit their Notices online on various parliamentary devices, in addition to the existing system of submitting Notices in hard copies. Members could use the Portal for the online submission of notices for all kinds of parliamentary devices for raising issues under the rules such as Questions, Resolutions, Bills, Special Mentions, Short Duration Discussions, Calling Attention, etc. easily from any location, within the stipulated time-frame.

Secured high speed wi-fi facility in the Chamber

In order to enable Members of the Rajya Sabha to have access to all the Government websites and websites of both the Houses of Parliament, a secured high speed wi-fi facility was provided inside the Rajya Sabha Chamber from July 2018.

Simultaneous interpretation facility

Members have previously been provided with simultaneous interpretation in English, Hindi and 17 other languages. Since the Monsoon Session of 2018, the interpretation has been extended to five more languages, thus enabling Members to speak in any of the 22 languages listed under the Eighth Schedule of the Constitution of India.

Memorandum of Understanding between India and Rwanda

A Memorandum of Understanding was signed between India and Rwanda for the promotion of cooperation during the visit of a high level delegation from the Senate of Rwanda in July 2018. The Memorandum was signed by M. Venkaiah Naidu, Hon'ble Chairman of the Rajya Sabha and Mr. Bernard Makuza, President of the Senate of Rwanda. This is the first time that the Rajya Sabha has entered into such a Memorandum with the Upper House of another country's Parliament to promote inter-parliamentary dialogue, organisation of conferences and seminars, workshops and exchanges, capacity building of parliamentary staff, furtherance of bilateral relations and friendship between the two countries. The practice has been that the Lok Sabha takes the initiative in such matters.

'Welfare Unit' created in the Secretariat

A separate new section, the Welfare Section, was carved out of the existing General Administration Section of the Secretariat on 6 June 2018. The functions of the Welfare Unit nclude rendering necessary assistance to the employees of the Secretariat during emergent circumstances, viz. emergency medical treatment, and forwarding the complaints of the employees to Government agencies, local bodies and police authorities for speedy redressal of their grievances.

Amendment in the Salary, Allowances and Pension of Members of Parliament Act 1954

The Salary, Allowances and Pension of Members of Parliament Act 1954 has been amended via the Finance Act 2018 to give effect to following changes/ revisions in respect of Members' Salaries and Allowances, with effect from 1 April 2018:

(i) Salary has been enhanced from Rs 50,000/- per month to Rs 1,00,000/- per month.

(ii) Constituency Allowance has been enhanced from Rs 45,000/- per month to Rs 70,000/- per month;

(iii) Office Expense Allowance has been enhanced from Rs 45,000/- per month to Rs 60,000/- per month out of which Rs 20,000/- is for meeting expenses on stationery items and postage, and Rs 40,000/- is payable to the person(s) engaged by a Member for obtaining secretarial assistance.

(iv) A Member of Parliament is now entitled to a minimum monthly pension of Rs 25,000/- and an additional pension of Rs 2,000/- per month for every year served as Member of Parliament for a period exceeding five years.

Removal of a Judge from the Office of Judges of Supreme Court and High Courts

The law and procedure for removal of a Judge from the Office of Judges of Supreme Court and High Courts are provided for in Article 124(4) and Article 217(1)(b) of the Constitution of India, and the Judges (Inquiry) Act 1968 and rules made thereunder.

Section 3(1)(b) of the Judges (Inquiry) Act 1968 states that if notice is given of a motion in the Council of States for presenting an address to the President praying for the removal of a Judge, the motion has to be signed by not less than fifty Members.

On 20 April 2018, a motion was submitted by 64 Members of the Rajya Sabha under Section 3(1) of the Judges (Inquiry) Act 1968 read with Article 124(4) of the Constitution to the Hon'ble Chairman of the Rajya Sabha praying for the removal of Mr. Justice Dipak Misra, the then Chief Justice of India (CJI).

Since the notice of motion was against the Chief Justice of India, after due examination and consultations with legal luminaries, constitutional experts, former Secretaries General of both the Houses, former law officers, Law Commission members and eminent jurists, the Hon'ble Chairman came to the conclusion that allegations levelled against CJI were neither tenable nor admissible. Hence, the Hon'ble Chairman refused to admit the motion in his order dated 23 April 2018.

NEW ZEALAND HOUSE OF REPRESENTATIVES

End of Life Choice Bill

The End of Life Choice Bill received its first reading and was referred to the Justice Committee for public submissions and detailed consideration in December 2017. The Bill aimed to give people with a terminal illness or a grievous irremediable medical condition the option of requesting medically-assisted dying.

The First Reading debate of the Bill saw the Speaker permit personal votes on two questions. Both questions were agreed to. The first question proposed supporting the bill being read a first time. The second question proposed extending the report back date from the Justice Committee from the standard six months to nine months.

Since then, the Justice Committee's consideration of the Bill has been extended by a further six months due to the unprecedented interest in the important and complex issues raised by the Bill. During its time with the Bill, the Justice Committee has received over 39,000 written submissions, and heard from all submitters who wished to be heard, resulting in approximately 1,400

oral submitters. It heard oral submissions by forming subcommittees that travelled across New Zealand to hear the views of individual New Zealanders, national level groups, community groups, and regional organisations.

The Committee is in the final stages of its consideration and is due to report back to the House by April 2019.

Bill to expunge historical homosexual offences

In New Zealand, sexual conduct between consenting males aged 16 years and older was not decriminalised until the enactment of the Homosexual Law Reform Act 1986.

On 3 April 2018 the House passed the Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Bill with unanimous support. The Bill sought to reduce prejudice, stigma and all other negative effects arising from a conviction for a historical homosexual offence. It provided a system for people with convictions for a historical homosexual offence, or families if the person is deceased, to apply to have those convictions wiped from the record.

When the Bill had its first reading, the House apologised to those homosexual New Zealanders who were convicted for consensual adult activity, and recognised the tremendous hurt and suffering those men and their families had gone through, and the continued effects the convictions had on them.

The Bill received its Royal Assent on 9 April 2018 and came into force the following day.

Celebrating diversity

The House has been recognising the diversity of languages throughout New Zealand.

From 27 May to 2 June 2018, New Zealand celebrated the importance of the Samoan language in New Zealand life. The theme for Samoan Language Week / Vaiaso o le Gagana Samoa was "Alofa atu nei. Alofa mai taeao—Kindness given. Kindness gained." Events were held across the country celebrating the third most commonly spoken language in New Zealand. It was the first of seven Pacific language weeks celebrated in 2018, the other six being Cook Islands, Tonga, Tuvalu, Fiji, Niue, and Tokelau.

On 10 May 2018 the House introduced New Zealand Sign Language interpretation during each oral question time. The House has featured New Zealand Sign Language interpretation during oral questions in New Zealand Sign Language Week since 2014, on Budget Day each year for the Budget Statement presented by the Minister of Finance and speeches from party leaders, and on some other significant events, such as the Opening of Parliament. New Zealand Sign Language interpretation was also made available during the first reading of the Election Access Fund Bill on 16 May 2018. In October

2018 the decision was made to return to offering New Zealand Sign Language interpretation only for significant events. This was in response to concerns from the deaf community to ensure the wide availability of sign language resources and interpreters.

Review of bullying and harassment in parliamentary workplace

On 27 November 2018 the Speaker, the Right Honourable Trevor Mallard, announced the launch of an independent external review into bullying and harassment of staff within the parliamentary workplace. This is the first such review to occur in the New Zealand Parliament, with the Speaker noting that "Bullying and harassment are unacceptable in any workplace, including Parliament."

The scope of the review is to establish whether bullying and harassment (including sexual harassment) has occurred within the parliamentary agencies, and the nature and extent of it if it has occurred. Evidence will be gathered from written submissions, on-line surveys, one-on-one interviews and focus groups with current and former staff and contractors employed across the agencies since October 2014, an estimated 3,000 people. The review will also analyse how previous complaints have been handled to assess existing bullying and harassment policies and procedures, and test whether the related controls are effective, and whether there are any barriers to reporting or making complaints.

After compiling and examining the evidence, the review will comment on the culture of Parliament as a place of work and provide a set of recommendations.

All data will be stored in a dedicated and secure ICT environment, separate from Parliament's network and will be treated in the strictest confidence. All files will be destroyed at the end of the review, other than the final report, which is due in May 2019. The report is to be made public.

Written questions—standards of accountability

In response to complaints about the quality of ministerial responses to written questions, the Speaker, the Right Honourable Trevor Mallard, considered a number of such responses and deemed them to be unacceptable. He ruled that Ministers are obliged to provide informative answers in the interests of accountability. Where this obligation is not met, the Minister is showing contempt for their accountability to the House. As a reward to the Opposition for not being able to scrutinise the Government in a timely manner, the Speaker awarded an additional 20 supplementary oral questions to the Opposition to be used by the following week.

Declaring legislation inconsistent with the New Zealand Bill of Rights Act

On 9 November 2018 a majority of the Supreme Court of New Zealand

delivered a judgment in the case of *Attorney-General v Arthur William Taylor [2018] NZSC 104*. The Supreme Court found that senior courts in New Zealand can declare legislation inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). The Attorney-General had appealed the case to the Supreme Court arguing that the NZBORA contains no express power to grant a "declaration of inconsistency" and that, therefore, it simply is not an available judicial remedy.

The issue in the case at first instance was whether the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, which prohibited all prisoners from voting, was consistent with the right to vote, protected by section 12 of the NZBORA. Prior to the amendment, only prisoners serving sentences of three or more years were prohibited from voting.

During the passage of the amendment bill through Parliament, the Attorney-General issued a report in accordance with section 7 of the NZBORA, which requires the Attorney-General to bring to the attention of the House of Representatives any provision in a Bill that appears to be inconsistent with any of the rights and freedoms contained in the NZBORA. In his opinion, the amendment Bill was inconsistent with the right to vote. The Speaker of the House of Representatives intervened in the Court of Appeal case on the basis that the High Court's treatment of the Attorney-General's section 7 report on the bill, represented a questioning of parliamentary proceedings.

The Speaker has referred the matter of declarations of inconsistency and its implications for Parliament to the Privileges Committee. Meanwhile, the Government has given its in principle support for the senior courts to be given the statutory power to issue declarations. Legislation to amend the NZBORA to this effect is expected in this current parliamentary term.

TANZANIA NATIONAL ASSEMBLY

Gender strategy and action plan

The Constitution of the United Republic of Tanzania stipulates that no fewer than 30 per cent of MPs be women. The National Assembly has considered how to improve gender representation in decision making and has launched its Gender Strategy and Action Plan as a result. The National Assembly has previously portrayed itself as a gender sensitive institution that takes into considerations the diverse needs, interests and experiences of both men and women in its structures, methods and operations. According to the Inter-Parliamentary Union, a gender-sensitive Parliament is one that:

- Promotes and achieves equality in number of women and men across all of its bodies and internal structures;
- Develops a gender equality policy framework;

- Mainstreams gender throughout all of its work;
- Fosters an internal culture that respects women's rights, promotes gender equality and responds to the needs and realities of MPs – men and women – to balance work and family responsibilities;
- Acknowledges and builds on the contribution made by its members who are men, to pursue and advocate for gender equality;
- Encourages political parties to take a proactive role in the promotion and achievement of gender equality; and
- Equips its parliamentary staff with the capacity and resources to promote gender equality, actively encourages the recruitment and retention of women to senior positions, and ensures that gender equality is mainstreamed throughout the work of the Assembly.

As such, the National Assembly introduced a National Target of Mainstreaming Gender in all of its functions. It is doing this by assessing the need for developing a Gender Capacity Development Programme for MPs and staff; developing a Gender Mainstreaming Policy and an implementation strategy; and supporting the coordination of gender in the works of Parliament.

In its efforts to be more gender sensitive, the National Assembly, with the support of the United Nations Development Programme's Legislative Support Programme held a ceremony to launch the Gender Strategy and Action Plan on 7 November 2018. The ceremony was officiated by the guest of honour, Hon. Kassim Majaliwa Majaliwa, the Prime Minister of the United Republic of Tanzania. The ceremony highlighted the priorities of the strategy and action plan:

- Supporting gender equality in the Decision-Making Process in National Assembly at all Levels;
- Mainstreaming gender equality throughout all Parliamentary functions;
- Improving gender-sensitive infrastructure in the National Assembly;
- Ensure that gender equality responsibility is for all Members of Parliament;
- Enhancing the gender-sensitivity and equality among staff of the Assembly.

In line with these priority areas, the implementation of the goals of the Gender Strategy and Action Plan will be achieved by a range of measures. This includes increasing female participation in the Assembly by supporting equal participation of women and men in Parliamentary activities. This will be implemented by ensuring gender balance in all appointments and elections which take place within the National Assembly and its committees (with a view to achieving equal representation between women and men in all leadership positions); and ensuring gender-balanced representation on study tours and on international delegations.

Another measure will be mainstreaming gender equality throughout all Parliamentary functions by supporting institutional strengthening of Standing

Committees. The Assembly will be providing continuous training to committee staff and members on gender concepts, gender analysis, scrutinising legislation from a gender perspective; a gender related budget; and interpreting gender statistics for policy making, to ensure that gender is mainstreamed within committee work.

The Assembly will also look to ensure that input of a wide spectrum of society is solicited to appear before committees; conduct a retreat for members of committees working on gender issues to have extensive training in gender mainstreaming; develop an action plan to implement a Gender Related Budget; and develop a database of gender experts who the National Assembly can consult on gender issues.

The National Assembly will also work on improving its infrastructure to ensure that the Assembly is suitable for the needs of people with disabilities, as well as nursing mothers. This will be done by allocating space in the Parliamentary buildings for childcare facilities; installing toilets for people with disabilities; and ensuring that all venues and facilities for parliamentary activities are accessible to people with disabilities.

The Assembly is also using male MPs as champions of gender equality. The Assembly will identify and provide gender-sensitive training for male MP champions on gender concepts, gender issues and gender analysis; identify and engage men who are gender champions in a nation-wide campaign in support of increased women participation in politics and public life;

And encourage the inclusion of male MP champions in national events pertaining to the recognition of gender-related issues, such as International Women's Day and the International Day for the Elimination of Violence against Women.

Finally, the institutional capacity of the Office of the National Assembly will be improved. This includes reviewing the role, and mandate, of the Gender Desk by preparing Terms of Reference with performance indicators and providing training on gender mainstreaming. It will also include developing a Gender Training Plan, gender mainstreaming guidelines and a training manual for the National Assembly for both MPs and staff; include a gender mainstreaming module in induction programmes for new MPs; and provide training to senior Parliamentary staff and Commissioners of the Parliamentary Service Commission (PSC) on gender mainstreaming. The use of information technology will also be improved, including through the website of the National Assembly and television broadcasting to disseminate information on gender and human rights.

Dodoma Capital City (Declaration) Act 2018

For many years, Dodoma has been considered as the capital city of the Tanzania.

This was based on the declaration in 1973 by His Excellence Mwalimu Julius Kambarage Nyerere (then-President of Tanzania) that Dodoma was to be the capital.

This declaration was based on the fact that geographically Dodoma is located in the centre of the country which made it easily accessible and gave it potential for economic, political and social development.

Since then, the Government has, from time-to-time, introduced various initiatives to implement this declaration, including establishing Dodoma as the Capital Development Authority (CDA).

The President (John Pombe Magufuli) also moved government operations from Dar es Salaam to Dodoma on 23 July 2016, and on 26 April 2018 Dodoma was declared a city by the President and that it would be developed and administered by the Dodoma City Council.

Dodoma has seen a number of developments and structural changes to support its establishment as a capital, including:

- An increase in the number of government institutions, away from Dar es Salaam;
- Various countries and international organisations showing interesting in establishing their embassies and operations there;
- An increase in investment by private individuals and businesses in the construction of residential and commercial buildings;
- Government-initiated construction projects in various sectors such as the expansion of Dodoma airport, roads and Government City at Mtumba – Dodoma; and the
- Allocation of free plots for Foreign Embassies in Dodoma for the construction of offices and residential facilities.

Despite the 1973 declaration and the Government-led initiatives to develop Dodoma as a capital city, there was no law which recognised Dodoma's status, giving it no legal mandate to recognise and implement the declaration and develop as a capital.

As such, the Government introduced a Special Bill Supplement called "The Dodoma Capital City(Declaration) Bill, 2018" in September 2018, which declared Dodoma as the capital city of the United Republic of Tanzania.

In line with Standing Orders 86, 88, 89 and 91, the Dodoma Capital City (Declaration) Bill 2018 was presented in the Assembly for Second Reading and then Third Reading to mark the final stage of passing Bills in the House on 4 September 2018.

The President of the United Republic of Tanzania assented to the Bill becoming an Act of Parliament on 24 September.

The enactment of the Dodoma Capital City (Declaration) Act No. 5 of 2018 has filled the void obstructing the implementation of the declaration made by

Mwalimu Nyerere in 1973.

UNITED KINGDOM

House of Commons

Proxy voting

On 29 January the House of Commons made an Order providing that Members wishing to be absent from the House in order to care for a newborn or newly-adopted child, or in consequence of miscarriage, could opt to nominate a proxy to cast votes in divisions in the House and in Committee on their behalf. By resolution, it also provided for a scheme to implement the details of proxy voting, which was brought into effect on 29 January 2019, upon signature by the leaders of he three largest parties in the House. The scheme is to have effect for an initial period of 12 months, whereupon it will lapse, as will the Order of the House. The Procedure Committee is required to review and report on the operation of the system before the expiry of the trial period.

The proposal, brought forward by the Government, followed a resolution of the House of February 2018 which established support for the principle, and a report on the matter by the Procedure Committee in May 2018. The Committee received written evidence from the Clerk of the Australian House of Representatives and the Clerk of the New Zealand House of Representatives on the operation of proxy voting in those chambers.

The Committee recommended that the scheme should be available to new mothers, new fathers and adoptive parents, who would be eligible to apply for a certificate from the Speaker certifying their entitlement to a proxy vote and identifying the Member to carry the proxy. The duration of eligibility parallels the statutory provision for maternity and paternity leave in UK law, i.e. six months and two weeks respectively. The later provision for miscarriage was made as an amendment to the Order of the House, and it is envisaged that the Speaker will determine how to apply the scheme should the circumstance arise where a Member seeks to use it on these grounds.

A proxy is entitled to vote on a Member's behalf from the sitting day after the certificate of eligibility is published in the Votes and Proceedings, or from the date specified in the certificate, whichever is the later. The certificate must certify the date on which eligibility ends.

The scheme is not compulsory, and Members wishing to vote in person on particular issues may suspend their participation for one or more sitting days, provided that notice is given by the rise of the House on the previous sitting day. Members may still choose to pair if that option is offered by their party whips: the Committee noted that the Scottish National Party does not participate in pairing.

Proxy votes are available on all private and public business in the House, in Committee of the whole House and in legislative grand committee, with certain exceptions. Proxy votes are also available for use in deferred divisions and in balloted elections for officeholders (Speaker, Deputy Speaker and select committee chairs). Proxy votes may not be used in select committee proceedings, nor in general committees: in the latter case the Committee anticipated that the Selection Committee would not nominate Members on parental absence to such committees.

Proxy votes are not to be used in divisions on motions for an early general election under the Fixed-term Parliaments Act 2011, where statute specifies that a two-thirds majority of Members of the House is required to trigger the provisions of the Act. Where Standing Orders require certain majorities to be demonstrated for business to proceed—40 members participating in a division, and 100 Members voting in favour of a closure—proxy votes are not to be counted in reckoning such totals.

The first proxy voting certificate was issued on 28 January 2019, and the first vote by proxy was cast on 29 January, by Vicky Foxcroft MP (a n Opposition Whip) on behalf of Tulip Siddiq MP. Three certificates are presently in force in respect of new mothers (two Labour Members and one from the newly-constituted 'Independent Group'); two certificates have also been issued to new fathers (both Conservative Members), one of which was suspended for two days to allow the Member to vote in person in divisions on key Brexit debates.

House of Lords

European Union (Withdrawal) Act 2018

On 16 May 2018, the European Union (Withdrawal) Bill had its Third Reading in the House of Lords. This marked the end of 150 plus hours of discussion of the Bill in the Lords alone.

Of particular note during its Third Reading, was the enforcement of the rules of debate and the self-regulation of the House and the motion "That this bill do now pass".

Lord Framlingham spoke during the debate on amendment 1. During his speech, the Countess of Mar (speaking from the backbenches) intervened to ask whether he would, "pay attention to the amendment on the Order Paper that was just moved by the noble Lord, Lord Krebs. Presumably she thought his speech was not focused on the amendment under discussion.

Later in the debate, Lord Framlingham attempted to interrupt several members. This eventually led the Countess of Mar to remind him that "procedure at Third Reading is the same as for Report, and the noble Lord has already spoken … If he wishes to ask a question, he can ask for the leave of the House beforehand." Nonetheless, soon after this, Lord Framlingham

tried again to intervene—whilst another member was speaking. That member initially refused to give way, claiming he did not have the support of the House, but was persuaded by Lord Deben to allow Lord Framlingham to speak. As Lord Framlingham started to speak, the Countess of Mar reminded him that he needed the leave of the House to speak—he asked for it, got it and thus was able to ask a question of Baroness Jones.

In most respects—as the Countess of Mar said—the procedure on Third Reading is the same as that at the Report stage of a bill. Therefore, most members should have refrained from speaking more than once to an amendment (although a member can speak more than once to explain themselves "in some material point of their speech"). This may have been why several members refused to give way to Lord Framlingham.

The rules also allow for a member to be interrupted with a brief question for clarification—but warn against lengthy or frequent interruptions. This is more generous to the member seeking to interrupt the ability to explain themselves, which does not allow for the member to ask a question. Which rules takes precedence? The simple answer is neither—in a self-regulating chamber such as the House of Lords, the way forward is generally determined by the broad sense of the members present.

After Third Reading has been agreed to or (as in this case) once the tabled amendments have been disposed of, the motion "That this bill do now pass" is moved immediately. This motion is usually moved formally and there is no substantive debate. But, the motion may be opposed, and reasoned or delaying amendments, of which notice must be given, may be moved to it. On this occasion, Lord Adonis tabled the following amendment to the passing motion:

Lord Adonis to move, as an amendment to the motion that this bill do now pass, at end insert

> "and, in the light of the vital importance of the issues raised to the future of the United Kingdom, this House urges the Leader of the House to make representations to government colleagues to ensure amendments made by the House of Lords to the bill are considered as soon as possible."

Had this amendment been agreed to, the Bill would nonetheless have been passed and sent to the other House—it was a non-fatal amendment. In the event, the House spent the best part of an hour debating the amendment at the end of which Lord Adonis withdrew his amendment. The original motion "That this bill do now pass" was then agreed to.

One of the interesting questions this motion raises is how far one House in Westminster can go in calling for actions in the other House. The debate on Lord Adonis' amendment shows what he wanted was for the House of Commons to consider the Lords' amendments to the EU Withdrawal Bill very soon. But his amendment could not call for this directly and instead had to

call on the Leader of this House to make representations. The 24th Edition of *Erskine May* explains that MPs should not comment on the proceedings of this House:

> "Members are restrained by the Speaker from commenting upon the proceedings of the House of Lords. When a Member raised the question of the handling by the Government of a bill which had been sent to the Lords, he was advised that the business of the House of Lords was their concern and not a matter for the Speaker."

Whilst *Erskine May* does not directly address whether a Member of the House of Lords can comment upon the proceedings of the House of Commons, the same courtesies are usually observed in both Houses.

Amending "That this bill do now pass" is a relatively rare, but not unusual, procedure. The last time an amendment was tabled to the motion "That this bill do now pass" was by Lord Framlingham in January 2017. The bill in question was the High Speed Rail (London–West Midlands) Bill (generally known as the HS2 Bill). Prior to that, the procedure had last been used in 2012 when two amendments were tabled in relation to the Health and Social Care Bill.

House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill

On Friday 7 September the main business in the Chamber was the second day of the Committee stage of Lord Grocott's Private Member's Bill, House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill. A plethora of unusual proceedings took place, as a group of hereditary members of the House sought to limit consideration of the Bill.

Before the Committee stage of a Bill starts on any day, the House must first agree a motion to resolve itself into Committee. Lord Trefgarne (one of the ninety hereditary peers elected by their colleagues to remain after the passing of the House of Lords Act of 1999) had tabled a non-fatal amendment to this motion which had to be moved on Friday before the second day of Committee could begin. Following the usual rules of debate, Lord Grocott moved that the House do now resolve itself into Committee (the original motion) and Lord Trefgarne then moved his amendment. The debate then followed.

At the end of the debate, Lord Trefgarne pressed his amendment to a division. Once an amendment is called, each side has three minutes in which to appoint tellers. Lord Trefgarne deliberately did not appoint tellers, perhaps because he thought he could not win the division. At three minutes, therefore, the Clerk of the Parliaments took the wording on insufficiency of tellers to the Lord Speaker for him to read out. This informs the House that tellers for either the Contents (as in this case) or Not Contents have not been appointed and that therefore the division has been called off and the provisions of Standing Order 53 come into play. Standing Order 53 provides that the Question shall be decided in favour

of the side which has appointed tellers. Thus the "Not Contents" were deemed to have it and Lord Trefgarne's amendment was disagreed to.

Lord Adonis had also tabled a non-fatal amendment to the motion that the House do resolve itself into a Committee. This amendment was listed second as Lord Adonis had tabled it after Lord Trefgarne had already tabled his. In practice, it was discussed during the debate on Lord Trefgarne's amendment. After the Lord Speaker's announcement about insufficiency of tellers, Lord Adonis then said he did not wish to move his own amendment to the motion, but because of the hubbub nobody could really hear the Lord Speaker say that—so the Table Clerk went up and advised him to say it again—"Amendment, Lord Adonis, not moved?". Then the original motion was agreed to so the House could indeed resolve itself into a Committee on Lord Grocott's Bill, and the Lord Speaker moved from the Woolsack to the Table of the House which is where he and the Deputy Speakers always sit during a Committee of the Whole House.

The Companion to the Standing Orders and Guide to the Proceedings of the House of Lords allows for amendments to the motion, "That the House do again resolve itself into a committee upon the bill". It states that when the Committee stage of a bill lasts more than one day, the motion moved on a subsequent day may provide an opportunity to raise matters relating to the progress of the Bill but it does not explicitly rule out raising other matters. Baroness McIntosh of Hudnall was perhaps alluding to this paragraph of the Companion when during the debate on the amendments to the motion, she questioned why Lord Trefgarne had tabled his amendment because, "It is really difficult to see what purpose is being served by the debate we are now having, in which the substantive issues from Second Reading are being reintroduced, other than to delay the progress of the Bill." Lord True, whilst not sharing her opinion, pointed out that the same strictures would apply to the motion tabled by Lord Adonis.

During proceedings on the Bill, Lord Trefgarne pushed his first amendment to a division. Again, Lord Trefgarne did not seek to appoint tellers but the Bill's proponents appointed tellers for both sides (perhaps to make sure that the division took place and to hopefully demonstrate strength of support for the Bill). The Companion says that "two Tellers are appointed by the members wishing to vote 'Content'" and it is arguably against the spirit of the Companion for one side to appoint all four, but there seems to be nothing to stop this procedurally.

Lord Trefgarne also pushed his next amendment, but neither he nor anyone else shouted "Content". Accordingly the Deputy declared the amendment disagreed to "on the voices" and it was minuted as having been negatived. This happened again later with amendment 16A. The effect of an amendment being

negatived is essentially the same as defeat in a division, but it takes less time.

Lord Northbrook (another member elected by his peers in 1999 to remain in the House) then pushed his amendment to a division. This time he appointed himself as a teller but did not have a second. Therefore, with some prompting from the Table Clerk, the Bill's proponents appointed three tellers (one to tell for the Contents along with Lord Northbrook, and the other two to tell for the Not Contents). This was fine except it meant that Lord Northbrook was not in the Chamber to shout "Content" when the Question was put for the second time at three minutes; this meant that the only voice in favour was the Earl of Caithness who was standing between the Throne and the Conservative benches. The Companion says that "No one may speak from the gangways in the House." But the Deputy sensibly decided to accept the shout and let the division continue—they could not in any case be expected to know that the voice over their right shoulder was coming from somebody not in the main body of the Chamber.

More generally, on a number of occasions the debate nearly took place on the mover's initial speech and so the Table Clerks had to keep an eye on ensuring that the question was actually put. The usual procedure is for the amendment to be spoken to, usually by the Member who tabled it; at the end of their speech they say "I beg to move" and sit down; whoever is in the Chair then puts the question that the amendment be agreed to; the debate follows; at the end of the debate the mover speaks again and then informs the House whether they wish to press the amendment or withdraw it; the relevant question is then put to the House.

There was also lots of discussion about whether a Member can speak to their amendment if it has been debated as part of a group on a previous day. The answer is that groups are informal and non-binding, so Members can degroup their amendments at any time, even those which have been debated on a previous day. Nonetheless, Lord Trefgarne and Lord Northbrook (who noted that he had not been present on the first day of debate to speak to one of his amendments so wanted to do so now) did accede to pressure and not move some amendments.

On Wednesday 12 September, Lord Grocott tabled the following motion:

> †**House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill [HL]** Lord Grocott to move that the bill be reported from the Committee of the Whole House in respect of proceedings up to amendment 35A; and that, for the remainder of the bill, the order of commitment of 8 September 2017 be discharged and the bill be committed to a Grand Committee.

If agreed to, the effect of this motion will be that the Bill will move into Grand Committee for the remainder of its Committee stage. Proceedings in Grand Committee are the same as those in Committee of the Whole House apart from

there are no divisions. It is probable that Lord Grocott wants to do this because he is unlikely to get another day of Committee of the Whole House— most Private Members' Bills only get one day so he has already done well to get two. The pressure of business is lighter in Grand Committee and presumably he hopes that the Government Chief Whip will allocate enough days for him to complete the Committee stage there. The motion was agreed to, and the next day of Committee took place on 23 November in Grand Committee, where the remaining amendments were considered and the Bill progressed to its Report stage.

Although it is unusual to have two different types of Committee stage for one bill, the Companion does provide for the House to split a Bill between Committee of the Whole House and Grand Committee (paragraph 8.102) or to change its mind about what sort of Committee should take place (paragraph 8.47). If Lord Grocott's motion is agreed to, though, we believe it would be the first time that a Bill has been transferred to a different Committee with the proceedings up to that point being "banked" and not reopened.

Taking a Private Member's Bill in Grand Committee is unusual but the Forced Marriage (Civil Protection) Bill was so handled in 2007.

Northern Ireland Assembly

Following the failure to establish an Executive following the extraordinary Assembly elections in March 2017, the Northern Ireland Assembly has not met during 2018 (and an Executive has not been established). There were talks involving the main political parties, particularly the two largest parties, the Democratic Unionist Party and Sinn Féin, to see if there was a basis for re-establishing the Executive. These talks were facilitated and supported by the UK Government. The Irish Government was also involved in accordance with the well-established three-stranded approach. Amongst the issues that these talks were attempting to resolve was the issue of language and culture and how this could be reflected in a package of legislation.

These talks reached their conclusion in February 2018 without an agreement being finalised and endorsed by both parties. While since then there have been some further formal and informal talks between the political parties in Northern Ireland and the UK and Irish Governments, there has not been the same level of intense negotiations that took place in February but which ultimately failed to reach the agreement required to restore the Executive.

Legislation in relation to Northern Ireland

The UK Government has recognised that, in the absence of an Executive, there will be some decisions that it should take, such as setting out departmental budget allocations for approval by Parliament to ensure that public services

continue to function. However, despite the absence of functioning devolved institutions in Northern Ireland, there has not been a return of Direct Rule. On 24 October 2018 the Secretary of State for Northern Ireland told Parliament that, where it comes to those devolved decisions conferred on Northern Ireland departments, the UK Government and Parliament should not be intervening directly.

Notwithstanding that position, Acts of Parliament in relation to Northern Ireland passed during 2018 include:

- Northern Ireland Budget Act 2018
- Northern Ireland Budget (Anticipation and Adjustments) Act 2018
- Northern Ireland (Regional Rates and Energy) Act 2018
- Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 (further detail below)

Northern Ireland Assembly Members (Pay) Act 2018 (further detail below)

Brexit

It was recognised that in the absence of functioning devolved institutions, action was necessary in order to deal with any deficiencies in law arising from the UK's withdrawal from the EU. Therefore, on 26 June 2018, the Secretary of State for Northern Ireland wrote to the Speaker of the Northern Ireland Assembly and said:

> "In light of the requirement for an operable statute book, and with exit day less than one year away, the window to prepare Northern Ireland's statute book is narrowing. UK Government Ministers have therefore considered, following discussions with the NI Civil Service, that the necessary EU Exit secondary legislation for Northern Ireland will need to be enacted by the UK Parliament."

The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 ("the 2018 Act") was essentially the UK Government and Parliament's response in 2018 to the absence of functioning devolved institutions in Northern Ireland. The principal aim and function of the 2018 Act is to facilitate a period of time where talks can take place to then allow the Executive to be formed. This was necessary as the previous statutory deadline for the appointment of Ministers had passed and the Secretary of State consequently had a duty to propose a date for another Assembly election.

The 2018 Act does this by providing a limited and prescribed period where Executive Ministers can be appointed - during this period the Secretary of State has no legal duty to propose a date for an Assembly election. She does,

however, have a discretionary power to call an election if she judges that it is in the public interest to do so.

The 2018 Act extends the period provided in the Northern Ireland Act for Ministers to be appointed until 26 March 2019, with the possibility to extend that period for up to 5 months.

The 2018 Act also:

- Clarifies that a senior officer of a Northern Ireland department is not prevented from exercising a function of the department during the period for forming an Executive if they are satisfied that it is in the public interest to do so,
- Requires the Secretary of State to provide guidance to Northern Ireland departments about the exercise of those functions (which she has since done),
- Enables the Secretary of State and the Lord Chancellor to exercise appointment functions normally exercised by Northern Ireland Ministers in relation to specified offices, and enable by regulations further such functions to be exercised by UK Ministers,
- Replaces the requirement for UK Ministers to consult, or obtain the approval of, Northern Ireland Ministers or the Executive Committee before exercising appointment functions with a requirement to consult the relevant Northern Ireland department, and
- Enables the Secretary of State to exercise any appointment function of a Northern Ireland Minister that is exercisable jointly with other persons who include the Secretary of State, following consultation with the relevant Northern Ireland department.

On 20 March 2019, in exercising the power conferred by the 2018 Act, the Secretary of State made the Northern Ireland (Extension of Period for Executive Formation) Regulations 2019 which extend the period in which Ministers can be appointed from 26 March 2019 to 25 August 2019.

Northern Ireland Assembly Members (Pay) Act 2018

The Northern Ireland Assembly Members (Pay) Act 2018 empowers the Secretary of State to make a determination on the pay and allowances of Members of the Northern Ireland Assembly during the period without a Northern Ireland Executive or sitting Assembly. On 28 September 2018 the Secretary of State announced that she would exercise this power. Members' salaries were subsequently cut by 15 per cent from 1 November 2018, and by a further 12.5 per cent from 1 January 2019. Travel allowances were also reduced.

Scottish Parliament

Presiding Officer's Commission on Parliamentary Reform

Following the publication of the report of the Presiding Officer's Commission on Parliamentary Reform in June 2017, the implementation of the recommendations continued throughout 2018.

The report included over 70 detailed recommendations designed to improve the way that the Parliament conducts its business, with a greater focus on public engagement, management of the business programme and enhancements to parliamentary procedures.

The reforms which implement the recommendations have promoted a more flexible parliamentary response to topical issues. For example, questions on urgent issues can be

asked on any sitting day and there are more opportunities to ask spontaneous questions at First Minister's Questions. There is an additional portfolio question time and portfolio question times have been restructured to increase the frequency with which Ministerial portfolios come up for scrutiny. The contribution of smaller parties to parliamentary proceedings has been given greater recognition: there is more time for interventions and each party now has more discretion and flexibility in the way that they use their allotted time in debates.

In addition, business programming has become more strategic with the Parliamentary Bureau holding termly planning meetings to manage workload and take an overview of issues that affect parliamentary business—an approach that has helped manage the extra demands on the Parliament posed by Brexit. There are also new opportunities for backbenchers and other non-Bureau members to influence business planning, responding to the Commission's desire to encourage a greater sense of ownership of parliamentary business.

More widely, the Commission's recommendations in relation to improving effective public participation in the work of the Parliament have led to the establishment of a Committee Engagement Unit. The Unit's role is to increase effective public participation in the work of committees to improve the quality of scrutiny for the benefit of the people of Scotland; help design engagement which lets people engage with their Parliament how and when they want; and support the Scottish parliamentary service in introducing new engagement methods.

Preparing devolved law ahead of the UK's withdrawal from the European Union

The Constitutional Issues Board, composed of parliamentary officials, has continued to engage in Brexit-related planning to ensure that the Scottish Parliament is equipped for, and supported in undertaking, the additional work

resulting from Brexit.

Statutory instruments

While the Scottish Parliament did not give its consent to the UK Parliament legislating on devolved matters in the European Union (Withdrawal) Act 2018, the Scottish Government has agreed on a case-by-case basis that, where the policy outcome being sought was consistent across administrations, then it could be appropriate to agree a UK-wide approach to statutory instruments laid under the Act.

A protocol was agreed between the Scottish Government and the Scottish Parliament to enable the Parliament to scrutinise the Scottish Government's intention to consent to devolved matters being dealt with by UK statutory instruments under the Act. The protocol was published in September 2018 and the Parliament has considered 84 notifications from the Scottish Government to consent to 127 UK SIs laid under the 2018 Act.

EU (Withdrawal) Bill and UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill

The Scottish Parliament's Finance and Constitution Committee has led the work in the Scottish Parliament on the constitutional implications of the UK's withdrawal from the EU. This has focused on two bills: the UK Government's European Union (Withdrawal) Bill and

the Scottish Government's UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

The Finance and Constitution Committee published an interim report in January 2018 on the Scottish Government's Legislative Consent Memorandum (LCM) on the European Union (Withdrawal) Bill, and a report on the Scottish Government's supplementary LCM in May 2018. In both of these reports it recommended that the Parliament should not give consent to the Bill.

The Scottish Government introduced the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill in February 2018. It aimed to achieve three objectives:

- to save all domestic devolved law that relates to the EU and separately incorporates devolved EU law that is directly applicable into domestic law;
- to give Scottish Ministers the powers needed to ensure that devolved law that is saved or incorporated into domestic law continues to operate effectively after the UK has left the EU; and
- to give Scottish Ministers the power to, where appropriate, ensure that Scotland's laws keep pace with developments in EU law.

The Presiding Officer, in exercising the requirement under the Scotland Act 1998 to make a statement as to whether the provisions would be within the

legislative competence of the Parliament, concluded that certain provisions would not be within the legislative competence of the Parliament.

Following a reference under section 33 of the Scotland Act 1998 by the Attorney General and the Advocate General for Scotland, the Supreme Court has ruled that some provisions of the Bill are outwith the legislative competence of the Scottish Parliament. The Bill cannot be submitted for Royal Assent in its unamended form.

Tackling sexual harassment

Work has been ongoing in the Scottish Parliament to develop procedures and policies to tackle sexual harassment and inappropriate behaviour. The Standards, Procedures and Public Appointments Committee conducted an inquiry into sexual harassment and inappropriate conduct, publishing a report in June 2018 with a series of recommendations on revising current practices and procedures. In addition, a Joint Working Group on Sexual Harassment was established. It was composed of MSPs from each party, senior parliamentary staff, MSP staff and a representative of Engender. It published a report in December making a series of recommendations on tackling sexual harassment in the Scottish Parliament. The Standards, Procedures and Public Appointments Committee is considering what revisions to the Code of Conduct for MSPs would be required to implement these recommendations.

Lobbying Register

The Lobbying (Scotland) Act 2016 came into force on 12 March 2018 when the online Lobbying Register went live. It is designed to improve transparency of face-to-face lobbying contact between organisations and:

- Members of the Scottish Parliament
- Members of the Scottish Government (including Scottish Law Officers)
- Junior Scottish Ministers
- Scottish Government Special Advisers
- The Permanent Secretary of the Scottish Government

Within one year of going live, there are over 1,000 registrants and 5,000 information returns included in the register.

National Assembly for Wales

An Emergency Bill

On Tuesday 6 March 2018, the Assembly agreed to treat the Law Derived from the European Union (Wales) Bill (LDEU Bill) as an Emergency Bill and agreed the timetable for its consideration.

The Bill was passed by the Assembly on 21 March 2018.

The Bill was primarily brought forward in response to concerns about

the European Union (Withdrawal) Bill that was being considered in the UK Parliament. In particular, the then clause 11 would freeze the competence of the Assembly to legislate for Wales in policy areas covered by EU law. An equivalent Emergency Bill was also being introduced into the Scottish Parliament due to similar concerns.

The Assembly and its Committees had been considering the UK Parliament's approach to Brexit for some time. On 17 January 2018 the Assembly agreed a Legislative Proposal by the late Steffan Lewis AM with the intention of affirming the continuation in Welsh law of all areas previously a matter of EU law that fall within the legislative competence of the National Assembly for Wales in accordance with the Wales Act 2017.

On 27 February 2018, the Welsh Government announced that it had taken steps towards the introduction of its own continuity legislation, providing the following explanation for proceeding with the Bill:

The Welsh Government's preference remains for the UK Government to amend their proposed EU Withdrawal Bill. But, as so much time has passed without any agreement between the governments on the amendments required, they need to proceed with the Continuity Bill as a fall-back option to protect Welsh devolution.

There had been early discussion (and speculation) on whether it would be within the Assembly's competence. The Presiding Officer had decided that, in her view, the provisions of the LDEU Bill would be within legislative competence and took the unprecedented decision to lay her statement on legislative competence ahead of formal introduction to help inform Members' consideration of the Bill. The Presiding Officer also published a summary of the legislative competence issues she considered in reaching her decision.

The Attorney General wrote to the Chief Executive and Clerk of the Assembly on 17 April 2018 to advise that he would be referring the Bill to the Supreme Court in accordance with Section 112 of the Government of Wales Act; meaning that the Bill could not be submitted for Royal Assent until the Supreme Court had made a decision on the question of competence.

In the period following referral to the Supreme Court, discussions were still ongoing as to potential amendments to the EU (Withdrawal) Bill, which would satisfy concerns about Clause 11. The Cabinet Secretary for Finance made a statement in Plenary on 25 April 2018 relating to an Inter-Governmental Agreement which had been reached.

When it became clear that the Welsh Government's intention, as part of the Inter-Governmental Agreement on the EU (Withdrawal) Bill, was to repeal the LDEU Act even though at that point it was still a Bill, the Llywydd took the view that the Assembly cannot change its mind about a Bill after Stage 4 and as such the Bill must still be submitted for Royal Assent.

On 23 May, the Counsel General wrote to the Presiding Officer informing her that the Supreme Court had formally indicated that the reference of the LDEU Bill had been withdrawn with the consent of all parties and could be submitted for Royal Assent. The Law Derived from the European Union (Wales) Act 2018 received Royal Assent on 6 June 2018.

Section 22 of the LDEU Act provides a mechanism for Welsh Ministers to repeal the Act, or any provision of it. The regulations required to Repeal are subject to the enhanced procedure set out in the Act. This essentially provides for a 60-day period (after the Draft Regulations are laid) where Welsh Ministers must have regard to:

- any representations made,
- any resolution of the Assembly, and
- any recommendations of an Assembly Committee.

Following the 60-day period, and depending on what representations are received during that time, the Welsh Minsters can then bring forward the final Regulations to the Assembly for approval.

The draft regulations were laid before the Assembly on 8 June 2018 and the 60-day period ran out on October 2018. No representations were made. The Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018 were approved by the Assembly on 20 November 2018 under the affirmative resolution procedure.

New First Minister

On 26 September 2018 the Rt Hon Carwyn Jones AM formally notified the Labour party of his intention to stand down as the Welsh Labour leader, triggering a contest for his successor. In standing down as the Welsh Labour leader, he also announced that he would retire as the First Minister of the Welsh Government.

Following a contest which came down to three candidates the new Welsh Labour leader, Mark Drakeford AM, was announced on Thursday 6 December 2018.

The First Minister formally tendered his resignation to Her Majesty on Tuesday 11 December 2018 which consequently triggered the procedure for nominating a new First Minister by the Assembly. The nomination was held on Wednesday 12 December. Mark Drakeford AM, Paul Davies AM (Leader of the Welsh Conservatives) and Adam Price AM (Leader of Plaid Cymru) were all nominated. As there were three nominations, a vote was conducted by roll.

Mark Drakeford received over half of the votes cast on the first vote and he was declared by the Llywydd as the nominee for the appointment as First Minister of the Assembly.

Motion to approve the First Minister's nomination for a Counsel General following a Government reshuffle

As well as appointing 12 Ministers and deputies, the First Minister also recommended the nomination of a Counsel General, Jeremy Miles AM, but with the additional title of 'Brexit Minister'. In contrast to Welsh Ministers who are appointed wholly at the discretion of the First Minister under Section 48 of the Government of Wales Act 2006, the Assembly must agree the First Minister's recommendation of a person for appointment as Counsel General, in accordance with Standing Orders.

Although the Counsel General's main function is to act as the Welsh Government's law officer, it is not unusual for the Counsel General to be given additional responsibilities relating to other areas. What made Jeremy Miles's appointment particularly novel was that it was the first time that a Counsel General was given substantial policy responsibilities and that the term 'Minister' was used in the office's title. This caused some consternation amongst Members, both because Section 49(9) of that Act specifically prohibits a Minister from also being the Counsel General and because the Counsel General's title seemed to contravene the legal limit of twelve Ministers set out by the 2006 Act.

These issues were raised during the debate on the nomination of the Counsel General in Plenary on 8 January 2019. Unusually, the nomination process resulted in a debate which forced the First Minister to defend the nature of the additional responsibilities that would be taken on by the Counsel General. The First Minister made clear that the Counsel General would not have any of the executive powers vested in Welsh Ministers. A record of the debate can be found here.

Jeremy Miles's appointment was eventually endorsed by Members, but not unanimously, with 31 Members voting in favour, 14 Member voting against and 6 Members abstaining.

The question of whether the post should be treated differently because of the change in title and responsibilities has continued since the appointment. Shortly after the appointment was endorsed, Standing Orders were changed so that the Counsel General and Brexit Minister could answer questions twice in each four-week period; once in relation to his law officer responsibilities, and once in relation to his other responsibilities. These changes were agreed by the Assembly on 30 January 2019.

Welsh Youth Parliament

On 23 February 2019, the Welsh Youth Parliament met for the first time.

Since 2014, when the Assembly signed up to a Youth Engagement Charter committing to making it easier for young people to find out about the Assembly and what it does, there has been a clear consensus by young people and

professionals (backed by the Campaign for a Children and Young People's Assembly for Wales) that they would like to establish a Welsh Youth Parliament.

In October 2016, during a meeting of the whole Assembly, Members agreed to take this forward. The National Assembly consulted over 5,000 young people in Wales to help decide what the Welsh Youth Parliament's aim, membership, and work should be.

Elections were held across Wales between 5–25 November 2018 and the election results were announced in Plenary by the Llywydd on 5 December 2018.

At the first meeting, in February 2019, three priority issues were chosen: emotional and mental health support; littering and plastic waste; and life skills in the curriculum.

The Welsh Youth Parliament Members intend work together to devise a work programme, and will meet in their regions in April 2019 to take this work forward.

Power to call

During the Easter recess, two motions were tabled seeking to invoke the 'power to call' under section 37 of the Government of Wales Act 2006 to force the Welsh Government to 'make available for the purposes of the Assembly' the Permanent Secretary's report into the alleged leak of information in the lead-up to the Cabinet reshuffle in November 2017. This was the first time ever that a motion had been tabled either in Committee or Plenary that sought to use these provisions of the Act.

On Monday 16 April, the Llywydd received a letter from the First Minister stating that in the view of the Government, the motion as tabled went beyond the scope of section 37 of the 2006 Act. The letter stated that the power to call under section 37 did not cover 'functions conferred or imposed on the First Minister alone', rather than those conferred or imposed collectively on him and the other Welsh Ministers. In this case, it was argued, as the matter related to the First Minister's power to appoint and remove Welsh Ministers, section 37 did not apply.

The letter further stated that the Table Office had acted unlawfully by accepting the motion, that the Presiding Officer was acting unlawfully by not withdrawing it, and that the First Minister reserved the right to bring proceedings for judicial review, seeking a declaration as to the interpretation of section 37(1) of the 2006 Act and/or a declaration that the motion and/or any notice issued as a result of it being passed is or would be ultra vires.

The Llywydd considered legal advice and formally responded to the First Minister's letter stating that she was not persuaded of the case which the Government had advanced. As a result, the motion remained scheduled for

debate the following day.

In the event, the Government did not make an application for judicial review, and the debate went ahead as scheduled. Prior to the start of the debate, the Llywydd made the following statement to the Chamber:

> "Before we debate this motion, I want to make my position clear about its legitimacy. First, the motion is in order and, second, the power in section 37 of the Government of Wales Act 2006 is undoubtedly broad, and that is why it can only be applied as a result of a vote in this National Assembly. I expect Members to continue to approach the use of section 37 proportionately and reasonably."

Despite this, the Counsel General, in responding to the debate, sought to make many of the arguments that had been made in the letter as reasons for opposing the motion. He also sought to advance the argument that the provisions of section 37 resulted from a drafting error.

The motion was defeated by 29 votes to 26, with one abstention. A Government amendment, which left only the first point noting the Permanent Secretary's letter in place, was passed by the same margin, as was the motion as amended.

Though this was the first time that the Assembly had debated the possible use of its power to call for papers, the arguments put forward on both sides were nothing new. Parliaments have long sought to assert their right of access so as to hold the Executive to account, while Ministers have argued that the very business of government could not continue if all documents in their possession are potentially releasable.

Assembly reform and the Senedd and Elections Bill

The Assembly Commission led an Assembly reform programme to consider how powers conferred by the Wales Act 2017 over the Assembly's electoral and internal arrangements might be exercised.

On 12 December 2017 the Expert Panel on Assembly Electoral Reform published its report: *A Parliament that Works for Wales*. Key messages from the report included increasing the number of Assembly Members from 60 to 80 or 90, elected through a more proportional electoral system, with accountability to electors and diversity at its heart. It also recommended lowering the minimum voting age for National Assembly elections to include 16 and 17-year-olds.

Following a Plenary vote approving them to do so, the Commission consulted between February and April 2018 on the Expert Panel's recommendations and on other potential reforms to the Assembly's electoral and internal arrangements.

After this consultation, the Commission announced in July 2018 plans to take forward those key elements of its programme to reform Wales' parliament. The plans were announced in a written statement to the Assembly from the

Llywydd, which outlined a two-phase approach.

In the first phase, the Commission set out its intention to legislate to lower the minimum voting age for Assembly elections to 16, and change the name of the Assembly to Welsh Parliament/Senedd Cymru to better reflect its constitutional status. Proposals also included changes to the rules on disqualification from being an Assembly Member, and to bring about other organisational reforms.

The second phase would focus on the question of the increase in size of the Assembly and the related decision on which voting system should be used to elect Assembly Members. The Commission had committed to allowing more time for discussions with political parties to take place on these matters.

The Senedd and Elections (Wales) Bill was introduced by the Llywydd on behalf of the Assembly Commission in February 2019 and is currently undergoing Stage 1 scrutiny in committee.

Suspension of Members

On 23 January 2018 the Standards of Conduct Committee agreed its report in respect of a complaint against an Assembly Member for the use of a racist term. The circumstances around this particular complaint, and the procedures to be followed for its handling, resulted in a number of procedural precedents.

One of the complaints against the Member was made by another Member in their capacity as Chair of the Labour Group. Therefore, in accordance with Standing Orders, neither the Labour Chair of the Standards Committee, nor any other Labour Member were able to take part in considering the case as they were all party to the complaint. As a result, there was no Labour representation throughout the process, though Labour members were able to vote on the motion on the Committee's report in Plenary.

The Committee decided that a breach had been found. Given the nature of the complaint, the Committee agreed on this occasion that a sanction beyond censure was necessary, including withdrawing rights and privileges and/or exclusion from proceedings. The Committee agreed to a censure and a seven-day exclusion from Assembly proceedings, but not the removal of any other privileges, such as access to the building. In practical terms this meant the Member would lose pay for seven days and not be able to attend Committee or Plenary meetings.

On day nine of the 10 days a Member has available to appeal, the Member notified the Llywydd of her intention to do so, following a leak of the Committee's report.

Following the completion of the appeal, the report was then laid on 18 April 2018 in accordance with Standing Order 22.9 for debate in Plenary "as soon as possible".

The Business Committee agreed that if this motion was pushed to a vote

then it would be taken immediately after the debate rather than at voting time. This meant that having been excluded, the Member would not be able to contribute to proceedings any further on that day, as this would have potential to be confusing and disruptive. If the Member was present they would have been required to leave the Siambr immediately. The motion was agreed by the Assembly, in the Member's absence.

On 3 July 2018 the Standards of Conduct Committee agreed its report in respect of a complaint against a different Assembly Member. In this instance the Committee considered the offence of breaking the law to be serious, and a breach which would require a sanction.

The Committee felt that the length of suspension might warrant a period of 21 days suspension. However, in acknowledging that the Member concerned had self-referred to the Commissioner, they reduced the sanction to 14 days.

Although this was not the first time that a sanction had been applied, it was the first instance in which it had an impact on a Member's attendance at Committee. Therefore some of the practical considerations around this second case were how to record the Member's absence, whether substitutions were allowed and what information could be provided to the Member. It was agreed that:

during the period of the exclusion, the Member's absence should not be recorded as an apology and was noted as 'Absent';

the group would be able to provide a substitute for the Member during the period, as usual; and

while the Member was not allowed to participate in Assembly proceedings, they were still a Member of the Committee, and as such should still receive the papers.

Member resignation

Simon Thomas AM wrote to the Llywydd resigning his regional seat with immediate effect on 25 July 2018; the Regional Returning Officer for Mid and West Wales was also notified that same day. The Returning Officer notified the Llywydd that Helen Mary Jones has been returned, as the next Member on the regional list, on 2 August 2018.

Nominations to the Assembly Commission

On 5 June 2018 the UKIP Commissioner resigned from her Group. Under Standing Order 7.9, the UKIP Group proposed a replacement member and a motion was tabled by Business Committee to elect that Member to the Commission.

On the day of the debate (13 June 2018) it became clear that there was opposition to the nomination, with Members (unusually) requesting to

speak on the motion. The nominee subsequently made representations to the Llywydd with a view to the motion being withdrawn and tabled again at a later date. However as the motion had been tabled by the Llywydd on behalf of the Business Committee at the request of the UKIP Business Manager, the Llywydd told the Business Manager that if he was in agreement with the nominee on the issue, the appropriate procedure would be for him to propose to the Assembly that the motion be withdrawn. The UKIP Business Manager subsequently informed the Llywydd that he would not be withdrawing the motion, and it was voted on as scheduled at voting time and was voted down by 31 to 17, with three abstentions.

Some weeks later (10 July 2018) the UKIP Business Manager informed the Committee that UKIP would like to re-nominate the same Member. The Llywydd explained that for the nomination to progress, the Business Committee would need to re-table a motion for the Assembly to consider. Business Managers indicated that they had no reason to think their Members would vote any differently if another motion to nominate the same Member was tabled, and it was therefore agreed that there was no point in Business Committee tabling such a motion. The Llywydd asked the UKIP Group to reflect on this discussion and whether an alternative nomination could be brought forward that would have the support of the Assembly. On 14 November a new Member of the UKIP Group was nominated and elected as Assembly Commissioner, without objection.

Collation of Guidance and review of Standing Orders

In March 2018 Business Managers considered a scoping paper on a broad review of Standing Orders. Their considerations included previous reviews undertaken by the Assembly in 2007 and 2011 and the prominence of ongoing revisions throughout the Fourth and Fifth Assemblies.

As a precursor to any review of Standing Orders and as part of the Committee's existing programme of procedural review, in July 2018, Business Managers began considering proposals to review, collate and publish guidance on the conduct of Assembly business issued by the Llywydd. Such guidance had been issued piecemeal over the years, but never collected in one place or made publicly available. The aim is to finalise and publish the guidance before summer 2019.

COMPARATIVE STUDY: THE ROLE OF THE OPPOSITION

This year's comparative study asked, "Is there a defined official Opposition in your assembly? If so, how is it defined? What rights does an official Opposition have to debating time, etc, compared to any other member of a non-government party, and what support—financial or otherwise—is provided to the official Opposition by the parliamentary authorities?"

AUSTRALIA

House of Representatives

In the Australian Parliament, the Opposition is the party or group which has the greatest number of non-government Members in the House of Representatives. This organised body has the officially recognised function of opposing the Government, and is recognised as the 'alternative Government'.

When the Opposition consists of more than one party opposed to the Government, and the parties prefer to remain distinct, the party having the largest number of members is recognised as the 'official Opposition'. If the official Opposition is not clear by virtue of numbers, the Speaker decides which group shall be so called, and who will be recognised by the Chair as the Leader of the Opposition.

The Opposition performs a critical role in exercising an oversight of the actions of the Government, and so the functions of the Opposition have become identified and linked with the role and functions of the House.

The working arrangements and conduct of business in the House reflect the clear division between Government and Opposition, that is, the opposing political parties. While Government business dominates the agenda of the House, the Opposition has the opportunity to express its views on all legislation and other matters initiated by the Government.

Historically, the vast majority of non-government Members of the House have been members of the party or parties that formed the official Opposition. This has meant that (as might be expected) the roles of the official Opposition and 'non-government' roles have evolved somewhat together. There are few specific 'rights' for the official Opposition that are not available to other non-government Members, for example, to propose private Members' motions and bills. But by virtue of the official Opposition's far greater numbers and the expectation that it will be effective, the official Opposition receives greater opportunities to participate than other non-government Members.

There are specific speaking opportunities afforded to the Opposition which

are not available to other non-government Members. For example, Standing Orders provide the lead Opposition speaker on a bill (the Leader of the Opposition or his or her representative) with a maximum speaking time limit equivalent to the Minister introducing the bill (30 minutes), while all other participants in the debate are allotted a maximum of 15 minutes. When the House grants leave to a Minister to make a ministerial statement, Standing Orders also provide the relevant shadow Minister with an equal time to respond. When the Prime Minister addresses the House on indulgence, the Leader of the Opposition traditionally receives an equal time to respond. Further, House practice is for the Chair to provide some latitude or preference to the Leader and Deputy Leader of the Opposition with respect to:

- receiving the call of the Chair in preference over other non-government Members, particularly in asking questions without notice; and
- indulgence of the Chair to explain or clarify matters before the House or to make a personal explanation.

The allocation of the call is a matter for the discretion of the Chair. Usually, the Chair applies a principle of calling Members from the Government and non-government sides of the House alternately. This principle is applied during debates and other periods, such as Members' statements and Question Time. Within this, non-aligned Members are given reasonable opportunities to express their views and share the call in approximate proportion to their (collective) numbers. A list of proposed speakers on items scheduled for debate is provided by party Whips. This provides a useful guide for occupants of the Chair in allocating the call, and independent and minority party Members liaise with the Opposition Whips as to their inclusion on these lists. However, such lists are informal and non-binding.

The effective scrutiny and oversight of the actions of the Government is largely dependent on an organised Opposition. Opposition Members may use the private Members' business procedures and other opportunities to raise matters or to scrutinise the Government. These are open to all private Members:

- Private Members are able to question Ministers on matters for which they are responsible to the House. There is no restriction on the number of written questions they can ask. During Question Time—held each sitting day and generally lasting for around 70 minutes—the call of the Chair to ask oral questions alternates between Government and non-government Members.
- Discussion on a matter of public importance—most discussions are on topics proposed by the Opposition, and are critical of Government policy or administration.
- Private Members' Business—bills and motions can be introduced on notice, within certain limitations (for example, a private Member may not

initiate a bill imposing or varying a tax or requiring the appropriation of revenue or moneys). The scheduling of items for introduction and debate is determined by the House Selection Committee.

- Members' statements, constituency statements, grievance and adjournment debates—these opportunities provide a range of opportunities for Members to raise matters of their choosing.
- Censure motions and motions to suspend Standing Orders—often used by the Opposition as an attempt to debate, or at least highlight, matters.
- Time and opportunities for private Members have increased significantly since 1988, particularly since the establishment in 1994 of the Federation Chamber, the House's 'second chamber', which operates in parallel with the House. In the current Parliament, 38 per cent of all business conducted in the House has been taken up by either private Members' business, discussion on matters of public importance, or other speaking opportunities for private Members.

The number of members and party composition of a committee is determined by the membership provisions of the relevant Standing Orders, or by the resolution or Act establishing the committee. In practice, committee membership is usually split on party lines, proportional to the number of seats held by each party in the House. The Leader of the Opposition appoints the Deputy Chair of each House committee.

Most general-purpose standing committees include provision for Government and 'non-government' Members, where non-government Members may be either members of the official Opposition, or minority party or independent Members. As the process of appointments to committees in managed by party whips, minority party or independent Members liaise with the opposition whips in respect of non-government positions, or, in some cases, may nominate themselves to the Speaker.

In the current Parliament, special provision has been made for the appointment of independent or minority party Members to two of the House's general-purpose standing committees.

A committee whose membership may be of particular interest is the Selection Committee, given its role to, among other things, set the timetable and order of private Members' business. The Selection Committee is chaired by the Speaker and counts among its members the Chief Whips from the Government and Opposition, the Third Party Whip, and specific numbers of Government non-government Members. At present there are no independent or minority party Members on the Selection Committee. However, one of the general principles the Selection Committee follows is to accord priority to private Members' business to ensure appropriate participation by independent and minority party members.

Each Senator and Member receives an annual base salary, which is determined by the Remuneration Tribunal under section 14(2) of the Parliamentary Business Resources Act 2017. In addition to base salary, certain Members receive additional salary by virtue of being a Minister or holding a specified office. The Remuneration Tribunal determines rates for offices holders under section 14(3)(b) of Parliamentary Business Resources Act 2017.

The Leader of the Opposition receives remuneration and resources in accordance with the status and recognition of the duties of office, evident by the Leader receiving greater remuneration than most Ministers. The positions of Deputy Leader of the Opposition, Manager of Opposition Business, Shadow Minister and Chief Opposition Whip also attract additional remuneration.

All Members are provided with one or more electorate offices within their electorate, subject to the geographical size of the electoral Division they represent. Members are provided with four full-time staff positions (five for some larger electorates) to assist in parliamentary and electorate responsibilities. A Member may also be provided with personal employee positions, on the decision of the Prime Minister or from a block of positions provided to, for example, the Leader of the Opposition or leader of a minority party.

An office in Parliament House is provided for each Member. An Opposition party meeting room is also provided within the building. The allocation and arrangement of suites for Members is a matter for the Speaker. Larger suites are generally reserved for the Leader and Deputy Leader of the Opposition. An additional office, as determined by the Special Minister of State, is provided to the Leader and Deputy Leader of the Opposition for official duties.

Senior departmental staff assist private Members with drafting bills, amendments and motions, and the Clerks provide advice to all Members on matters of procedure.

Senate

The official Opposition in the Senate is defined as the largest party (or coalition of parties) not participating in the formation of the ministry.

In most respects, the rights of Opposition and other non-government senators are equal. Exceptions are:

- *Debate* The Leader of the Opposition is given the call (right to speak) by the President of the Senate before all other non-government senators. An Opposition senator leading for the Opposition in relation to a bill or other matter before the Senate is usually given the call before other non-government senators.
- *Committee membership* The membership of Senate committees approximately reflects the composition of the Senate and committees generally consist of between two and four members each from the

Government and opposition and one minority group/independent senator. Six of eight references committees (portfolio-based standing committee) have Opposition chairs while the remaining two are from the largest minority party. The Privileges Committee is chaired by a member of the Opposition. The Leader of the Opposition has *ex officio* membership of the Procedure Committee, Scrutiny of Bills Committee and Appropriations, Staffing and Security Committee and power to make nominations of Opposition senators to committees.

All senators receive a base salary, an electorate allowance and additional allowances and entitlements. Opposition office holders receive additional office holders' salary.

Australian Capital Territory Legislative Assembly

Standing Order 5A, as amended in June 1991, provides that the leader of the largest non-government party in the Assembly will be Leader of the Opposition. Current practice is that, either at the first meeting of an Assembly following a general election, or at the first opportunity following a change in leadership of the major opposition party, the Speaker recognises that Member as Leader of the Opposition.

In the event that the two largest non-government parties are of equal size, the Assembly elects a Leader of the Opposition and the election is conducted in a similar manner to the election of the Speaker and Chief Minister. Since the adoption of the current provisions there has not been a ballot for the position. There is no provision in the Standing Orders for the election to take precedence of other business. On 21 June 1991, for example, the Speaker ascertained whether it was the wish of the Assembly to proceed and there was no objection.

Other than in Standing Orders 5A and B, the position of leader of the Opposition receives no special recognition in Standing and other Orders of the Assembly.

It is the practice of the Assembly for the Leader of the Opposition to receive the first call from the Chair in question time.

In addition, the first opposition Member to speak on any motion or order of the day (with some exclusions) receives an additional five minutes speaking time, as does any other recognised party in the Assembly.

The office of Leader of the Opposition has statutory recognition and attracts a special allowance. The Remuneration Tribunal has also determined an additional salary for the Deputy Leader of the Opposition.

The Legislative Assembly (Members' Staff) Act 1989 makes provision for Members and officeholders to employ staff in accordance with arrangements made by the Chief Minister and subject to determinations and directions made by the Chief Minister. The arrangements for employment and the conditions

determined by the Chief Minister for the staff of both officeholders and Members are disallowable instruments. The Leader of the Opposition also receives an extra staff monetary allocation.

Furnished and equipped office suites are provided within the Assembly building to Members for their use and the use of their staff for parliamentary and electoral purposes.

New South Wales Parliament

Within the NSW Parliament the party or coalition of parties which wins a majority of seats in the Legislative Assembly forms the government. The party or coalition of parties that has the second largest number of seats in the Legislative Assembly is known as the official Opposition. The Legislative Council (Upper House) Opposition is the same party or coalition of parties as the Legislative Assembly.

The Constitution Act 1902 does not refer to or define the Opposition. It is an accepted convention that the party or coalition of parties that has the second largest number of seats serves as the Opposition.

Debating rights and speaking times

Rules of debate govern all Members' participation in the House equally. These rules ensure that all Members may speak freely and be heard even if in the minority.

The Speaker (LA) and President (LC) exercise discretion over which Member shall be given the call to contribute to a debate. However, the convention has been for the Chair to alternate between Government, Opposition and cross-bench Members during debate.

The Standing and Sessional Orders of both Houses provide for speaking time limits that apply to all Members (irrespective of party) with some exceptions for the Leader of the Opposition (or lead Opposition speaker).

In addition, the Standing Orders of the Legislative Assembly provide for the Leader of the Opposition to be called by the Speaker to ask the first Question of Question Time. The same practice exists in the Legislative Council, although this is not provided for by Standing Order.

The Standing Orders of both Houses provide for the Leader of the Opposition or any Member deputed to respond to Ministerial Statements for the same period of time as the Statement.

Financial and other support

The Parliamentary Remuneration Tribunal (PRT), constituted under the Parliamentary Remuneration Act 1989, makes annual determinations on salaries, allowances, equipment services and facilities for Members of the NSW

Parliament.

Opposition Members receive the following staff:

- two staff members in an electorate office of a Member of the Legislative Assembly
- one staff member in the office of a Member of the Legislative Council.

One additional (shared) staff member is allocated to the Offices of the Leader and Deputy Leader of the Opposition in the Legislative Council.

The Leader of the Opposition in the Legislative Assembly is allocated an office budget from the NSW Department of Premier and Cabinet. The Leader of the Opposition in the Legislative Assembly may determine the appropriate number of staff and their level having regard to the available budget.

The Parliamentary Remuneration Act 1989 does not classify Shadow Ministers as office holders meaning they do not receive any additional staff.

Northern Territory Legislative Assembly

The Opposition is 'defined' by it being the grouping of Members from the political party represented in the Assembly with the second largest number of Members—being not enough to form the Government.

The Opposition (and Independents) use General Business on Wednesdays of sitting weeks (four hours a week) allocated for their debates.

Question Time each Wednesday of a sitting week does not permit Government Members to ask questions of Ministers. Only Opposition and Independents receive the call.

In 2016 at the commencement of the 13th Assembly, the 25 Member Northern Territory Legislative Assembly was constituted by 18 Government Members, two Opposition Members and five independent Members on the cross bench.

In December 2018 the Labor Government expelled three of its members from their caucus. One remains a nominal member of the Australian Labor Party and the two others have resigned from the party of Government.

An independent Member is asking a number of Questions on Notice to the Government about how the Assembly considers the status of Opposition when the Opposition party has only two Members and there are now seven on the cross bench and one in limbo and 15 in Government.

The independent Members have also expressed concern that they share a resource of two full time researchers for seven Members while the two Opposition Members receive a staff entitlement provided by Government (not by 'Parliamentary Authorities') of ten staff and status which flows from the annual Remuneration Tribunal Determination for some extra travel allowances to those recognised as 'Opposition' and 'Shadow Ministers'.

This is a matter which has been subject to extensive and even national media

reporting and the preparation of advice from the Clerk of the Legislative Assembly to the Speaker and the Solicitor-General of the Northern Territory to the Government.

Queensland Legislative Assembly

The Opposition, the Leader of the Opposition and Shadow Ministry, are not roles established formally in the Constitution of Queensland 2001 (the Constitution). However, both the Constitution and the Parliament of Queensland Act 2001 refer to, and make provisions about, the Opposition and Leader of the Opposition, for example the power of the Leader of the Opposition to nominated members to serve on committees.

The Opposition is also recognised in the Standing Orders and Rules of the Legislative Assembly and the Sessional Orders, which provide the Opposition with certain rights compared to other non-Government members. The Standing Orders, for example, provide that the Leader of the Opposition may ask two questions during Question Time (the first two questions by convention) and may respond to certain ministerial statements. The Standing Orders also recognise the Opposition in the procedures for undertaking a party vote of questions where a division has been called.

In addition, the Sessional Orders allocate additional debating time to the Leader of the Opposition, or their nominee, compared to other non-Government members, for example, the Leader of the Opposition (or nominee) is allocated 30 minutes during the Second Reading of a government bill, compared to 10 minutes for other members. The Leader of the Opposition is also allocated 10 minutes during debate on Matters of Public Interest, compared with five minutes for other members.

The Leader of the Opposition and Shadow Ministers are paid an additional allowance, above that of other non-Government members, which is set by the Queensland Independent Remuneration Tribunal. The Leader of the Opposition is also provided with staff and resources, as determined by the Government.

Given that there is no constitutional or statutory definition of the official Opposition in Queensland, there is also no statutory formulae as to who should be recognised as the official Opposition or Opposition Leader. Historically, there was no Opposition Leader recognised until the 1890s. At this time there were no official political parties and the majority of non-Government (non-Ministerial) members agreed upon a Leader of the Opposition. In modern times the largest non-Government political party or coalition of non-government parties is recognised as the official opposition party.

South Australia House of Assembly

While there is no recognized official Opposition within the Constitution Act 1934, it is defined by convention and practice and referred to in a number of Acts.

The Standing Orders of the House of Assembly, acknowledge the "Leader of the Opposition" as a category of member who is allocated a specific time limit on speeches. Generally, the Leader of the Opposition or one member deputed by them is entitled to unlimited speaking time on second reading debates or substantive motions. This compares to non-government party members who have an entitlement of 20 minutes.

By convention the Speaker generally provides the Opposition with the majority (generally around two thirds) of questions during Question Time.

There are a range of other Acts or Parliament, including the Parliamentary Committees Act, Parliament Joint Service Act and Parliament Remuneration Act, that acknowledge the existence of a group led by the Leader of the Opposition for the purpose of appointing members to committees, quorum makeup and providing additional allowances to the Leader and Deputy Leader of the Opposition, Shadow Ministers and Opposition Whip.

Support provided to the Opposition in addition to that provided to Members, generally

- Financial support
- Additional salary allowances (Leader, Deputy Leader, Opposition Whip, Shadow Ministers)
- Stationery allowance (Leader twice the amount provided to backbencher)
- Travel allowance (Leader or Deputy Leader when deputising, accommodation/ meals and air travel)
- Parliament House office and additional staff (Leader of the Opposition)
- Chauffeur and vehicle (Leader and Deputy Leader)

Tasmania House of Assembly

The House of Assembly has a defined Opposition, which is recognised by the Standing Orders and in legislation.

The Leader of the Opposition is a person appointed by the main minority Party to lead it. The nominee is the leader of the largest minority Party within the Parliament, willing to assume office in the event of a change of government either after an election or as a result of a loss of support for the Government in the House of Assembly.

The Opposition is afforded additional speaking times and rights over ordinary members, as is the Leader of a minority party with four or more Members. The Leader of the Opposition or, if absent or waive the right under this proviso, the

Deputy or, to the exclusion of the right of either, a Member of the Opposition whom the Leader of the Opposition or Deputy has nominated to the Speaker for the purpose in respect of the Bill, Motion, Question, or Matter being then considered by the House, may speak for forty minutes when the Speaker is in the Chair and more than twice on any Question in Committee of the whole House.

It is practice for the Speaker when allocating the call, as a matter of courtesy, to give priority to the Leader or Deputy Leader of the Opposition over other non-government members.

During Questions Without Notice ("Question Time"), the opportunity to ask such questions is generally shared amongst the parties in proportion to their membership in the House. The current allocation provides a minimum of questions without notice to be asked shall be seven by the Opposition, four by the Government Private Members and two by other members. It is practice for the Speaker to give the first and second questions to the Leader of the Opposition.

The Opposition has a specific lectern from which its Members address the Speaker.

The Parliamentary Salaries, Superannuation and Allowances Act 2012 provides for additional salaries to be paid to Officers of the Opposition, in addition to the Basic Salary received by all Members: The Leader of the Opposition receives an additional 70 per cent, the Deputy Leader receives 34 per cent and the Opposition Whip six per cent.

Victoria Legislative Assembly

In the Legislative Assembly of Victoria, the largest minority party is called the Opposition. The Parliamentary Salaries and Superannuation Act 1968 specifies remuneration for the Leader of the Opposition but does not explain the position. It was not until 1973 that the title Leader of the Opposition was formally defined in legislation as 'the member of the Assembly who is for the time being the Leader of Her Majesty's Opposition'.

Under Standing Orders, the lead speaker for the Opposition is entitled to speak for the same amount of time as the mover of the Bill or motion before the House. Other members of non-government parties receive a reduced time allocation, depending on if they are the lead speaker for another party, or a singular member.

The Leader of the Opposition is entitled to a salary the same as that awarded to ministers, (almost twice that of an ordinary member). The Leader is also entitled to an allowance for expenses, the same as that allowed to ministers. Financial assistance is provided by the Government for staff to be employed by the Leader of the Opposition.

Victoria Legislative Council

An official Opposition is recognised in the Legislative Council of the Parliament of Victoria. The official Opposition in the Legislative Council is defined as the largest non-government party or coalition of parties in the Legislative Assembly. That party or coalition of parties, so far as they have Members in the Legislative Council, are the official opposition in the Legislative Council.

The Opposition is afforded certain rights in relation to scheduling of business and in relation to time limits for lead speakers. Under the Legislative Council Standing Orders, a 'General Business' day is scheduled each sitting Wednesday, where non-government business takes precedence. Both the Opposition and other non-government parties and independents are entitled to sponsor business on these days. The scheduling of business on General Business days is a matter for discussion between the Opposition and the other non-government parties and independents, however, regard is taken for the proportionality of party membership in the House.

According to Standing Orders, the lead speaker of the Opposition is afforded particular speaking time limits for lead speakers in relation to certain types of business. This includes when speaking to Government business, (including second reading of bills), when debating the budget and the Address in Reply to the Governor's Speech. The time given to Opposition speakers in these debates is the same as is afforded to the Government lead speaker. Other non-government parties and independent lead speakers are afforded less time.

Parliamentary authorities provide office accommodation in Parliament House for the Leader of the Opposition in the Legislative Council.

The Opposition is afforded financial support in the Legislative Council for the parliamentary party leadership under the Parliamentary Salaries and Superannuation Act 1968. A grant is also provided by the Government for some staff members employed by the Leader of the Opposition.

Western Australia Legislative Council

While 'Opposition' is not defined in our Standing Orders, in 2017 Madam President Doust ruled that:

> "The ordinary parliamentary meaning of 'opposition' is Her Majesty's most loyal Opposition. This expression is usually shortened to the official opposition. This is the party in opposition with a membership in the house of government greater than any other non-government party."

During debates on bills, budget debates, and address in reply and dissent motions, the official Opposition has debating time limits equal to the government and greater than other non-government parties. These limits reflect the fact that the official Opposition is the alternative government.

For the above items, the Government and Opposition lead speaker and

party leader or member deputed have unlimited debate time. Assuming the lead speaker is not the party leader or member deputed, two members from the government and two members from the Opposition have unlimited debate time, while only one speaker from other parties (the party leader or member deputed) has unlimited debate time.

There are no time limits for debates on bills (second and third reading) for the mover, the lead Member (Government or Opposition, and the Party Leader (or relevant deputed member). Other members are limited to 45 minutes.

The time limits applying to budget debates, and address in reply and dissent motions are the same as above except 'Other members' have a 60 minute limit. Debate times on other items do not distinguish between whether the member is a government, opposition or non-goverment member.

The Department of the Premier and Cabinet (DPC) allocates money to the leader of the Opposition and the leader of the second party in opposition from which they must meet their operational and salary expenses. While the President of the Legislative Council is nominally the employer of Legislative Council member's electorate office staff, that responsibility was delegated to DPC in June 2013. DPC also provides IT support to all members and their staff. Parliament House currently provides offices to members, and a staff office and party room to the official Opposition and second party in opposition.

CANADA

House of Commons

Canada has no written rules, either in a statute or in the Standing Orders of the House of Commons, detailing the procedures for the selection of the official Opposition; rather, the title of official Opposition in the House of Commons (and referred to as "Her Majesty's Opposition") has by convention been conferred upon the party which holds the second highest number of seats in the House.

The Leader of the Official Opposition enjoys a number of privileges in recognition of the important role he or she plays in the parliamentary system. By law, they must be consulted before certain important decisions are made by the government and before certain important appointments are made.

When Government bills or motions are introduced, the Leader of the official Opposition or another member of the official Opposition is usually the first to be recognised in debate following the Minister who speaks first on behalf of the Government. Time to debate bills and motions is typically allocated roughly in proportion to the number of seats each recognised party holds in the House.

For the conduct of Question Period during the Forty-Second Parliament, the current practice is for the Speaker to recognise the Leader of the Opposition, or

the lead questioner for their party, for a total of five initial questions in the first round of questions, while the opposition party with the second highest number of seats is permitted four initial questions. After this initial round of questions, the recognition pattern varies depending on party representation in the House and the number of members in each party.

Following the budget speech, the Speaker recognises a representative of the official Opposition, usually the finance critic, who, after a brief speech, moves the adjournment of the debate, which is then deemed adopted. In doing so, that member reserves the right to speak first when debate on the motion resumes at a subsequent sitting.

Each year, under Standing Orders, the Leader of the Opposition is permitted to select, in consultation with the leaders of the other opposition parties, the main estimates of two departments or agencies for consideration in Committee of the Whole for up to four hours. Pursuant to Standing Order 81(4)(a) and (b), the Opposition Leader is empowered to extend a committee's consideration of the main estimates of a specific department or agency.

The Standing Orders provide for the Chairs and the Vice-Chairs of standing and standing joint committees to be elected by all members of the committee. In the case of the Standing Committee on Public Accounts, the Standing Committee on the Status of Women, the Standing Committee on Access to Information, Privacy and Ethics, the Standing Committee on Government Operations and Estimates, and the Standing Joint Committee for the Scrutiny of Regulations, Standing Order 106(2) require that the Chair (or Joint Chair) be a member of the official Opposition, the first Vice-Chair a member of the Government party, and the second Vice-Chair a member of an opposition party other than the official Opposition party. All other Standing Committees are chaired by a member of the Government party.

Pursuant to Standing Order 35(2), when parliamentary committees present reports in the House which are accompanied by a supplementary or dissenting opinions or recommendations, a committee member from the official Opposition, representing those who support the opinions or recommendations in the appended report, may rise and offer a succinct explanation of these views.

Each Thursday after Oral Questions the Speaker recognises the House Leader of the official Opposition, or their representative, to ask the Government House Leader, or their representative, about the Government orders to be considered by the House in the succeeding days or week.

The importance of the official Opposition and the position of Leader of the Opposition are reflected in the extra allowances and services as laid out in the Parliament of Canada Act, the Official Residences Act, and other statutes.

According to the Parliament of Canada Act, a political party must have at least 12 elected members to be a "recognised party" in the House of Commons.

The Leaders, Whips, Deputy Whips, House Leaders, Deputy House Leaders and Chairs of recognised parties receive additional financial allowances and their parties are entitled to funding for their research groups.

Political party funding stems from a combination of private and public funding which are regulated under Canada's federal election finance laws. With regards to public funding, the Canada Elections Act states that political parties shall receive a quarterly allowance payable to a registered party whose candidates for the most recent general election received two per cent of the national vote or five per cent of the vote in the districts in which the registered party endorsed a candidate. The quarterly allowance is calculated by multiplying the quarterly rate by the number of valid votes a party's candidates received in the previous general election.

Each recognised party is provided with the additional resources necessary to support their members and House Officers in the carrying out of their parliamentary functions. The Board of Internal Economy regulates the use of all these resources. Besides salary and benefits, the resources provided to national causes include House Officer's Office budgets and National Causes Research Offices.

House Officer's Office Budgets

Opposition Party Leaders, House Leaders, Chief Whips and National Caucus Chairs of all recognised parties are provided with an annual office budget to pay employee salaries; translation services and contracts; and some office expenses.

National Causes Research Offices

The National Causes Research Office of each recognised party is provided with resources to support its members and House Officers in carrying out parliamentary functions. Each National Caucus Research Office is provided with an annual office budget to pay employee salaries and costs for language training; translation services; and contracts.

The budgets of the House Officer's of recognised parties and the National Caucuses Research Officer are established following a general election, based on a formula approved by the Board of Internal Economy. These budgets are calculated using party representation in the House of Commons and pro-rated until the end of the fiscal year. Thereafter, these budgets can only be adjusted by a decision of the Board of Internal Economy. The budget formula can be found in the Appendix of the Members' Allowances and Services Manual.

Senate

The Rules of the Senate define a recognized party or recognised parliamentary group as:

A recognised party in the Senate is composed of at least nine senators who are members of the same political party, which is registered under the Canada Elections Act, or has been registered under the Act within the past 15 years. A recognised parliamentary group in the Senate is one to which at least nine senators belong and which is formed for parliamentary purposes. A senator may belong to either one recognized party or one recognized parliamentary group. Each recognized party or recognized group has a leader or facilitator in the Senate.

The Leader of the Opposition is defined as "the Senator recognized as the head of the party, other than the Government party, with the most Senators." The Leader of the Government and the Leader of the Opposition are allowed unlimited time for debate, whereas the leader or facilitator of any other recognised party or parliamentary group are permitted up to 45 minutes for debate (rule 6-3(1)(a)). When the Senate is dealing with a motion to allocate time, the Government Leader and the Leader of the Opposition have 30 minutes, whereas other leaders and facilitators have 15 minutes.

The Rules of the Senate give special powers to the Opposition on a number of other points, when compared to other recognised parties or recognized parliamentary groups that are not the government. These include the following:

- the Leader of the Opposition (or deputy) is *ex officio* member of all standing Senate committees other than the Ethics and Conflict of Interest Committee, as is the Leader of the Government (or deputy) (by order, however, during the current session, the leaders or facilitators of other recognised parties and recognized parliamentary groups have similar status);
- the motion to appoint the Ethics and Conflict of Interest Committee must, under the Rules, be moved by the Government Leader and seconded by the Opposition Leader, and the process for choosing the members involves the Government and opposition caucuses (again, during the current session, special provisions were applied in this regard);
- the Government and Opposition Leaders can, jointly, authorise committees to meet during extended adjournments of the Senate in certain situations if the Senate had not given such permission before the adjournment;
- the Opposition Whip can, like the Government Whip, defer most votes on debatable motions to the next sitting; and
- the Opposition Whip must agree with the Government Whip before a proposal to shorten the length of the bells for a vote is put to the Senate.

In the current Parliament, the dynamics and structure of parties in the Senate have changed significantly. In the past, the governing party in the Senate was the party that held power in the House of Commons. Since the beginning of the 42nd Parliament, the Government is represented by three senators in the Senate: the Leader of the Government in the Senate (styled as Government

Representative in the Senate), the Deputy Leader of the Government in the Senate (styled as Legislative Deputy to the Government Representative), and the Government Whip (styled as Government Liaison). They are not members of the Liberal Party of Canada caucus. The current official Opposition—the Conservative Party of Canada—does sit with Members of the House of Commons as a national caucus. There are 31 Conservative senators, whereas the Independent Senators Group (ISG) has 58. Though the ISG is the larger of the two groups, the Rules of the Senate specify that the Leader of the Opposition is the head of the party, not group, with the largest number of senators after the government party.

In terms of financial support, the official Opposition leadership receives the following salaries in addition to their base senator salary, as of 1 April 2018:

- Leader of the Opposition in the Senate, $39,800;
- Deputy Leader of the Opposition in the Senate, $25,200;
- Opposition Whip, $7,000;
- Deputy Opposition Whip in the Senate, $3,100; and
- Opposition Caucus Chair, $6,000.

By way of comparison, the Government leadership receives the following amounts:

- Government Representative in the Senate, $84,000;
- Legislative Deputy to the Government Representative, $39,800; and
- Government Liaison, $12,100.

Under the Senate Administrative Rules, the Office of the Leader of the official Opposition receives $1,297,950 in supplementary and research funding. By way of comparison, the Office of the Government Representative receives $1,678,150; the Independent Senators Group receives $1,060,000; and the Senate Liberals receive $160,000. For the 2019–20 fiscal year, the leaders of the four groups agreed on the following financial support, subject to each group meeting the minimum number of members required under the Rules of the Senate for recognised parties or groups:

- Office of the Government Representative in the Senate, $1,628,150;
- Office of the Leader of the official Opposition, $1,347,150;
- the Independent Senators Group, $1,510,000;
- and the Senate Liberals, $410,000.

The Standing Senate Committee on Internal Economy, Budgets and Administration adopted a motion on 28 February 2019, granting the agreed financial support to the four groups, and the funding will remain in place until the end of the 42nd Parliament.

In addition to the financial support, the Senate Administrative Rules specify that the official Opposition leadership (Leader, Deputy Leader, and Whip) are to be accorded office accommodations in proximity to the Senate Chamber.

Similar provisions apply to the Government leadership.

Alberta Legislative Assembly

Typically, the party that wins the second highest number of seats in a general election is designated Her Majesty's Loyal Opposition. However, when there is a question as to which parliamentary caucus ought to be designated the official Opposition because of an equality in the number of seats either arising from an election or during a Legislature, the Speaker is responsible for determining which caucus will be designated the official Opposition.

By convention, the official Opposition receives the first three sets of questions during Oral Question Period each sitting day. Moreover, the official Opposition receives the majority of total questions that are allocated among all caucuses in the Oral Question Period rotation. To illustrate, the official Opposition were entitled to ask up to 11 questions in any one Oral Question Period (50 minutes in duration), whereas all other Opposition caucuses and Independents combined were able to ask up to four questions, while the Government caucus were entitled to up to three questions.

In debate, the typical practice is for the Speaker to recognise the official Opposition before any other Opposition caucus following the Government's moving of a motion for Second or Third Reading of a bill. Speaking second in debate at these stages entitles the Member to five additional minutes of speaking time as compared to Members who speak subsequently.

Financial support

In Alberta, section 41 (1) of the Legislative Assembly Act provides that the Leader of Her Majesty's Loyal Opposition is paid a salary equal to that payable to a member of the Executive Council. By comparison, a leader of a recognised party other than the official Opposition receives a rate of pay not less than 25 per cent of the salary of a Cabinet Minister (section 42 (2)). In addition, the official Opposition receives a Leader's Office Allowance that is double the amount of the next caucus (i.e. the third party).

In terms of caucus funding, the official Opposition receives funding for a Calgary office, an allowance other Opposition caucuses do not receive. The official Opposition receives committee research funding that is half the amount received by the Government caucus, but twice that of the third party.

It should be noted that all Members receive the same per Private Member funding amount (this figure multiplied by the number of Members in a caucus is allocated to the caucus).

In February 2019, the Special Standing Committee on Members' Services (Alberta's equivalent to a board of internal economy) approved a new caucus funding proposal. This proposal primarily sets out to establish a defined funding

model for caucuses other than the official Opposition and for Independent Members. There are some changes to committee research funding for all caucuses. The official Opposition still receives a base amount that is half the base amount received by the Government caucus, though there is now an additional per Member amount, up to a set maximum. The proposal makes no other changes to the funding model for the official Opposition.

British Columbia Legislative Assembly

While there is an official Opposition in the Legislative Assembly of British Columbia, the official Opposition is not defined in statute or the Standing Orders. By convention, the opposition party with the most seats in the Legislative Assembly is designated as the official Opposition and the leader of that party is recognised as Leader of the official Opposition.

The official Opposition serves an important role in ensuring responsible government and several statutes directly reference the official Opposition. The Legislative Assembly Management Committee Act defines "Opposition House Leader" as "the member of the Legislative Assembly named as such by the Leader of the Official Opposition" and specifies that "additional parties" are parties with two or more members other than the Government and the official Opposition. The provincial Constitution Act includes in the definition of a "leader of a recognized political party" that such leader is a member of the Legislative Assembly other than the Premier or Leader of the official Opposition. References to the official Opposition also appear in the Members' Remuneration and Pensions Act and the Electoral Boundaries Commission Act.

The provincial Constitution Act stipulates that the Leader of the official Opposition must be consulted if the date of a general election is to be changed, and the Electoral Boundaries Commission Act requires that the commission include a person nominated by the Speaker following consultation with both the Premier and the Leader of the official Opposition. Finally, the Legislative Assembly Management Committee Act describes the composition of the Legislative Assembly Management Committee and reserves two spots for the official Opposition: one for the House Leader, and one for the Caucus Chair. Other officially recognised parties are afforded only one seat on the Committee.

The Standing Orders also directly reference the official Opposition and offer precedence over other recognized caucuses. Practice Recommendation 6 in the Standing Orders states that the official Opposition should be consulted before moving certain motions, including the deferral of a division on a debatable motion, the referral of votes within estimates to a Select Standing Committee, or the referral of a bill to a Select Standing Committee. Standing Order 14 states that the House may appoint a Member of the official Opposition to be

Assistant Deputy Speaker. Finally, the official Opposition is recognised through tradition and convention. The Deputy Chair of each parliamentary committee is traditionally a Member of the official Opposition, with the exception of the Select Standing Committee on Public Accounts, where the Chair is traditionally a Member of the official Opposition Caucus.

The official Opposition is granted some extended speaking time in debates. Standing Order 45A, which describes the maximum period for which a Member may speak, provides for extended speaking times for leaders of recognised opposition parties or their designate for the Address in Reply to the Speech from the Throne and the Budget Debate. For debate on public bills and certain motions, leaders of recognised opposition parties or their designate also enjoy an extended speaking time of two hours, compared to 40 minutes for the mover and 30 minutes for other Members.

The official Opposition is also provided with financial support in recognition of its role. Funding for parties to carry out parliamentary duties and activities is administered under the Legislative Assembly Management Committee Act by the Legislative Assembly Management Committee. The budget for caucus support services is determined by a formula based on the number of Members in each caucus. The Leader of the official Opposition is granted an additional allocation to cover the cost of running a leader's office based on the average of the Ministers' office budgets. The leaders of any other recognised parties receive a percentage of the amount allocated to the Leader of the official Opposition to cover the costs of running a leader's office.

Manitoba Legislative Assembly

Manitoba defines the "official Opposition" as "the political party represented in the Legislature by the second largest number of Members." The Spring Session began with former NDP Premier and long-time MLA Greg Selinger resigning from the Manitoba legislature, which resulted in a by-election held on 17 July 2018. The by-election was won by the new Leader of the Manitoba Liberal Party, Dougald Lamont. This win gave the Liberals official Party status as he became the 4th MLA required for Recognized Party status. The Liberals became known as the Second Opposition Caucus rather than their previous status as Independent Members.

The by-election win resulted in numerous changes to the Legislature to incorporate three recognised parties when it resumed in the autumn, including but not limited to:

- seating arrangements in the Chamber;
- rotation in Question Period;
- caucus allotment for MLAs attending conferences;
- representation on the Legislative Assembly Management Commission;

- appointments of positions such as Whip, Caucus Chair and House Leader;
- unlimited speaking time for the Leader of the Second Opposition party;
- sharing of the selection of Designated Government Bills and Opposition Day Motions;
- replies to Ministerial Statements;
- rotation in debate and allotments for Member's Statements and Private Members' Business;
- divisions in speaking times in Estimates (to be negotiated by the Opposition parties with the Speaker ultimately ruling if the parties cannot agree);
- allocation of interns; and
- proportional representation on various Committees.

The last time Manitoba had three Recognized Parties represented in the Legislature was 1995. The Second Opposition Caucus also automatically received an increase in staffing and operating budgets as well as larger office space. As a Recognized Opposition Party, the Liberal Leader became Leader of the Second Opposition and has unlimited speaking time on Government motions. The Caucus also obtained a permanent seat on every Standing Committee (membership was previously assigned to the Independent Members), they no longer required unanimous consent to reply to Ministerial Statements and a new rotation of speakers in Oral Questions and Members' Statements is now in place.

In terms of rights, the official Opposition receives more questions in Oral Questions than other Recognized Parties. For example, the official Opposition receives questions 1–4, 6, 9, 11 and onward (Government gets questions 7 and 10 with Independents getting question 11 one time per week) with the current Second Opposition Party receiving the right to ask questions 5 and 8. The official Opposition is allowed two out of the three Opposition Day Motions in which it has the right to decide the House Business for that day. In terms of Private Members Business held during two mornings per week, one of those mornings is set aside for the Opposition to set the agenda. The two Opposition parties negotiated a split of 75 to 25 percentage split as to which Party determines the business for that morning.

In terms of funding, all MLAs receive funding from the Assembly for Constituency Assistants. There is no specific number for staff allocation. Caucus offices are provided with budgets to hire staff who provide support and research services. In addition, MLAs receive money through the Constituency Allowances to hire one or more constituency staff depending on whether they want one full time person or several part time staff. Some MLAs also pool resources to hire a specific researcher to work for that group of MLAs.

The Assembly also provides computer equipment for Caucus staff. In terms of travel, if the MLA is being sent to a CPA or MLC conference by the Clerk's

Office, the Assembly would make the arrangements for and pay for their flights. The official Opposition would have more opportunity to participate based on their number of seats.

Members of Recognized Parties (four or more Members) who hold the position of Leaders, House Leaders and Whips receive an additional amount to their annual salary, as does the Caucus Chair of the official Opposition and any Permanent Chairperson, such as the Chairperson of the Public Accounts Committee.

Ontario Legislative Assembly

Ontario inherited from the United Kingdom its model of parliamentary democracy. One of the characteristics of the Westminster model is the presence of a recognised official Opposition, traditionally positioned as a "government in waiting" should the Executive lose the confidence of the House.

Inasmuch as the presence of an official Opposition is a defining characteristic of the Ontario Legislative Assembly, the official Opposition itself is not defined in either the Assembly's governing statute, the Legislative Assembly Act ("LAA"), or the Assembly's Standing Orders. Traditionally, the official Opposition is formed by the largest parliamentary group sitting in opposition to the Government. This status is granted at the beginning of a new Parliament by the Speaker, who formally recognises the parliamentary Leader of this group as "the Leader of Her Majesty's Loyal Opposition".

Ontario, like the majority of Canadian legislatures, also follows the particularly Canadian practice of recognising certain parliamentary party groups in the legislature, granting them "recognized" (or "official") party status. The type of recognition and threshold needed to obtain this status varies by legislature. In Ontario, Standing Order 2 (SO 2) sets out the definition of "recognized" party. Currently, the threshold required for "recognized" party status is a membership equal to at least 10 per cent of the total seats in the Assembly (12 seats). Having "recognized" party status allows the parliamentary group certain procedural privileges as well as financial and other forms of support provided by the Assembly.

While all parties in the House with "recognized" status under SO 2 benefit from both procedural and financial privileges not shared by smaller parties and independent members, the parliamentary group recognised as the official Opposition enjoys a few additional procedural advantages over the other opposition parties with recognised status. All parties recognised under SO 2 enjoy more access to debate time in general debates, and their lead-off speakers in certain debates may speak for up to an hour. The official Opposition is entitled to more Opposition Day debates and want of confidence motions each session than the other opposition parties recognised under SO 2. Because

committee membership and chairship are distributed proportionally amongst parties recognized under SO 2, the official Opposition will normally have more members on, and chair more Standing and Select Committees than any other "recognized" opposition party. The official Opposition is guaranteed the chairship of the Standing Committee on Public Accounts.

The Leader of the official Opposition is granted certain procedural considerations. In the Chamber, they are seated in the front row directly across from the Premier. They normally leads off Oral Questions, and has a larger designated number of questions and supplementary questions. They will reply to any ministerial statements made by the Premier, and will usually deliver their party's lead-off remarks in major debates such as the debate on the Address in Reply to the Speech from the Throne, or on any Government motion moved by the Premier.

The financial and other support provided to the official Opposition is set out in the LAA. Section 62 (5) of the LAA includes the same definition of "recognized party" as found in the Standing Orders, and so all parties that qualify largely enjoy the same financial and other support. However, the wording of the sections of the Act governing these benefits differs with respect to the official Opposition, in a way that would allow the official Opposition to be entitled to these benefits even if it did not meet the threshold for recognised party status.

The Leader of the official Opposition in Ontario has received an additional allowance above the base salary for MPPs since 1919. A similar (but slightly smaller) indemnity was made available to other "recognized" party leaders (other than the Premier and the Leader of the official Opposition) in 1968. Funding for research purposes is provided for the caucuses of the Government party, the official Opposition, and the caucuses of all other parties that have recognised status, as is additional funding for defraying the cost of salaries and expenses of the personal staff of the Leader of the Opposition and of the leaders of other parties with recognised status. The Leader of the official Opposition (and leaders of other recognised parties) is entitled to be paid the actual cost of their accommodations if their principal residence is more than 50 kilometres from the seat of government (up to a specified maximum), and unlimited air, train, bus and automobile travel within the province. Additional salaries are also paid to the House Leader, Whips, and Caucus Chair of both the official Opposition and other opposition parties with recognized status. In all of the above instances, the amounts payable to the official Opposition are greater than those payable to other opposition parties with recognised status. The travel, meal, and hospitality expenses for the leader of the official Opposition, leaders of other recognised opposition parties and their staff, are publicly disclosed by the Speaker on the Assembly's website, as required by the Cabinet Ministers'

and Opposition Leaders' Expenses Review and Accountability Act 2002, and Public Sector Expenses Review Act 2009.

Prince Edward Island Legislative Assembly

By convention, the official Opposition is formed by the political party with the second most seats in the House; this rule is not written down in statute or the Rules of the Legislative Assembly. There is reference in the Legislative Assembly Act to various roles in the Legislative Assembly, including "Leader of the Opposition", "Opposition House Leader", and "Opposition Whip", mostly in relation to indemnities and allowances.

In relation to debating time, the official Opposition is afforded the following for debating time:

- Leader of the Opposition (or designate) is given the first question during Oral Question Period; currently, the opposition is given the first half of OQP (20 minutes out of 40) for questions; and any remaining time after questions are asked by other private members.
- Approximately two-thirds of time designated as "Orders or Motions other than Government" is allocated to Members of the official Opposition.
- The first response to Statements by Ministers, and the right to respond for as long as the Ministerial statement.
- All official Opposition members are included in a rotation of all private members for Statements by Members.

Additional support provided to the official Opposition is as follows:

- In addition to the base salary of a Member of the Legislative Assembly, three official Opposition parliamentary roles receive an additional remuneration, including the Leader of the official Opposition, the Opposition House Leader, and the Opposition Whip.
- As with all Private Members, a grant is allocated to the official Opposition Members Office, which is based on the number of members in the official Opposition.

Québec National Assembly

At the National Assembly, even though the opposition has long had a recognised role in our system of parliamentary government, the expression "official Opposition" has no status in law. While it is true that legislative texts and the Standing Orders legitimise the idea of the official Opposition by using such expressions as "Leader of the Opposition", "Leader of the official Opposition" and "official Opposition House Leader", the recognition of the Official Opposition does not derive from the Standing Orders but is based, rather, on the constitutional convention that the largest minority group prepared to assume office if the Government resigns has the right to be called the "official

Opposition".

Parliamentary jurisprudence has on several occasions recognised the preponderant role traditionally played by the official Opposition in the allocation of measures applying to Members. It is for this reason that the official Opposition is always entitled to the majority of questions during Oral Question Period, including the first main questions each day there is a Question Period. Furthermore, the first main question asked by the Leader of the official Opposition may be followed by three supplementary questions. All other main questions may be followed by only two supplementary questions.

The official Opposition is also granted the majority of other measures, such as Business Standing in the Name of Members in Opposition and interpellations, including the first of each sessional period.

With respect to speaking time during limited debates, the official Opposition is entitled to more speaking time than the other opposition groups, in proportion to the number of Members each group has in the Assembly. Furthermore, within the framework of the debate on the Opening Speech of the Session or the debate on the Budget Speech, the Leader of the official Opposition or his representative may speak for up to two hours, while the other parliamentary group leaders or their representatives are entitled to one hour.

However, as regards speaking time arranged on an individual basis, for instance during debates on the different stages of the legislative process, the official Opposition is not entitled to more speaking time than the other recognised parliamentary groups.

Regarding budgets, that of the official Opposition is generally higher than that of the other opposition groups since the allocation of budgets to parliamentary groups, at the beginning of each legislature, is determined according to the preponderant role played by the official Opposition.

Furthermore, the following benefits are provided to the Leader of the official Opposition:

- Official vehicle and bodyguard;
- Reimbursement of actual costs incurred for the use of charter transportation, to a maximum of $40,000 per fiscal year for travel within the province of Québec;
- Reimbursement of actual costs incurred for transportation and accommodation outside of the province of Québec, to a maximum of $25,000 per fiscal year; and
- Office located at Place Ville-Marie, in Montréal (in addition to the office at the National Assembly, located in the capital, Québec City). The Québec National Assembly pays for office rental and operating expenses as well as parking expenses for the official vehicle of the Leader of the official Opposition. It also provides office furniture and equipment.

Saskatchewan Legislative Assembly

The term "official Opposition" is a colloquial, traditional parliamentary term not defined in statute or the Standing Orders. In Saskatchewan, "opposition caucus" is defined in the Legislative Assembly Act 2007 as the largest caucus sitting in the Legislative Assembly in opposition to the Government. The statutory definition of the "Leader of the Opposition" is the member who is designated by the opposition caucus as its leader. The title "Opposition" is taken from the definition of the leader.

The Rules and Procedures of the Legislative Assembly of Saskatchewan do not contain specific provisions for the Opposition caucus in debating time etc. compared to any other member of a non-Government party. In practice, in the absence of other caucuses sitting in opposition to the Government, the vast majority of time of debate in readings of bills and consideration of budgetary estimates is allotted to the Opposition, as are all the questions in the daily Question Period. If other opposition groupings of members existed the Speaker would take steps to ensure the allotment of time is proportional to standing of Assembly membership.

Funding for research and other services for the Opposition caucus and the Office of the Leader of the Opposition is authorised by the Legislative Assembly Act 2007. The Act delegates determination respecting the amount, method of calculation, manner of paying, and terms and conditions to the Board of Internal Economy (BOIE). The Board is established by the Assembly act as a management board consisting of the Speaker as Chair, two members of the Government caucus, two members appointed by the executive and two members of the Opposition. The BOIE is structured so that decisions are made on the basis of consensus. Presently, the BOIE has issued directives that provides funding for research, information technology, administrative services and other operating expenses of the caucus as outlined as follows:

- Directive 7.2(3)(a) states the formula for annual funding to a caucus. Funding to a caucus, other than the Government caucus, has a base amount of $364,538 plus the product of $28,898 multiplied by the number of private members in the caucus excluding Ministers of the Crown (cabinet ministers), the Speaker, the Leader of the Opposition and the Leader of the Third Party.
- Directive 7.3, although not specific to the opposition caucus, provides a grant in the amount of $1,000 per elected member belonging to a caucus, to be used for information technology enhancements in the caucus office. Information technology enhancements include the purchase of information technology hardware and software, technical computer support, maintenance and system development expenses.
- In addition to the caucus funding and the grant for IT, Directive 11

provides a grant of $179,722 per annum to the Office of the Leader of the Opposition to cover the cost of staff, supplies, stationery and services. The grant is increased or decreased annually based on the consumer price index on 1 April.

- Directive 21 provides the Leader of the Opposition the same rate of pay as a member of cabinet. That directive provides the same level of pay for all Opposition caucus appointed positions such as House Leader, Deputy House Leader, Whip, Caucus Chair, Deputy Caucus Chair as is provided to the Government caucus. The Standing Orders of the Assembly require each standing committee to elect a deputy chair from the opposition, and an opposition members as chair of the Standing Committee on Public Accounts. The BOIE requires that Opposition and Government members be paid at the same rate for equivalent duties as presiding officers.

Yukon Legislative Assembly

Yukon's Legislative Assembly Act defines the leader of the official opposition as "the recognized leader of the party with the largest number of members in opposition to the party or coalition that forms the government". The importance of the official Opposition in the Yukon Legislative Assembly is demonstrated by the fact that the Assembly has felt it necessary to designate one caucus as the official Opposition even where the two opposition caucuses had the same number of members. The circumstances surrounding this event, and the Speaker's ruling determining which opposition caucus would be the official Opposition was detailed in this journal.[1]

The official Opposition gets to respond first to government motions and bills. Pursuant to the Standing Orders for the Yukon Legislative Assembly, the member moving a motion and the member speaking first in reply may speak for longer than 20 minutes (the time limit is 40 minutes at Second Reading of a main appropriation bill and when responding to the Speech from the Throne). As such the official Opposition gets priority of place and, potentially, more time to respond to government motions and bills.

The official Opposition also has priority of place in the Oral Question Period, receiving the first two main questions (plus supplementary questions) in the daily roster. The official Opposition also gets a greater proportion of questions based on their status as "the party with the largest number of members in opposition to the party or coalition that forms the government."

The Standing Orders of the Yukon Legislative Assembly mention the official

[1] See "Ruling on which of two equal parties in the Official Opposition" prepared by Patrick Michael, Clerk of the Yukon Legislative Assembly, published in The Table, Volume 65 (1997), pages 70–74.

Opposition in the context of establishing a roster for sitting days on which opposition private members' business has precedence. The official Opposition also enjoys priority of place on this roster. The roster is comprised of six positions, with the official Opposition being allocated positions 1, 2 and 5.

The Standing Orders stipulate that all bills that receive second reading are referred to Committee of the Whole, unless otherwise ordered. Once again, the official Opposition gets priority of place in terms of getting to respond first to government bills and to individual votes in appropriation bills.

The Leader of the official Opposition receives a salary for holding that position. The salary is equivalent to that of a cabinet minister (other than the Premier) and is greater than that paid to the leader of other opposition parties. The official Opposition caucus also receives more funding than other opposition parties. This, however, is by virtue of its greater size, since the formula for allocating funds does not distinguish between the official Opposition and other opposition parties. Each recognised caucus receives a set amount for secretarial and research services and receives additional amounts for each caucus member.

CYPRUS HOUSE OF REPRESENTATIVES

There is no defined official Opposition in the Cyprus House of Representatives as the political system in the Republic of Cyprus is a presidential, not parliamentary, democracy.

GUYANA NATIONAL ASSEMBLY

Article 184 of the Constitution states that the Leader of the Opposition shall be elected by, and from among, the non-governmental members of the National Assembly at a meeting held under the chairmanship of the Speaker of the National Assembly, who shall not have the right to vote.

The Office of the Leader of the Opposition is supported financially by the Government through the Parliament Office's budget. Financial support includes the payment of salaries for five employees, rental of a building, travel and other operational costs.

INDIA

Rajya Sabha

The Salary and Allowances of Leaders of Opposition in Parliament Act 1977 granted a statutory recognition to the office of the Leader of the Opposition and accorded the rank and status of a Union Cabinet Minister to the Leader

of the Opposition. The Act defines the Leader of the Opposition in relation to either House of Parliament, as a "Member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the Party in Opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be".

Further, "where there are two or more parties in opposition to the Government, in the Council of States or in the House of the People having the same numerical strength, the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, shall, having regard to the status of the parties, recognise any one of the Leaders of such parties as the Leader of the Opposition."

The claimant party for being recognised as the party in opposition to the Government should have at least the strength equal to ten per cent of the total membership of the House, as laid down in article 100 (3) of the Constitution.

The Leader of the Opposition occupies a 'front seat' in the Rajya Sabha Chamber, on the left side, next to the Hon'ble Deputy Chairman of the Rajya Sabha. Under the Salary and Allowances of Leaders of Opposition in Parliament Act 1977, the Leader of the Opposition gets salary, daily allowance for each day during the whole of his term, a constituency allowance and a sumptuary allowance per month, travelling allowance in respect of journeys performed along with free and fully furnished residence and telephones, secretarial and medical facilities.

However, no separate time for debating in the Parliament is allotted to the Opposition parties.

Kerala Legislative Assembly

The Rules of Procedure of Kerala Legislative Assembly do not define "official opposition". The Leader of the Opposition is, however, defined as "the leader of the largest party in opposition as recognized as such by the Speaker". Generally, the Opposition comprises of one or more political parties that were opposing primarily and ideologically the Government. The Opposition is responsible for challenging the policies of Government. Members belonging to Opposition parties are not entitled to any special rights in terms of debating time.

As per Article 176 of the Constitution of India, the Governor will address the Legislative Assembly at the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year. The Speaker allots time for the discussion of issues raised in the Governor's address, in consultation with the Leader of the Opposition along with the Leader of the House. Generally, the last two hours of sitting on Fridays is allotted to Private Members' Business. The Speaker

allots any day other than a Friday for the transaction of the Private Members Business in consultation with the Leader of the House and the Leader of the Opposition.

The Leader of the Opposition is a member of the committees which recommends to the Governor the appointment of the Chairmen of the State Human Rights Commission and State Information Commission.

The salary, allowances and other facilities given to the Leader of the Opposition are equivalent to that given to the ministers of the state cabinet. The Leader of Opposition is paid a salary of two thousand rupees a month and a dearness allowance at the same rates as an officer of Government who draws a salary of one thousand rupees a month. They are also paid a constituency allowance of forty thousand rupees a month.

The Leader of the Opposition is entitled, without payment of rent, to use of a fully furnished residence in Thiruvananthapuram throughout their term of office and for a period of fifteen days immediately thereafter.

The Leader of the Opposition and the members of his family are entitled to free medical treatment in any Government institution. The Leader of the Opposition is also entitled to be insured at the expense of the Government for accidents during air travel journey and is also entitled to traveling allowances, incidental expenses and daily allowances in respect of tours undertaken by them on public business. The Leader of the Opposition is provided a personal staff as in the case of ministers of the state cabinet.

Rajasthan Legislative Assembly

The official Opposition is defined on the basis of a group having more than 10 per cent of seats in the Assembly. The Leader of the Opposition is given the equivalent status of a Cabinet Minister and has the privilege of initiating the debate on the general discussion on the budget presented for the year and can intervene in the ongoing debate to put forth an opinion pertinent enough. The time allocation of the business hours for all members and parties is done on proportional basis.

Utter Pradesh Legislative Assembly

The minimum numerical strength for recognition as a political party is one tenth of the total membership of the House (alliances do not count towards this proportion). The official Opposition is the non-government party with the most members. There are no specific rights for the official Opposition compared to any other non-government party and no special additional support is given.

West Bengal Legislative Assembly

The official Opposition is not defined by any rule or Act. The rulings of the

Speaker given on 7 August 1952, 25 June 1957 and 24 February 2014 are used to inform the criteria used for recognition of the official Opposition and the Leader of the Opposition. If a parliamentary party is able to command a minimum strength of more than the quorum for a sitting of the Assembly, it will be treated as a recognised opposition party.

The test of determining which party has a right to be called the official Opposition is that it is a non-Government party which could form an alternative government. The Bengal Legislative Assembly (Members' Emoluments) Act 1937 defines the Leader of the Opposition as being the Leader in the Assembly of the party with the most seats who is not in government. The Act states that the Speaker has final say of who is the Leader of the Opposition and that "his decision…shall be final and conclusive."

The debating time in the Assembly is based on agreement between the Government and the opposition parties on a 60:40 ratio. The time allotted to opposition parties is distributed between the official Opposition and the other parties in opposition, again on a 60:40 ratio.

The Leader of the Opposition enjoys the same rank, status, salary and access to amenities as a Cabinet Minister and is given transport, accommodation and security the same as a Minister of the Government. The Leader is provided with two personal secretaries, one orderly and one Group-D staff member from the Assembly Secretariat. They can also appoint an executive assistant and three attendants. The Leader of the Opposition is also provided with a furnished office in the Assembly.

The Chief Whip of the Opposition is also provided with such an office, and is provided with necessary staff (one stenographer and one Group-D employee). They also are provided with an Assembly Car. The official Opposition party also has a furnished office in the Assembly.

PARLIAMENT OF JAMAICA

Jamaica's Constitution makes provision for the Governor-General to appoint as Leader of the Opposition the "member of the House of Representatives who, in his judgement, is best able to command the support of a majority of those members who do not support the Government, or, if there is no such person, the member of that House who, in his judgement, commands the support of the largest single group of such members who are prepared to support one leader" (section 80). However, thus far, no third party has won a seat at the polls.

In the Standing Orders, no distinction is made among backbenchers in respect of speaking time.

The Parliament maintains an office for the Leader of the Opposition. Additionally, every Member of Parliament is provided with a small constituency

office and a driver.

STATES OF JERSEY

There is no defined Opposition in the States Assembly. Most Members are independent. Five of the 49 belong to Jersey's only registered political party, Reform Jersey, three of whom are ministers or assistant ministers in the current government. The Assembly's rules and procedures do not recognise the existence of an official Opposition to the government.

NEW ZEALAND HOUSE OF REPRESENTATIVES

New Zealand has an official Opposition. It is defined under Standing Order 36 which states,

> "The leader of the largest party in terms of its parliamentary membership that is not in Government or in coalition with a Government party is entitled to be recognised as Leader of the Opposition."

Standing Orders do not go into any more detail regarding the role of the opposition but *Parliamentary Practice in New Zealand* provides more information. The party that the Leader of the Opposition leads is known as the official Opposition, and its members are seated immediately to the left of the Speaker.

Although the Office of the Leader of the Opposition is recognised in a number of statutes, it is not created by statute (neither is the Prime Minister, for comparison). It is a product of constitutional convention. If there were multiple claims to the position of Leader of the Opposition, it would be for the Speaker to determine who holds the title (because it is a parliamentary office which depends upon recognition in the House).

The Opposition in New Zealand is also recognised as a government-in-waiting. This is evident during the Opening of Parliament, when the Governor-General is flanked by both the Prime Minister and the Leader of the Opposition during the Speech from the Throne. The Leader of the Opposition is accorded a relatively high precedence in the official order of precedence of New Zealand, after the Head of State, Prime Minister, Speaker, Chief Justice, Ministers, and the Diplomatic Corps, and ahead of leaders of other parties, other MPs and Judges of the Supreme Court.

The Leader of the Opposition is entitled to precedence on the Opposition side of the House in major parliamentary debates, and this means the Leader of the Opposition has the right to speak first in reply to any Government motion. This means that, in matters of confidence such as the Budget, the Leader of the Opposition can move an amendment that the House express no confidence

in the Government. This emphasises the Leader of the Opposition's symbolic position as the rival candidate for the Office of Prime Minister. Similarly, the Leader of the Opposition can make the first comment in response to a Ministerial statement.

For the majority of other speeches in New Zealand's House of Representatives, the speaking times are often dictated by the Business Committee. The Business Committee is convened by the Speaker for the purpose of arranging and facilitating the House's consideration of its business, and comprises one member from each party. It works on the basis of unanimity, or near-unanimity, as assessed by the Speaker, who takes into account the proportionality in the House.

During question time, questions and supplementary questions are allocated proportionately by size of party, but the size of each party is calculated for this purpose as excluding members who are Ministers. This means that the main Opposition party receives a high proportion of opportunities to question Ministers (currently about two thirds of all questions). A similar practice tends to be employed in select committee scrutiny hearings, so that Opposition members are given more time to question Ministers about the Estimates and chief executives about the performance of agencies.

Other rights accorded to the Leader of the Opposition include:

- The Leader of the Opposition (or the Leader's nominee) is an *ex officio* member of the Parliamentary Service Commission and of the New Zealand Lottery Grants Board
- The Leader of the Opposition is accorded a special status regarding intelligence and security matters:
- The Leader is a member of the Intelligence and Security Committee
- The Director of the New Zealand Security Intelligence Service is obliged to consult the Leader of the Opposition regularly to keep him or her informed about matters relating to security
- The Leader of the Opposition must also be advised by the Prime Minister and the Attorney-General whenever an entity has been or is to be designated a terrorist entity, and must, if the Leader requests it, be briefed on the factual basis for the designation.

The recognition of parties by the Speaker under Standing Orders has the direct legal effect of qualifying them for the allocation of funding for parliamentary purposes. This funding is administered by the Parliamentary Service, in accordance with directions issued by the Speaker, to help the parties discharge their parliamentary duties. It includes allocations of amounts in recognition of party leadership and caucus responsibilities, and for other party activities as long as they are for parliamentary purposes. However, this funding is not by virtue of being the official Opposition, but rather is a right to funding

for all parties in Parliament, the amount of which is determined with reference to the size of each party's parliamentary membership. Because the official Opposition is by definition a large party (and currently is the largest party in the House), it receives a relatively large proportion of the party funding.

The Leader of the Opposition is paid the same salary as a Cabinet Minister.

In terms of other support, the official Opposition does not have access to government departments and advisers like the Executive does. Any support that the official Opposition receives is due to its status as a political party, which is also given to other parties. For example, all parties and members are assisted by information and research support provided by the Parliamentary Library.[2]

TANZANIA NATIONAL ASSEMBLY

The defined official Opposition is provided for by Standing Order 14 (2) which specifies that all Members of Parliament from Opposition Parties may constitute an Opposition camp (caucus) if their total number is not less than 12.5 per cent of the total number of the Members of Parliament.

The Leader of official Opposition is given priority in debating time and Prime Minister's Question. The official Opposition has the right to appoint shadow Ministers (spokespersons for each Ministry); and the right to be represented in various Parliamentary positions and events.

The official Opposition is provided with offices within the Parliamentary premises; Parliamentary staff to support administrative issues; a means of transport for the Leader of official Opposition; and a budget in each financial year.

UNITED KINGDOM

House of Commons

Although statutory recognition of the official Opposition was only granted in the 1930s when the Leader of the Opposition was allocated a salary of £2,000 a year through the Ministers of the Crown Act 1937, the term 'His Majesty's Opposition' had been used since the early 1800s. The first time the phrase appeared on the record was on 10 April 1826 when John Cam Hobhouse, a Whig politician, rose to express his "protest" and "astonishment" at the Government's decision to bring in a report on the Civil List. During his speech, in an attempt to undermine the Government, Hobhouse referred

[2] The above contribution features relevant passages compiled and adapted from McGee, D. *Parliamentary Practice in New Zealand (4th Edition)*, edited by Harris, M. and Wilson, D. (Oratia Books, Auckland, 2017), available online at www.parliament.nz.

to "his majesty's opposition" doing the work of the Government and was, according to Hansard, met with a laugh in the Chamber. The then leader of the Whigs, George Tierney, praised Hobhouse's use of the phrase and quipped that "though the gentlemen opposite are in office, we are in power". From that point on, the term became widely accepted.

Her Majesty's Opposition, or the official Opposition, is today identified as the largest minority party in the House of Commons which is prepared to assume office in the event of a resignation of the Government. The official Opposition enjoys certain privileges that other opposition parties do not; for example, its official spokespeople have the right to sit on the frontbench in the Chamber and to address the House from the despatch box.

UK politics has traditionally favoured a two-party system which has tended to avoid uncertainty around which party has been designated the title of the official Opposition. If there is any dispute over who should be named as the Leader of the Opposition, either at the beginning of a Parliament or, if party numbers change, during a Parliament, the Speaker of the House of Commons is called on to make a decision. According to the Ministerial and Other Salaries Act 1975, the Speaker's decision on this matter is "final and conclusive".

Opposition Days

During each parliamentary session (normally a year in length), under Standing Order No. 20, the opposition parties are allocated 20 Opposition Days where the business they choose takes precedence over Government business. The dates are agreed through the "Usual Channels" (the business managers in the Government and official Opposition parties), and 17 days—which can be a combination of full days and half days—are in the gift of the Leader of the Opposition. The remaining three days are allocated to the second largest opposition party (currently the Scottish National Party) although it has been the practice in some recent sessions for the leader of the second largest opposition party to informally give some of their time over to the smaller opposition parties.

Sometimes the Government may also make additional days—known as unallotted days—available to opposition parties, and when a session runs for significantly longer than a year, there is an expectation that the Government will provide additional Opposition Days. When and how many may, however, be a subject of dispute.

During Prime Minister's Questions, which take place every sitting Wednesday at 12 noon, the Speaker usually calls the leaders of the two largest opposition parties to ask questions: under current arrangements (not set down in the Standing Orders) the Leader of the Opposition usually has a guaranteed six questions, and the leader of the second largest opposition party has two. Neither are required to table their questions in advance.

The leaders of other smaller parties may be called to speak by the Speaker on an occasional basis. An informal rota applies but as an illustration, during the 2015-16 session, the then leader of the Democratic Unionist Party was called during PMQs on eight occasions, out of a possible 33.

Urgent Questions and Ministerial Statements

Urgent Questions (UQs), which have become much more prevalent under the current Speaker, provide an opportunity for Opposition frontbenchers as well as for backbenchers on both sides of the House. MPs submit their applications for a UQ to the Speaker who then decides whether to grant them. There is no limit on how many UQs can be granted on one day and, if a UQ is granted, a responsible Minister is required to the attend the House to respond. A spokesperson for the official Opposition is allowed up to two minutes to speak and ask questions on the issue (after the Member asking the Urgent Question, if it is not them) and, following a backbench question from the Government side, a spokesperson from the second largest opposition party then gets up to one minute. Following these speeches and/or questions, the Speaker will call on other Members, from alternate sides of the House where possible, to ask supplementary questions.

Similarly, once a Government minister has made a statement in the House, the relevant spokesperson from the official Opposition gets up to five minutes to speak before the Minister responds. The second largest opposition party spokesperson then has up to two minutes to speak on the subject, and gets a response from the Minister, before the Speaker starts to call backbench MPs to ask the Minister questions.

Response to the Budget

When the Chancellor of the Exchequer delivers the Budget Statement, usually in March or April, the Leader of the Opposition has the opportunity to respond first. They will usually also have been given advance—albeit short–notice of the statement. The statement is then followed by four days of debate on the budget—covering national finances, public spending, borrowing and taxation–and on the second day of the debate, the Shadow Chancellor makes the first speech. With the exception of the second largest opposition party, where there is an expectation that they will be called early in the debate, other opposition parties must, once again, rely on the Speaker calling them to speak.

Westminster Hall

Westminster Hall, the parallel Chamber in the House of Commons, is an additional forum for debate where Members from any side of the House, with the exception of Members with a Government role or a principal opposition

frontbench role, can apply for debates on any subject. A range of 30, 60 and 90-minute debates are available through a ballot each week and are responded to by a responsible Minister. A spokesperson from the official Opposition, and one from the second largest opposition party, are allowed to speak during the 60 or 90-minute debates and are usually called just before the Minister.

Other opportunities for debate

In addition to the opportunities listed above, members of the official Opposition and the smaller opposition parties also have the same rights as any other Member of the House (who does not hold a Government position) to apply for Private Members' Bills, Ten Minute Rule Bills, emergency debates and adjournment debates, all of which can result debate time on the floor of the House. However, members of the Opposition Shadow Cabinet (as opposed to junior frontbench spokespeople) do not normally take up these opportunities.

Support to the official Opposition

Opposition parties in the House of Commons receive a certain amount of public money in order to carry out their parliamentary functions. Certain official Opposition roles receive a salary under the Ministerial and Other Salaries Act 1975. Opposition parties also receive 'Short Money'. Named after Edward Short, the Leader of the House of Commons at the time the arrangement was first introduced, Short Money is to be used exclusively for costs incurred whilst undertaking parliamentary business and not for political campaigning, fundraising or party membership drives. It has been in place since 1975 and is available to parties with at least two MPs—or one MP providing the party polled at least 150,000 votes overall across the country—elected at the most recent General Election who take their seat in the House of Commons.

Sinn Fein, whose seven elected MPs refuse to take their seats due to their opposition to Westminster jurisdiction in Northern Ireland and the requirement to take an oath to the Queen, are not eligible for Short Money. However, since 2006, Sinn Fein has been in receipt of 'Representative Money', calculated on the same basis as Short Money, to cover staffing and associated costs incurred whilst undertaking representative business.

Short Money is paid for out of the House of Commons Members' Estimate, following a resolution of the House, and currently stands at £17,673.65 per elected MP plus £35.30 for every 20 votes cast for the party at the most recent General Election. In addition, opposition parties share £194,154.52 for travel expenses (divided in the same proportion as the main allocation of Short Money) and the Office of the Leader of the Opposition receives an additional £789,146 in support. Representative Money is also paid for out of the same Estimate.

Apart from financial support, Parliament also provides all members of the House with non-political support on an impartial basis, equally available to all Members and Members' staff without favouring one party over another. This can range from procedural advice, assistance in tabling Questions and Early Day Motions, support in progressing legislation through the House and secretariat and research functions for select committees, all the way across the spectrum to office facilities, allocations of computer hardware, meeting rooms and catering facilities.

House of Lords

Due to the appointment, rather than election of Peers, the composition of the House of Lords does not change after an election. The party in Opposition in the House of Lords is the same as that in the Commons, even where the number of Opposition Peers may be greater than those in Government. For example, despite there initially being fewer Labour peers than Conservative peers (the two largest parties in Parliament), the Labour peers still occupied the Government benches in the period 1997–2010, when Labour held the majority of the seats in the Commons. The arrangements for the seating of members of the House of Lords are, in theory, governed by the House of Lords Precedence Act 1539, but in practice these arrangements have been modified for the sake of convenience of debate on modern party lines. The Government and its supporters sit to the Lord Speaker's right, whilst the Opposition sit on the benches closest to him on the left, with other parties sitting at the back of these benches and further away from the Woolsack.

Officially, the House of Lords scarcely recognises the existence of political parties. They are nowhere referred to in its Standing Orders, and they are barely mentioned in the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, the House's procedural handbook.

Rights of the official Opposition

The House of Commons Standing Order 14 provides 'Opposition time' on 20 days each session. However, the Lords provides no such designation for official Opposition time. The Lords is a self-regulating chamber, meaning that the Lord Speaker has no power to rule on matters of order. This means that the Lord Speaker does not select amendments to be debated. As such, amendments tabled by the official Opposition and other opposition parties are treated in the same way.

The official Opposition has no protected time on oral questions, of which there are four at the start at the start of each sitting day. There is, however, protected time in general debates where official Opposition frontbenchers are given a guaranteed minimum number of minutes (in line with the overall length

of the debate) just before the Government responds. For example, for debates lasting less than two hours, the official Opposition frontbencher is given a minimum of eight minutes to speak, whereas in a debate of four hours or over, they are given a minimum of twelve minutes.

The Opposition in the Lords, like much of the proceedings in the Lords, functions more typically by convention. For example, there is by practice no firm rule as to the political composition of most committees. At present, political balance is applied with a typical 12 member committee having four Conservatives, four Labour, two Liberal Democrat and two Crossbenchers.

Financial assistance to the two main opposition parties has been provided from House of Lords funds since 1996 to assist them in carrying out their parliamentary business. This is known as Cranbourne Money, after a former Leader of the House, Viscount Cranbourne. The two opposition parties referred to here are the official Opposition and the opposition party with the largest number of members in the Lords, other than the official Opposition. In October 1999 this was extended to cover the Convenor of the Crossbench Peers (peers not aligned to any particular party). The official Opposition receive the most Cranbourne Money. These sums are determined by resolution of the House and are up-rated annually (in line with inflation). There is no specific allocation to use this money, but it often functions as a means to run the office of the official Opposition, as staffing resources are not provided by the parliamentary authorities. This contrasts to the party of Government, which has the advantage of an office staffed by civil servants.

Northern Ireland Assembly

In December 2014, as part of the Stormont House Agreement, Northern Ireland's political leaders agreed, amongst other things, to put in place arrangements that would allow for the formation of an official Opposition. In November 2015, 'A Fresh Start: The Stormont Agreement and Implementation Plan' was published. The Fresh Start document contained provisions for an official Opposition which reflected the arrangements envisaged in the Stormont House Agreement. It is these provisions for an official Opposition which have been directly adopted at the Northern Ireland Assembly and which have been in place since the election of May 2016.

In addition to these arrangements there is also statutory provision relating to an official Opposition. In September 2015, a Private Member's Bill on the formation of an official opposition at the Northern Ireland Assembly was introduced. The Assembly and Executive Reform (Assembly Opposition) Act (Northern Ireland) 2016 ("the 2016 Act") was passed by the Assembly and received Royal Assent on 23 March 2016, shortly before dissolution of the Assembly for the May 2016 election.

The primary purpose of the 2016 Act is to provide for the formation of an Assembly opposition and to confer on it certain rights and benefits. The Act provides that an opposition can be formed if one or more qualifying parties form it (qualifying parties being parties which could have a Ministerial office but do not, or parties which do not contain a Minister but whose members comprise eight per cent of the total number of Members). The 2016 Act provides that the Standing Orders of the Assembly make provision for various matters relating to the formation and operation of an official Opposition in the Assembly.

These provisions in the 2016 Act have not yet been implemented as the necessary Standing Orders have yet to be agreed. The Committee on Procedures had been considering the issue of Standing Orders relating to the 2016 Act but had not concluded this work when the Assembly was dissolved in January 2017. It is therefore the rights and entitlements agreed between the parties at the Fresh Start talks in November 2015 which continue to apply.

Formation of the first official Opposition

Arrangements were introduced to facilitate the establishment of an official Opposition following the election in May 2016. The arrangements provided that where a party was entitled to nominate a person to hold Ministerial office but declines to do so, that party may choose to be recognised as part of the official Opposition. In May 2016 the Social Democratic and Labour Party (SDLP) and Ulster Unionist Party (UUP) declined to nominate Ministers and instead formed the first official Opposition. The official Opposition was short lived due to the collapse of the Executive and dissolution of the Assembly in January 2017.

Standing Orders of the Assembly provide for the formation of the official Opposition (SO 45a: The Official Opposition); the tabling of opposition business (SO 10(1) Sittings and Adjournments of the Assembly); and questioning rights (SO 20A Topical Questions). This provision is based on the Statement of Entitlements included in the Fresh Start document.

Although the 'Statement of Proposed Entitlements for an Official Opposition' made provision for the formation of an official Opposition, it determined that no formal titles were to be conferred upon individual members, including leaders of the party within the official Opposition. The Statement provided that the official Opposition was entitled to research and financial assistance (which was to be allocated from within existing Assembly budgets to keep these changes cost neutral). The official Opposition were also accorded additional speaking and questioning rights.

The enhanced speaking rights accorded to the official Opposition during plenary business, comprised of the following:

- The first supplementary question after the tabling Member for the first

three listed oral questions to each Minister
- The first topical question to each Minister to be allocated outside the ballot.
- The first supplementary after the tabling Member for a question for oral answer.
- The first contributor following the Minister to Budget and Programme for Government debates.
- The first contributor following the relevant statutory committee chairperson in Executive bill debates; subordinate legislation motions; and legislative consent motions.
- The first question to the Minister following an oral statement.
- The first contributor after the tabling Member to a matter of the day.

Recognising that the official Opposition may comprise of more than one party, the Fresh Start Statement of Entitlements provided that 'the apportionment of speaking rights amongst parties will be determined by such parties themselves on the basis of party strength, in a manner similar to the allocation of Private Members' Business by the Business Committee.'

In September 2016 the Business Committee agreed to allocate a minimum of ten sitting days each session to opposition business.

Scottish Parliament

There is no defined official Opposition in the Scottish Parliament: instead regard is had to the balance of political parties in the Parliament in managing parliamentary business. For example, speaking time in debates is allocated in accordance with the number of elected members that a party has, and amendments to motions are taken in accordance with the size of the party, with the amendment from the largest party taken first. This reflects that the Members of the Scottish Parliament are elected on the basis of the additional member system, which tends to result in the smaller parties securing more seats than in a first-past-the-post system.

In terms of financial support, the Scotland Act 1998 provides for assistance for opposition parties by making payments to registered political parties in the Parliament 'for the purpose of assisting members of the Parliament who are connected with such parties to perform their Parliamentary duties." To be eligible, a party may have no more Ministers or Junior Ministers than one fifth of the total number of Ministers and Junior Ministers within the Scottish Government. An eligible party is entitled to an annual sum based on the number of members of the Parliament who are connected to the party. The annual entitlement per member was £8,496.09. In addition, any "qualifying party leader" (the Parliamentary leader of a registered political party represented in the Parliament by no less than fifteen members and which is not part of the Government) receives a Party Leaders' Allowance. The purpose of this is to

provide support to carry out the extra duties as a Parliamentary party leader.

National Assembly for Wales

The National Assembly for Wales does not reference nor define an 'official Opposition' in its Standing Orders nor its Determination on Members' Pay and Allowances, though 'the opposition' it is a title traditionally used when referring to the largest opposition party. Generally speaking, the largest opposition party will have some benefits because of the number of Assembly Members they have, but there is no 'bonus' for being the largest opposition party. Their rights, compared to smaller opposition parties, are as follows:

Financial support

- Party group support staff: section 8.2 of the Determination on Members' Pay and Allowances 2019–2020 provides a formula for the allocation of the total of £961,890 Political Party Support Allowance available. Allowances for any Political Party or Parties represented in the Welsh Government are deducted first (up to a maximum of £158,480), followed by a core administration allowance for any opposition party with three or more Members (£52,830). The remainder of the pot is then allocated on a per capita basis among all opposition parties (for employment purposes those staff are employed by the Group Leader). Hence the largest opposition party will receive the largest portion of the remainder, by virtue of them having the most Members; and
- Party Leaders: section 3.1.4 of the Determination states that each 'Leader of a Political Group not in Government' is entitled to £13,741 on top of their base salary, plus £1,057 per Member in their political group (up to £38,052). Again, this means that the Leader of the largest opposition party will always receive the most.

Debating time and rights in Plenary

Whilst, as above, Standing Orders do not define an "official Opposition" and therefore they have no rights set out, balance and proportionality are expressly provided for, thus the largest opposition groups will receive more proportionately by way of having more Members. Specifically:

- Standing Order 11.21—time must be made available for debates on motions proposed by opposition groups, in proportion to the number of Members they have;
- Standing Orders 17.2B and 17.6—when agreeing the allocation of Committee Chairs between political groups and balance of committee membership, respectively, Business Managers must have regard to the size of those political groups; and

- Subject to the discretion of the Llywydd (not provided for in Standing Orders), the largest party is usually called first for leaders/spokespeople questions, supplementary questions, and statements.

By way of background, at the start of the Fifth Assembly Plaid Cymru had the greatest number of seats of the opposition parties. Their leader, Leanne Wood, was referred to as 'Leader of the Opposition' (although not a formally recognised role in Standing Orders). In October 2016, one of their Members left the group, creating an equality of seats between Plaid Cymru and the Welsh Conservatives (previously the second largest opposition group). During that period, neither group leader was referred to as the 'Leader of the Opposition', and the Presiding Officer alternated who was called first on statements and other items in Plenary. In April 2017 Mark Reckless joined the Welsh Conservatives, making their Leader (at the time Andrew RT Davies, subsequently Paul Davies) the 'Leader of the Opposition' and the Welsh Conservatives the largest opposition group.

PRIVILEGE

AUSTRALIA

Senate

Search warrants and parliamentary privilege

On 16 October 2018 the Senate referred to the Committee of Privileges a matter arising from the execution of search warrants during an Australian Federal Police (AFP) investigation into a 'leak' connected to the exercise of ministerial powers in granting visas to au pairs.

On 11 October 2018 AFP officers seized documents from the home and office of an employee of the Australian Border Force (ABF). The Legal and Constitutional Affairs References Committee had earlier inquired into the au pair matter, reporting to the Senate on 19 September. The Chair of that Committee, Senator Pratt, made a claim of privilege over the seized material after being notified by the ABF employee of the execution of the warrants then in progress. In accordance with guidelines applying to AFP searches, the material was sealed and delivered into the custody of the Clerk as a neutral third party until the claim was determined. Senator Pratt notified the AFP that she was maintaining her claim of privilege over the documents, and notified the President of her intention to seek a ruling on the claim from the Senate. The President informed the Senate of the matter on 15 October. Senator Pratt gave notice of a motion to refer the matter to the Privileges Committee, and it was agreed to without debate on 16 October.

On 26 November 2018 the Privileges Committee reported to the Senate in its 172nd report on the disposition of documents seized by the AFP. The Committee found that the documents warranted protection as 'proceedings in Parliament'. On the same day, the Senate adopted the Committee's recommendation that the documents be withheld from the AFP investigation and provided to Senator Pratt. The Committee expressed concerns about the scope of the warrants, which named a Senate committee and one of its inquiries, as well as aspects of their execution.

On 6 December 2018, the Senate passed a resolution requiring executive agencies "to observe the rights of the Senate, its committees and members in determining whether and how to exercise their powers in matters which might engage questions of privilege" and calling on the Attorney-General to work with the Presiding Officers "to develop a new protocol for the execution of search warrants and the use by executive agencies of other intrusive powers, which complies with the principles and addresses the shortcomings identified" in recent reports of the Parliament's Privileges Committees.

Possible improper interference with a senator in the free performance of his duties

On 16 October the President made a statement granting precedence to a matter of privilege raised by Senator Burston, who alleged that while he was a member of Pauline Hanson's One Nation party, Senator Hanson removed him from positions within the party and pressed him to resign from the Senate in order to influence his vote on company tax legislation. Senator Burston alleged that Senator Hanson had thereby sought to improperly interfere with the free performance of his duties as a senator or penalise him for his conduct as a senator.

The President noted that any credible allegation that a person had sought to intimidate a senator to change his or her vote is a serious one, but that the question whether such an allegation warrants investigation is not one for the President, but for the Senate. To assist the Senate in that decision, the President drew attention to the guidance of the Privileges Committee in a similar matter, involving former senator Grant Tambling. Senator Tambling was instructed by his party organisation to vote against the Government position on the Interactive Gambling Bill 2001, and lost his preselection when he failed to do so. The Committee's guidance indicates a high degree of reluctance to intervene in internal party matters, but does not entirely close the door on the possibility that the Senate's contempt jurisdiction might be invoked in such circumstances (see the 103rd report of the Privileges Committee, paragraphs 1.58—1.59).

The Senate agreed to refer the matter the following day and the inquiry is still in progress.

Australian Capital Territory Legislative Assembly

Proposed Privileges Committee regarding alleged threats by the Chief Minister towards a Chair of a Standing Committee

A motion was moved by the Opposition to establish a Privileges Committee to examine whether there was improper influence of a Member, in relation to threats made by the Chief Minister, Mr Barr MLA, during a public hearing of the Standing Committee on Economic Development and Tourism on 6 November 2017. The motion was amended twice and debate was suspended on two occasions.

The amended motion resolved that the Assembly finds the Chief Minister in breach of the Standing Orders and that finding be referred to the Standing Committee on Administration and Procedure to consider any further action on the matter and report back to the Assembly on any recommendations on those matters.

On 12 April 2018 the Chair of the Committee (the Speaker) made a statement to the Assembly pursuant to Standing Order 246A informing the Assembly

that, having considered the matter, the Committee had resolved that no further action be taken and that the Committee would consider matters relevant to possible changes to Standing Orders in the context of the upcoming review of Standing Orders.

Privileges Committee established to examine actions of third party websites and actions of two MLAs

On 10 April 2018 the Speaker, having received a letter from an MLA alleging a breach of privilege, granted precedence for a motion to be moved to establish a Select Committee on Privileges to examine certain aspects of the conduct of two MLAs as well as the use of a Liberal Party website to transmit submissions to a Standing Committee on Public Accounts inquiry. On 12 April 2018 the Assembly established a three Member Privileges Committee which was comprised of a Government MLA, an Opposition MLA and a crossbench MLA, with the crossbench MLA (who was also a Minister) being elected as Chair.

On 20 June 2018 the Committee reported out of session, finding that there had been no contempt committed, but recommending that the Standing Committee on Administration and Procedure, in consultation with the Committee of Chairs, develop guidelines for the use of third party websites in the preparation of submissions to Assembly inquiries.

Northern Territory Legislative Assembly

An alleged Contempt of the Assembly by reason of interference with a witness attending before the Public Accounts Committee

A witness appearing before the Public Accounts Committee (PAC) wrote to that Committee's secretariat alleging he had been denied work as a taxi driver as a direct consequence of his providing evidence to the Public Accounts Committee which was at the time undertaking an inquiry into the taxi industry in the Northern Territory.

The PAC considered the complaint and reported the allegation to the Legislative Assembly which in turn referred the matter for investigation and report to the Committee of Privileges. In order to examine the substance of the complaint and to ascertain whether the complainant has been improperly interfered with as alleged, the Committee of Privileges conducted an investigation pursuant to the Legislative Assembly (Powers and Privileges) Act and in accordance with the requirements of Standing Order 232.

In doing so, the Committee had regard to the following well-established principle:

> Any conduct calculated to deter prospective witnesses from giving evidence before either House or Committee is a contempt.

The Committee published its report in February 2018. The facts of the case as the Committee saw them were:

- Mr Kamaldeep Singh Khattra provided evidence to the Public Accounts Committee;
- Mr Kamaldeep Singh Khattra had driven a taxi belonging to Mr Luke Emmanuel;
- The use of that taxi was withdrawn on 21 June 2017; and
- Mr Kamaldeep Singh Khattra's allegation that as a direct consequence of providing information to the Public Accounts Committee he had suffered a punishment by Mr Luke Emmanuel.

On the basis of the written and oral evidence before the Committee, the Committee was satisfied that on balance it was likely that Mr Emmanuel had terminated his relationship to supply a taxi to Mr Khattra as a consequence of Mr Khattra giving evidence about the taxi industry to the PAC.

The Committee found that the action taken by Mr Emmanuel to terminate the arrangement was intended as a punishment and was therefore an interference with a witness assisting the Legislative Assembly's Committee with its inquiries.

The Committee considered the range of penalties available, the circumstances of the case before it and the appropriate level of sanction in all the circumstances.

The Committee recommends that the Assembly take appropriate action in all the circumstances which would assist Mr Emmanuel understand the gravity of an offence of interfering with a witness, but takes the view that while it is clearly available to the Assembly to order a personal appearance, the circumstances do not on this occasion warrant requiring Mr Emmanuel to appear before the bar of the Assembly to issue an oral apology.

In particular, the Committee recommended:

- The Assembly resolves (taking into account the requirements of the notice provisions in Standing Order 230) that a contempt of the Assembly has occurred and requests the Chair of the Committee of Privileges write to Mr Emmanuel advising him of the finding and cautioning him.
- The Assembly requires the Clerk to publish warnings and information on the Legislative Assembly website about the rights and duties of witnesses appearing before and giving evidence to Assembly Committees and the protections they have.

Queensland Legislative Assembly

Contempt of Parliament

The Parliament of Queensland Act provides that the Assembly may impose conditions on the publication of a parliamentary record. Terms and conditions for the use of official broadcast footage of parliamentary proceedings were adopted by resolution of the House, accordingly.

Section 57 further provides that publication of a Parliamentary record in contravention of a condition imposed by the Assembly is, *per se*, a contempt of Parliament.

The Ethics Committee considered and reported on a complaint relating to the use of parliamentary broadcast footage for the purposes of satire or ridicule, in contravention of the terms and conditions of broadcast. A member of the public using the social media platform Twitter had retweeted official broadcast footage of a member of parliament engaged in parliamentary proceedings, with accompanying words that were deemed to constitute ridicule of that Member.

The Committee found that the subject of the complaint had committed a contempt of Parliament in breaching the broadcast terms and conditions

In its report to the Assembly, the Committee noted that the subject had declined to remove the offending tweet after several requests from the Clerk, and from the Office of the Speaker, for it to be removed. It expressed disappointment at the deliberate disregard shown to a democratically elected parliament; and strongly encouraged individuals who disagree with parliamentary rules to use appropriate means to raise their concerns. The Committee recommended no further action be taken, but did note that it may be timely for the parliament to review its prohibition on the use of parliamentary footage for satire or ridicule.

South Australia House of Assembly

An unprecedented number of matters of privilege (predominately allegations of misleading the House), were raised in 2018 (11 in total). The Speaker declined to give precedence to any of the motions to enable any one of them to be pursued as a matter of privilege immediately. On each occasion, the Speaker requested all information and reported to the House later, usually on the same sitting day. In one instance, the Speaker was of the view that the matter touched on privilege but not to the extent where it could be considered to genuinely being regarded as tending to impede or obstruct the House in the discharge of its duties.

Victoria Legislative Council

In August 2018 the Legislative Council Privileges Committee tabled its report on the Inquiry into matters relating to the misuse of electorate office staffing entitlements. It was the first report tabled by the Legislative Council Privileges Committee since it was formed as a permanent Domestic Committee in 1990.

The Privileges Committee inquiry arose from an investigation by the Victorian Ombudsman titled *Investigation of a matter referred from the Legislative Council on 25 November 2015*. The Ombudsman's report related to the misuse of electorate office staff budgets by some current and former Labor Members in the lead up to the 2014 state election.

The Privileges Committee report found that a former Member may have acted to bring discredit upon the Parliament, which is in contravention of the Members code of conduct outlined in the Members of Parliament (Register of Interests) Act 1978. Contravention of that Act would constitute a contempt of Parliament, however, the Committee could not establish to a High Civil Standard that the Member's actions were wilful. As such, the Committee was unable to find the Member in contempt of Parliament.

The Committee made a recommendation, in line with a recommendation in the Victorian Ombudsman's report, that a revision of the Member's Guide be put in place to:

- remove the prohibition on political activity for electorate officers but emphasise the prohibition on party-specific activity;
- provide guidance and examples to Members about the types of activities which electorate officers may not be directed to perform; and
- include a statement about the effect of section 30(4) of the Parliamentary Administration Act 2005, which relates to a Member being able to determine the responsibilities of electorate officers.

CANADA

House of Commons

Question of Privilege—Motz

On 19 June 2018 the Speaker ruled on a question of privilege raised on 29 May 2018 by Glen Motz (Medicine Hat—Cardston—Warner) concerning documents published on the website of the Royal Canadian Mounted Police (RCMP) in relation to Bill C-71, An Act to amend certain acts and regulations in relation to firearms. Mr. Motz contended that information published on the RCMP website would lead the public to believe that Bill C-71 had already been enacted because it omitted information regarding the parliamentary process and the fact that the Bill remained subject to parliamentary approval. The member returned to the House the next day to argue that the RCMP had admitted its fault by updating its website to include a disclaimer regarding the proposed law.

On 1 June 2018 the Parliamentary Secretary to the Leader of the Government in the House of Commons, Kevin Lamoureux (Winnipeg North), responded to the question of privilege by stating that, in his view, the matter raised was simply one of debate as the RCMP made no presumption on its website respecting the Bill. In his ruling, the Speaker noted that while the Chair identified instances where some provisions of the Bill were in fact framed as legislative proposals, the majority of the information presented on the RCMP website, prior to the addition of the disclaimer, suggested the new provisions of the Bill would definitely be coming into force or were already enacted.

The Speaker added that he was disappointed by the oversight of the RCMP regarding the absolute authority of Parliament in the scrutiny and adoption of legislative proposals: "any hint of this parliamentary role and authority being passed or usurped is not acceptable". The Speaker having concluded that the matter constituted a *prima facie* question of privilege, Mr. Motz moved that the matter be referred to the Standing Committee on Procedure and House Affairs. After a short intervention, the motion was agreed to by unanimous consent. On 30 October 2018 the Committee commenced its study on the Question of Privilege related to the matter of the Royal Canadian Mounted Police publications respecting Bill C-71 but has yet to report on the matter.

Senate

Communication to the media of confidential correspondence

On 1 March 2018 the Speaker ruled on a question of privilege raised by Senator McPhedran, who argued that the communication to the media of information contained in confidential correspondence from the Sub-Committee on Agenda and Procedure of the Standing Committee on Internal Economy, Budgets and Administration constituted a breach of her parliamentary privilege and affected her ability to perform her parliamentary functions without obstruction. After reviewing the facts surrounding the question of privilege, the Speaker ruled that it did not satisfy the second of four criteria listed in rule 13-2(1), which is that the matter "directly concerns the privileges of the Senate, any of its committees or any Senator", since it did not seem that the material sent to the media directly concerned privilege. As such, a *prima facie* question of privilege was not established.

Support to a Senator's website

On 22 March 2018 the Speaker ruled on a question of privilege raised by Senator Beyak, concerning a motion which, if adopted, would direct the Senate administration to temporarily cease to support Senator Beyak's website. The Speaker ruled that there was no *prima facie* question of privilege, since the Senate has the right to manage its internal affairs and decide how its resources will be managed.

Canadian NATO Parliamentary Association

On 8 November 2018 the Speaker ruled on a question of privilege raised by Senator Patterson relating to events that took place at the Annual General Meeting of the Canadian NATO Parliamentary Association. There were concerns that the meeting had not been conducted in accordance with the Constitution of the Association. The Speaker determined that the issue could be dealt with by other parliamentary bodies, such as the Joint Inter-parliamentary

Council and the Standing Senate Committee on Internal Economy, Budgets and Administration. As such, the Speaker ruled that one of the criteria of rule 13-2(1), that a question of privilege must "be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available", was not met and no *prima facie* case of privilege existed.

Manitoba Legislative Assembly

On 30 May 2018 the Hon. Mr. Fletcher (Member for Assiniboia) rose on a matter of privilege relating to a letter he had received from the law firm MLT Aikens regarding comments made during Second Reading debate on Private Members' Bill (No. 208)—The Conflict of Interest Act. The letter asserted his comments and his live tweets posted during debate were suggestive that the company Delta 9 was involved in impropriety and insider trading. The letter further demanded a retraction of the comments. Hon. Mr. Fletcher stated that the letter was an attempt to intimidate him in his role as an MLA and infringed on his privileges and concluded his remarks by moving the motion:

> "That the Speaker utilize her full powers under the Manitoba Legislature Act and the Legislative Assembly and Executive Council Conflict of Interest Act, specifically sections 1(2) Registered Common-Law relationship, 2(1) subsidiary corporation, 2(2) Control, 2(3) Subsidiary includes subsidiaries, 3(1) Indirect pecuniary interest, 3(2) Exception for indemnity or expenses, 3(3) Exception for common interests, 3(4) Indirect pecuniary liability, 3(5) Exception for common liabilities, 3(6) General exception, 3(7) Statutory appointments for Crown agencies, 3(8) Employees of public bodies, 4(1) Meetings involving Members insist on much more comprehensive Legislation."

In her ruling, Speaker Driedger noted that whenever Members are threatened by outside sources with legal action for comments made inside the House that parliamentary privilege would provide protection for comments made by Members during a proceeding of the Legislature. However, parliamentary privilege does not provide protection for comments that are repeated outside the Chamber, whether through a press conference in the hallways, or through mailings to constituents, or posts on social media. Madam Speaker specified that even if comments repeated elsewhere are identical to comments that were made in the Legislature, these outside comments are not protected by parliamentary privilege. The Speaker quoted the third edition of Bosc and Gagnon's *House of Commons Procedure and Practice*, which states that,

> "Members should be aware that utterances which are absolutely privileged when made within a parliamentary proceeding may not be when repeated in another context, such as in a press release, a householder mailing, on an

Internet site, in a television or radio interview, at a public meeting or the constituency office."

Madam Speaker went on by explaining that she carefully reviewed the letter sent to the Member for Assiniboia and that it made reference to social media posts and not to comments spoken in debate. Therefore, there was no violation of the member's privileges in relation to comments made during a proceeding of Parliament. Comments made outside of the House are not protected by parliamentary privilege, even if repeating comments made during a proceeding in Parliament; hence, a *prima facie* case of a breach of Privilege had not been demonstrated.

Québec National Assembly

Commitment of public funds without prior legislative authorisation

In a notice sent to the President on 14 March 2018, the Official Opposition House Leader alleged that several ministers had acted in contempt of Parliament by committing public funds without prior legislative authorisation. The Official Opposition House Leader was of the opinion that the Government should have sought the National Assembly's authorisation before initiating the expenditures described as new initiatives for the fiscal year underway in the Québec Economic Plan of March 2017. He also mentioned that his parliamentary group's representatives had on several occasions tried to obtain documents from the Government regarding the source of the funds that had enabled the financing of new initiatives. The Official Opposition House Leader also underlined that these dealings with the Government had failed to clearly establish that the amounts used to finance these expenditures came out of appropriations that had first been approved by the Assembly.

In his ruling, the President recalled that parliamentary jurisprudence states that, in budget-related matters, ignoring the Assembly's role in examining and adopting the State's estimates of expenditure is tantamount to denying the former's fundamental role with regard to exercising its oversight power as concerns public finances and the Government. This could undermine the Assembly's authority in financial matters and, in all likelihood, constitute *prima facie* contempt of Parliament.

The President also reiterated that the Assembly's fundamental role in the budgetary process is inherent in British-style parliamentary systems, in which the executive branch and Parliament both play a decisive role in establishing the State's annual budget. In this regard, the Constitution states that the Crown alone may recommend the adoption of financial measures in the House. Although it does not play a role in preparing the estimates of expenditure, it is the Assembly's responsibility to examine these measures and then grant or refuse the budget estimates requested by the Government. This role falls within

the scope of the Assembly's powers of oversight with respect to any action by the Government or its departments or bodies.

The President also recalled that the Assembly manifests its approval by adopting an appropriation bill that binds the executive, which is responsible for implementing its provisions in keeping with the State's legal framework for financial management, under which it falls. If, over the course of the year, unforeseen expenditures arise or needs exceed the initial forecasts, the Government may choose to avail itself of the supplementary estimates procedure provided for in the Standing Orders. However, the Public Administration Act and the appropriation bills themselves provide more limited mechanisms that also give the executive a certain leeway in how the voted appropriations may be used. These mechanisms will have been authorised by Parliament beforehand.

In light of the principles relating to the budgetary process and the role played by both the executive and Parliament, the Chair asked itself the following question: At first glance, did the Government bypass the Assembly's role by spending amounts that should have received prior authorization by Parliament? The Chair noted, in its ruling, that it was not its role to determine whether government expenditures were made in compliance with the law, but rather to ensure that the Assembly's role in the budgetary process was not ignored. The elements before the Chair did not *prima facie* show that the Assembly's role in the budgetary process had been bypassed. Consequently, the point of privilege or contempt was declared out of order.

Despite the point being out of order, the Chair recalled the importance of the role conferred on the Assembly and its Members to oversee the Government's actions. Members devote much time and energy to examining the estimates of expenditure. In this context, the more information the Government makes available to the Members, the more likely it is that debates and decision-making will be carried out in an informed manner. This is why Ministers' collaboration is desirable and, often, in a spirit of openness, Ministers make information available in preparation for or following examination of the estimates, thus enabling Members to carry out their role and mandate efficiently.

In conclusion, the Chair recalled that the information requested by the Official Opposition concerned expenditures made by the Government out of the appropriations approved by the Assembly which, therefore, fall under Parliament's oversight of government action. However, the Chair noted that there is a difference between questions asked by Members in performing their duties and orders to produce documents adopted by the Assembly or a committee. Only the latter constitute orders issued under the constitutional privileges the Assembly enjoys and allow a document to be communicated regardless of possible objections under the Act respecting Access to documents held by public bodies and the Protection of personal information. The Chair

nonetheless mentioned that if the information the Chair possessed had been made available to the Members, the question of privilege or contempt put to the Chair might never have been raised. Although the communication of documents is at the Government's discretion, the Chair held that it is desirable and even necessary that the Government cooperate to ensure that Members have the most complete information possible in order to exercise their parliamentary oversight role.

Disclosure of the content of a Bill under embargo to journalists before it is introduced in the National Assembly

In a notice sent to the President on 17 May 2018, the Official Opposition House Leader raised a point of privilege in which he alleged that the Minister responsible for Access to Information and the Reform of Democratic Institutions acted in contempt of Parliament, during a technical briefing session, by giving journalists copies of Bill 179, An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, before introducing the Bill in the Assembly. More specifically, the Official Opposition House Leader indicated that the Minister's office had held a technical briefing session one hour before the Bill was introduced in the Assembly. During this briefing session, journalists had allegedly received copies of the bill with the mention "under embargo" on each page. The Minister herself had later admitted, in a press release, that the Bill's contents had been disclosed before the Members could be informed.

In light of parliamentary jurisprudence and the elements submitted to it, the Chair concluded that the point raised by the Official Opposition House Leader constituted *prima facie* contempt of Parliament.

In arguments on this matter, a parallel had been drawn between the case at hand and in-camera meetings in the budget context. In this regard, the Chair recalled that parliamentary jurisprudence was clear that budget speech leaks, while deplorable, did not involve parliamentary privilege and could not constitute contempt of Parliament, contrary to disclosing a bill's contents before introducing it in the Assembly.

The Chair underlined that journalists and, especially, Members participate in in-camera budget meetings. It also noted that the participation of the Opposition groups' finance critics stems from the fact that they may make their comments right after the Minister of Finance gives the Budget Speech, pursuant to the Standing Orders of the National Assembly. Consequently, the fact that budget-related information is disclosed in-camera before being introduced publicly in the Assembly is a well-established tradition that takes the Members' role into account, allows them to exercise their government oversight duties and gives them access to information that is useful for understanding complex aspects of

a budget before having to speak publicly and give opinions about it.

Some arguments raised the point that technical briefing sessions are held at other times in order to privately communicate information that is not yet officially tabled in the Assembly, for example, when reports from persons designated by the National Assembly are about to be tabled. The Chair mentioned that this was another example of a practice where information is given to Members, who accept the procedure, allowing them to become aware of the key aspects of sometimes very lengthy documents before they are made public, thus enabling the Members to do their job properly.

The Chair therefore concluded that both in-camera budget meetings and technical briefing sessions on documents not yet released publicly stemmed from a well-established tradition accepted by the Members and helped the Assembly's proceedings run smoothly by preserving the Members' role. The Chair mentioned that these were not Government-initiated communications exercises designed to deliver the Government's message to hand-picked recipients first, a practice that could influence media coverage once a measure is made public.

In its ruling, the Chair underlined that, contrary to the examples given during arguments, only journalists participated in a technical briefing session in which copies of the Bill were allegedly distributed. No Members took part in this technical briefing session. Given this difference, the Chair stated that no parallels could be drawn with the examples regarding in-camera budget meetings and technical briefings on budget-related information disclosed in-camera before being introduced publicly.

Moreover, the Chair reiterated that, despite the fundamental role journalists play in our democracy, parliamentarians must be the first to receive all information needed to perform their legislative duties. The Chair also recalled, as it had done on several occasions, the importance of respecting this principle by calling on all parliamentarians, especially Cabinet Members and their staff, to be very careful when communicating information intended first and foremost for the Assembly, out of deference to the Assembly and its Members.

In its ruling, the Chair also noted that in legislative matters, parliamentary jurisprudence has always been categorical: Members must be the first to be informed of the details regarding a bill's contents, out of respect for their role as legislators. In this regard, the Chair mentioned that allowing journalists to be informed of a bill's contents before informing the Members could, in fact, put the latter in an awkward position. For example, when questioned by journalists and asked for their opinion on a bill, Members might actually have less information than the journalists do on the subject which must be discussed in the Assembly first. Clearly, no one would advocate such an imbalance.

The Chair also underlined that the legislative process, as set out in the Standing

Orders, generally provides for one week between the time a bill is introduced and the time it is passed in principle, to allow Members to substantiate their viewpoint before having to debate the bill's expediency, principles and merits as well as alternative means of achieving its purpose.

However, the Chair felt it important to note that it did not deny the Government's recognised right to inform the public about its policies and programs, or about the measures it intends to adopt. The Government may therefore hold technical briefing sessions to explain measures contained in a bill not only to journalists, but also to the Members. The Chair specified that this briefing should take place after the bill has been introduced in the Assembly, not before, out of respect for the Members' role in the legislative process.

The Chair also specified that contempt of Parliament is any act or omission that discredits or hinders the proceedings of the Assembly or its committees or the duties of its Members. In the case at hand, the Chair was of the opinion that disclosing Bill 179, An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, before it was tabled in the Assembly discredited the Members' legislative role and could have hindered the Members' ability to do their job properly.

Furthermore, the Chair recalled that the Minister herself admitted that the Bill's contents had been disclosed before the Members could be informed. The Minister also expressed her most sincere regrets regarding this situation in the Assembly. However, the Chair concluded that, despite the regret expressed by the Minister, the point of privilege or contempt raised by the Official Opposition House Leader constituted *prima facie* contempt of Parliament.

Following this ruling from the Chair, the Official Opposition House Leader entered a motion on the Order Paper asking the Assembly to rule on the Minister's conduct and the alleged offence by voting on a report from the Committee on the National Assembly, once its inquiry without special reference was concluded. The Committee on the National Assembly did not carry out this mandate as the National Assembly was dissolved by the Lieutenant-Governor on 23 August 2018.

Disclosure of the content of the Opening Speech of the Session by the Premier before its delivery in the House

The Chair gave a ruling on the point of privilege or contempt that was initially raised verbally by the Official Opposition House Leader on 28 November 2018, immediately after the Premier gave the Opening Speech of the Session, and later in writing. The Official Opposition House Leader alleged that the Premier and his cabinet acted in contempt of Parliament by forwarding his entire Opening Speech to journalists, whereas he had just begun to deliver it in the National Assembly Chamber. In support of his allegations, the Official Opposition House

Leader included with his notice copies of media articles referring to elements of the speech before these topics were addressed in the House by the Premier. He also included a photo of a document entitled "Opening Speech of the First Session of the 42nd Legislature" marked "under embargo".

The Chair pointed out that this is the first point of privilege raised in the National Assembly with regard to disclosure of the content of the Opening Speech of the Session. However, in 2012, the Chair had responded to a request for a directive from the Official Opposition House Leader at the time, who alleged that journalists had received a copy of the Opening Speech of the Session by the Premier before she had finished its delivery in the House. As the Chair had not received notice of a point of privilege at the time, it had not formally ruled on whether premature disclosure of the content of the Opening Speech of the Session constituted *prima facie* contempt of Parliament. The Chair had nonetheless highlighted the principles governing delivery of the Opening Speech of the Session, starting with the important role it plays in Québec parliamentary tradition, particularly since it is the first item of business under Business Having Precedence and it concludes with the introduction of a motion for the Assembly's approval of the Government's general policy. The Chair had also underlined the importance of the parliamentary principle holding that the Government's general policy directions must be disclosed to the Members in the House before third parties are informed thereof. This principle reaffirms the executive power's respect for the legislative power and respect for the Members' role as overseers of government action. Consequently, the Chair had warned the Members that they needed to be very careful when communicating information intended first and foremost for the Assembly.

In light of these principles, the Chair questioned whether there were precedents in other legislative assemblies on premature disclosure of the Throne Speech—the equivalent to the National Assembly's Opening Speech of the Session.

The Chair found three precedents on premature disclosure of the Throne Speech in Canadian parliamentary jurisprudence. In all three cases, which occurred, respectively, in the House of Commons of Canada, the Legislative Assembly of Alberta and the Legislative Assembly of Ontario, the Speakers concluded that such disclosure did not constitute a breach of parliamentary privilege. The Speakers of these assemblies also drew a parallel with the secret surrounding the Budget Speech's delivery which, in their opinion, is more a matter of parliamentary custom than one of privilege.

Regarding Québec parliamentary jurisprudence, the Chair underlined that it stated that disclosure of the content of a bill before it is introduced in the National Assembly can constitute contempt of Parliament. With regard to the Budget Speech, in the past, like the assemblies in the three above-mentioned

Canadian cases, the Chair of the National Assembly has held that a Budget Speech-related leak falls outside the scope of parliamentary privilege.

In light of these Canadian and Québec precedents, the Chair considered it inappropriate to differentiate between a Budget Speech leak and premature disclosure of the Opening Speech of the Session. However, the Chair stressed that, while premature disclosure of the Opening Speech of the Session does not fall within the scope of parliamentary privilege, this in no way diminishes its importance. It considered that the Opening Speech of the Session should not have been given to third parties before it was presented to the Members.

In this ruling, the Chair underscored, as it had done in 2012, that certain information must be communicated to the Members before being forwarded to third parties. This is true for bills, reports to be tabled in the Assembly and written questions to be entered on the Order Paper and Notices. The Opening Speech of the Session is now added to this list. It is a matter of deference to the Members and respect for the important duties they perform.

The Chair also pointed out that, as regards this principle, journalists have no special status. Though it may be tempting to want to facilitate their work, the Chair indicated that they cannot be given documents that Members should be apprised of first. Moreover, a document to be communicated to the Members first cannot be given to journalists beforehand, despite being marked "under embargo". Doing so deprives the Members of their most legitimate right, namely, the right to know the content of the document before anyone else.

The Chair felt it important to note that it was normal for the Government to want to facilitate the work of journalists by giving the media quality information for the public. It further recalled that it could also be tempting for the Government to want to control the message by choosing to whom it gives information. Excluding the parliamentarians from this communication is problematic, as the Members are unaware of information to which journalists are privy. It is precisely for that reason that as concerns the in-camera budget meetings preceding the Finance Minister's Budget Speech, journalists do take part, but the Members are also invited. In its ruling, the Chair also mentioned that forwarding the content of a bill under embargo to journalists before the bill is introduced in the Assembly puts the Members in an unfair, undesirable situation. The Chair thus concluded that the same applies to disclosure of the Opening Speech of the Session to third parties before it is read in the House.

INDIA

Lok Sabha

The Committee of Privileges reported on two cases in 2018.

The first arose from the notice given on a question of privilege by Sarvashri

A.P. Jithender Reddy MP and A.T. Nana Patil MP dated 24 March, 28 March and 10 April 2017 against the Editor and Publisher of Hindustan Times newspaper for allegedly publishing a false and defamatory news item wherein they have been reported to have low attendance in the House.

The Speaker referred the matter to Committee of Privileges for investigation and report on 30 March 2017. The Committee of Privileges examined the matter and gave their observations and recommendations, in its Ninth Report presented to Speaker on 29 December 2017 and laid on the Table of the House on 3 January 2018.

The second arose when Shri Rajesh Ranjan alias Pappu Yadav MP gave notice of a question of privilege arising, dated 7 August 2015 against the Senior Superintendent of Police, Patna for allegedly making prejudiced statement in the media against him.

The Speaker referred the matter to Committee of Privileges for investigation and report on 8 August 2015. The Committee of Privileges examined the matter and gave their observations and recommendations, in their Tenth Report presented to the Speaker on 24 December 2018 and laid on the Table of the House on 28 December 2018.

West Bengal Legislative Assembly

The Legislative Assembly was notified of two alleged breaches of privilege.

Tapas Roy MLA notified the Speaker that the editor, publisher and a reporter of the Ananda Bazar Patrika (a Bengali daily newspaper) distorted the events of a meeting of the Business Advisory Committee on 25 July. The second was from Partha Bhowmick MLA against Manoj Chakraborty MLA for allegedly casting aspersions on the Chair and questioning the impartiality of the Speaker by shouting slogans from the well of the Assembly on 28 November 2018.

The Speaker considered the overall aspects of both notices, and was satisfied that *prima facie* cases of a breach of privilege and contempt of the House were involved and referred both matters to the Committee of Privileges for examination. The matters remain under investigation.

TANZANIA NATIONAL ASSEMBLY

In 2018 one significant case of breach of privilege or contempt was ruled out by the Speaker. A local newspaper, the Raia Mwema, was summoned before the Parliamentary Powers, Immunities and Privileges Committee for its article published on 9 April 2018 which appeared to be in contempt of the House. The Speaker ruled on 9t April 2019, ordering the newspaper to clear the name of the House in its pages.

UNITED KINGDOM

House of Commons

Failure to comply with an Order of the House

The campaign director of the Vote Leave campaign during the 2016 referendum on UK membership of the EU, Dominic Cummings, was first invited, then ordered to give oral evidence to the Digital, Culture, Media and Sport (DCMS) Committee as part of its inquiry in Spring 2016 into so-called "fake news". Mr Cummings did not obey this order, nor a subsequent Order of the House that he should attend, whereupon the House referred the matter to its Committee of Privileges. That Committee reported in March 2019. Annexed to the report was a resolution on process in which the Committee noted the long-standing practice of the House to exercise its penal jurisdiction as sparingly as possible, and set out how it intended to proceed in the interests of fairness and transparency.

In assessing whether Mr Cummings' conduct amounted to contempt of Parliament, the Committee considered whether there were extenuating circumstances that might have justified that conduct. It noted that Mr Cummings had been offered by the DCMS Committee a series of alternative dates for a hearing, and that he had not supplied any evidence to suggest that he had been at significant risk of criminal prosecution (which might have supplied grounds for declining to give evidence) or which suggested any significant flaw in the DCMS Committee's inquiry or in their handling of witnesses.

The report concluded that Mr Cummings' evidence would have been relevant to the DCMS committee's inquiry, that his refusal to attend constituted a significant interference with their work, and that he had committed a contempt by his refusal to obey first the committee's and then the House's order. It recommended that the House admonish Mr Cummings, by resolution (without requiring his attendance in person). This recommendation is awaiting decision by the House.

The Committee noted that the Cummings case raised questions about the enforceability of the powers of the House and its committees to secure the attendance of witnesses—in effect, admonishment was the only sanction available to them. They intend to return to this subject in a continuation of their wider inquiry into "select committees and contempts", a matter referred to them by the House in 2016.

STANDING ORDERS

AUSTRALIA

Senate

Routine of business

The Senate on 26 June 2018 adopted a recommendation of the Procedure Committee to amend Standing Orders relating to the hours and routine of business, in the terms of a temporary order made on 7 December 2017 and adopted for a trial period. These changes provided for five-minute speeches on the Wednesday adjournment, so that more speakers can speak; removed the option for 20-minutes speeches on the Tuesday adjournment; provided for a midday start to sittings on Tuesday; and moved private senators' bills from Thursday to Monday morning.

Temporary order for suspension motions and formal business

After an exchange on 27 November 2018 in which other senators were required to withdraw words ruled objectionable by the President, the Leader of the Australian Greens was suspended from the Senate for declining to do so. The matter was reported to the Senate in accordance with Standing Order 203 which deals with infringement of order. In these circumstances, it is a question for the Senate whether a senator should be suspended (initially, for the remainder of the sitting day). The Senate voted to do so, on the motion of the duty minister.

The President and several other senators made statements about the matter immediately after the vote, and at the start of the next day's sittings. The President referred to the increasingly combative nature of the formal business process, and asked the Deputy President and the Procedure Committee to bring forward a temporary order to prohibit debate on procedural motions to suspend Standing Orders at that time. Such an order was proposed on 28 November 2018 in the Committee's fourth report of 2018 and adopted later that day.

Australian Capital Territory Legislative Assembly

Acknowledgement of traditional owners to be done every sitting day

On 10 May 2018 the Minister for Aboriginal and Torres Strait Islander Affairs moved a motion to alter Standing Order 30 so that, instead of acknowledging at the beginning of a sitting period that the Assembly is meeting on the lands of the traditional custodians, it should occur every sitting day.

The change to the Standing Order was made with all parties expressing their support.

Adoption of new amended Standing Orders of the Assembly

On Thursday 25 October 2018 the Speaker presented the Standing Committee on Administration and Procedure's report on its review of the Standing Orders and Continuing Resolutions of the Legislative Assembly which recommended sixty-six changes to the Standing Orders and five changes to the continuing resolutions. Among the more significant changes were:

- Traditional custodians be invited to conduct a ceremony of welcome prior to members assembling in the Chamber after an election and before members take their seats.
- In addition to bills being co-sponsored, notices of motion could also be co-sponsored.
- On days when the Clerk announces that a member has lodged either a paper or electronic petition or a Ministerial response, the Speaker shall propose the question that petitions be noted and 30 minutes will be allocated to debate that motion.
- Proposed motions of no-confidence, censure and proposed establishment of privileges committees must be circulated to all members 90 minutes prior to the time at which the motion is proposed to be moved.
- Many documents lodged with the Clerk's Office (i.e. questions on notice, answers to questions on notice, amendments etc.) must now be lodged electronically.
- When the Speaker states a question Members are now able to say "yes" rather than "aye".
- The Speaker may exercise discretion for a short period to allow a member caring for an infant to be present on the floor of the Chamber during meetings of the Assembly.
- Petitions (both electronic and paper) that cumulatively exceed 500 signatures and are tabled on the same sitting day will be referred to the relevant Assembly Committee for consideration.
- All amendment to Bills are to be referred to the Scrutiny of Bills Committee unless they are urgent, minor or technical or in response to a scrutiny report.

Queensland Legislative Assembly

Amendments to the Sessional Orders

On 15 February 2018, the House adopted Sessional Orders for the 56th Parliament. The Leader of the House advised the changes would allow more efficient use of the House's time. Significant changes included introducing standard sitting hours from 9.30am on all days (previously the House did not sit on Wednesday mornings which were dedicated to Committee meetings) and automatic adjournments at 7.30pm on Tuesdays and Wednesdays and 6.30pm

on Thursdays.

The removal of dedicated Committee time on Wednesday mornings means most committee meetings now take place on Mondays mornings.

The changes include a reduction in the number of opportunities and time allocated to private member business. The Sessional Orders in the previous, hung, Parliament introduced increased opportunities and time allocated to private members business.

A number of other measures were introduced in relation to time limits e.g. a 50 per cent reduction in the time to speak to Motions and second reading debates and specified business where no questions may be put or divisions called (private members' statements, matters of public interest and adjournment debates).

Business Program Committee and Motion

On 23 August 2018, the Legislative Assembly amended the Sessional Orders to establish a Business Committee and provide for the consideration of a Business Program Motion.

Similar to the Victorian Legislative Assembly and New Zealand House of Representatives, the Business Committee is a consultative committee to consider how the House will deal with government business, in particular Bills, during a sitting week. A Business Program Motion provides for the allocation of time for any proceedings on a Government Bill or other Government business and may include allocation of time orders ('guillotine motions').

The Business Committee meets on Mondays prior to the start of the sitting week. The Business Committee is chaired by the Leader of the House and comprises of the Premier, the Manager of Opposition Business and a cross-bench member, or their alternatives. Decisions of the Business Committee are non-binding.

The Sessional Orders provide for the Business Program Motion to be debated on sitting week Tuesdays after Question Time, with a maximum of four speakers allocated five minutes each. During each debate to date, the Manager of Opposition Business has restated his opposition to the time allocation orders in the business program motions (or guillotine motions), alleging that it stops members from fully participating in democracy by raising issues on behalf of their constituents. The Opposition has called for a division on each Business Program Motion put to date, with the Government securing sufficient votes to pass each motion.

South Australia House of Assembly

Changes to Standing Orders adopted in the previous session of Parliament, were subsequently approved by the Governor, and took effect on 3 May 2018,

being the first sitting day of the new parliament.

On the first sitting day of the new parliament, Sessional Orders were adopted to re-order the time for consideration of Private Members Business. The Sessional Order did not change the amount of time allocated to Private Members' Business, but merely altered the order of business. On 30 May 2018 the Government introduced a Sessional Order requiring that questions on notice be answered within 30 days. This honoured an election promise of the new Government. While it is early days, the Sessional Order has seen a significant shift in the number of questions on notice being answered.

Victoria Legislative Council

The Legislative Council Procedure Committee produced a Review of the Standing Orders (58th Parliament) in September 2018. The Committee considered both Sessional Orders of the 58th Parliament for inclusion in the Standing Orders and changes to the Standing Orders to improve the clarity and operation of proceedings.

The Sessional Orders that the Committee recommended be made Standing Orders included provision of video on demand for proceedings of the House, four-minute division bells, and general business speaking time limits. A recommendation was also made in respect of the Legislative Council Standing Committees so that their Membership will have regard to the proportionality of parties in the House. The election of chairs and deputy chairs for the Standing Committees was also changed so that they are elected by the Committees themselves.

The Procedure Committee also made recommendations to make certain changes to existing Standing Orders. The changes related to motions, the postponement of notices of motion, the ability of a Minister to dispose of an adjournment matter in the House, and the provision of further clarity about speaking time limits. Voting rights of the Chair of the Privileges Committee was also clarified.

During debate on a motion that the Standing and Sessional Orders as recommended by the Procedure Committee be agreed to, six amendments to the Standing Orders were made. The amendments were to:

- require the response to questions without notice to be lodged within one business day for Council Ministers and two business days for Assembly Ministers; and
- retain constituency questions, expand the number of Members who can ask constituency questions from 10 to 15, and require the answers to constituency questions within 14 days.

The original motion, as amended, was passed. The new Standing Orders have taken effect from the first day of the 59th Parliament.

Lapsed sessional orders from the 58th Parliament included:
- changes to questions without notice;
- sitting hours on Tuesdays;
- Minister's statements; and
- Standing Committee functions and Chairing arrangements.

Western Australia Legislative Council

In December 2018, the House amended Standing Orders and introduced or extended Temporary Orders as follows.

Uniform Legislation and Statutes Review Committee—treaty function removed

The rarely used treaty function of the Uniform Legislation and Statutes Review Committee was deleted from our Standing Orders.

Motions on Notice Temporary Order

New Temporary Orders reduce motion debate time limits by at least 50 per cent. The Temporary Order provides:
- A quota system and a schedule of allocation to parties.
- That debate on a motion is limited to two hours.
- That the motion mover, Responsible Minister or Parliamentary Secretary and other members have 20 minutes each to debate the motion, and the mover in reply and members speaking on an amendment each have a five-minute limit.

Consideration of Committee Reports

The Temporary Order relating to Consideration of Committee Reports was extended for a further year. This provides that consideration of each report rotates, enabling debate to continue (at a later time) until members resolve to end the debate on a particular report. The Temporary Order provides:

That Members have unlimited periods of 10 minutes to debate each report.

Where debate on a report has reached 60 minutes and there are further reports listed, the report rotates to the end of the list.

CANADA

House of Commons

Code of Conduct for Members of the House of Commons: Sexual Harassment

On 20 June 2018 the House of Commons concurred in the 64th Report of the Standing Committee on Procedure and House Affairs. As part of its Report, the

Committee recommended that the Standing Orders be amended by replacing Appendix II, "Code of Conduct for Members of the House of Commons: Sexual Harassment" with the appendix set out in the Report.

Petitions

On 29 November 2018 the House concurred in the 75th Report of the Standing Committee on Procedure and House Affairs. The Report contained amendments to Standing Order 36. Specifically, the Committee recommended that within 90 days of the adoption of the Report, the Standing Order be amended with the following changes:

- To provide greater flexibility to the e-petitions website, "each electronic petition shall be open for signature for either 30, 60, 90 or 120 days, as determined by the e-petitioner"—Standing Order 36(2.2);
- The term "sponsor" or "sponsored" when referring to the role executed by a member of Parliament in relation to petition be adjusted to reflect that the member is agreeing to allow the petition to be published—Standing Order 36.(2.1)(d);
- That the minimum size of a paper for a petition be 14 cm x 21.5 cm (5.5 x 8.5 inches) and that the maximum size be 28 cm x 43.25 cm (11 x 17 inches)—Standing Order 36(1.1)(c).

Senate

The tenth report of the Standing Committee on Rules, Procedure and the Rights of Parliament was presented in the Senate on 29 November 2018. The report is still before the Senate.

The report proposes to amend the Rules of the Senate by creating a Standing Committee on Audit and Oversight. The committee would be authorised to, among other things, retain the services of and direct the Senate's internal and external auditors; oversee and direct the Senate's internal audit function; and report to the Senate regarding the internal audit function, including audit reports and other matters.

British Columbia Legislative Assembly

In March 2018 the Standing Orders were amended to address two matters. The first change provides that a "stranger" does not include an infant being cared for by a Member, allowing Members who are caring for infants to be present in the House. A Speaker's directive issued following the adoption of this amendment clarifies that the provision is intended to accommodate Members with newborn, or very young, infants. The amendment supports Members who are required to be present in the Chamber to vote, and is not intended to be used by Members who wish to seek the floor to participate in debate.

The second amendment to the Standing Orders clarifies rules around the use of electronic devices by Members in the Chamber. The amendment clarifies that electronic devices must not be used by a Member who is in possession of the floor or during certain proceedings, including Oral Question Period and ceremonies of State, and that all devices must be operated silently and in a manner that does not disrupt the orderly conduct of the House.

Manitoba Legislative Assembly

Rule changes adopted as of 20 November 2018 contained a range of amendments to procedures, including:

- including specific provisions to direct the conclusion of consideration of the Business of Supply on the final sitting day of a legislative session.
- changing when the timing of the second reading question periods for Specified and Designated Bills on their respective deadline completion days are held.
- clarifying steps required in the passage of Designated and Specified Bills. For example, the revised Rule addressed a previous Rule contradiction clarifying that debate is allowed on a deadline day under certain conditions. The timing of the question periods on Bills was also changed so it would take place immediately after the Minister's speech to align with the normal practice of the House.
- authorising House Leaders to call Bills for debate during Private Members Business without seeking consent of the House to proceed directly to certain items.
- the scheduling of Selected Bills sponsored by Independent Members. Previously the Rules contained no specific process governing the scheduling of votes for Independent Member Selected Bills. There was a provision saying that this should happen, but no explanation of how it should unfold. This problem has been addressed by obligating Independent Members and the Government House Leader to agree on a date and time for the debate and question put on a Selected Bill.
- clarifying steps required to terminate Budget and Throne Speech debates. Changes to these Rules codified the long-standing practice that the House shall not rise on the last day of the debate on the Budget or Address in Reply to the Throne Speech until all questions relating to the Sub-Amendment, Amendment and main Motion have been put.
- clarifying the method for determining the proportional representation of caucuses on Standing Committees, particularly when a change in caucus numbers occurs due to resignations or by-elections, particularly during an intersessional period.
- codifying existing practice that challenges to Speaker's Rulings on Matters

of Privilege require the support of at least four Members or one House Leader.
- deleting the model where a Committee of Seven met to determine the membership composition of Standing Committees and assigns determination to the House Leaders, in cooperation with the Speaker.

Ontario Legislative Assembly

The Legislative Assembly permanently amended its Standing Orders in December 2018, on a substantive Government motion. The only amendment was to the definition of "recognized party", a status to which certain procedural privileges are attached. Prior to this amendment, the Standing Orders defined a recognised party as a party caucus of eight or more Members. However, the total membership of the Legislative Assembly increased from 107 to 124 after the June 2018 election. Government representatives indicated that this increase in total seats warranted a corresponding change to the definition of recognised party.

The amended Standing Order now defines a recognised party as a party caucus comprising at least 10 per cent of the total seats in the Legislative Assembly. The Standing Order also provides rounding instructions to assist in this calculation, should the percentage of seats held by a party not be a whole number. In the current Legislature, with 124 total seats, a party caucus must have 12 Members in order to meet the definition of a recognised party.

Prince Edward Island Legislative Assembly

Standing Orders were amended in April 2018.

Rule 31 was amended by being renamed from "Rising to speak" to "Participating in debate", and amended by deleting the following words: "head uncovered" to read: "Every member desiring to speak shall rise in his or her place, and address the Speaker."

It was felt the amended language was more inclusive and reflective of the values of the Legislative Assembly. Hats and other casual head coverings shall not be permitted; however, head coverings for religious or health related reasons will be permitted.

Rule 67, related to Private Members Bills, was amended to remove the requirement for notice for a Private Members Bill. This eliminated the requirement for notice to introduce a private members bills. Private members will be free to introduce legislation during their designated time in the House, as the Government is during the order of business "Introduction of Government Bills".

Rule 110, related to reports of Standing Committees, was amended in two ways:

- the first amendment introduced a requirement that a certain amount of time occur between the motion of receipt of a report by the House and the motion of adoption of the report (one sitting day). This requirement allows members to familiarise themselves with the contents of the report, prior to debate taking place; and
- a second amendment formalised the requirements for a written governmental response to committee reports.

Québec National Assembly

Following the 1 October 2018 general election held in Québec, the composition of the National Assembly was as follows:

- Coalition avenir Québec: 74 Members;
- Québec Liberal Party: 31 Members;
- Parti québécois: 10 Members;
- and Québec solidaire: 10 Members.

Acknowledging these results, the parties entered into discussions that led to an agreement particularly on the concept of parliamentary group and the conduct of proceedings in the Assembly and in parliamentary committees. Pursuant to the criteria stipulated in the National Assembly's Standing Orders— "twelve Members returned" or "20 per cent of the popular vote in the most recent general election", only two of the four parties represented in the Assembly had parliamentary group status. On 29 November 2018, the National Assembly's Standing Orders and Rules of Procedure were temporarily amended for the duration of the 42nd Legislature, so as to reflect the agreement made between the political parties.

Regarding the concept of parliamentary groups, the temporary Standing Orders stipulate that each political party represented in the National Assembly following the 1 October 2018 general election shall constitute a parliamentary group. Thus, for the duration of the 42nd Legislature, the National Assembly is composed of a parliamentary group forming the Government, an Official Opposition, a Second Opposition Group and a Third Opposition Group. The Standing Orders were also amended to allow the Second and Third Opposition Groups to have the parliamentary offices of Leader and House Leader.

For committees, the National Assembly's Standing Orders and Rules of Procedure were amended as follows:

- *Membership of committees*: for the duration of the 42nd Legislature, each committee shall consist of thirteen Members instead of ten or twelve, including seven Members from the parliamentary group forming the Government, four Members from the Official Opposition, one Member from the Second Opposition Group and one Member from the Third Opposition Group. When an independent Member serves as a committee

member, such committee shall consist of fifteen members, thus adding the independent Member and a Member from the parliamentary group forming the Government to the committee membership.

- *Vice-chairs of committees*: the Committee on Public Administration and the Committee on Labour and the Economy shall each have a second vice-chair from the Second Opposition Group.
- *Temporary chairs*: the list of temporary chairs consists of ten Members from the parliamentary group forming the Government and five Members from the Official Opposition. These Members may preside over committee debates when the committee chair and vice-chair are unavailable.
- *Allocation of speaking time in committee*: during mandates in which each parliamentary group has a limited amount of speaking time (example: public hearings and continuation of the debate on the Budget Speech), it was agreed that speaking time be allocated as follows: 50 per cent to the parliamentary group forming the Government and 50 per cent to the opposition groups, allocated among them according to the relative importance (number of Members) of each opposition group within the committee.

The effect of these regulatory amendments is limited to the duration of the 42nd Legislature.

Yukon Legislative Assembly

On 23 April 2018, the Legislative Assembly amended the Standing Orders, as follows:

Standing Order 11(2) was amended such that Introduction of Visitors will henceforth take place prior to Tributes in the Daily Routine.

Standing Order 11 was further amended by adding Standing Order 11(7) which states:

> "On the first sitting day of a Spring Sitting, Fall Sitting or Special Sitting the Speaker shall commence the proceedings by acknowledging the traditional territory of the Yukon First Nation, or Yukon First Nations, upon which the Legislative Assembly is meeting."

INDIA

Rajya Sabha

On 17 May 2018 the Hon'ble Chairman of the Rajya Sabha established a Rules Review Committee (RRC) with Dr. V.K. Agnihotri, former Secretary-General of the Rajya Sabha as its Chairman and Shri Dinesh Bhardwaj, a former Additional Secretary, Ministry of Law and Justice for the Government of India, as its Member. The mandate of the RRC was to review the Rules of Procedure

and Conduct of Business in the Rajya Sabha, particularly those provisions which seem to be inadequate and not very specific as compared to the rules in the Lok Sabha and suggest suitable amendments. The Hon'ble Chairman also directed the RRC to identify the best practices in comparison to Parliaments of other countries and recommend suitable modifications in the Rajya Sabha Rules. The RRC submitted its final report to the Hon'ble Chairman on 28 December 2018. The report of RRC, which recommends several amendments and additions in the Rules of Procedure and Conduct of Business in the Rajya Sabha, will be considered by the relevant Committee.

Kerala Legislative Assembly

The Rules Committee of the Kerala Legislative Assembly recommended amendments to the rules of procedure and conduct of business in the Assembly. The report recommended changes to the timing of sittings of the House. As a result, the sitting of the Assembly now commences at 9am and concludes at 2pm Monday to Thursday, and on Fridays at 9am, concluding at 12.30pm (instead of 8.30am to 1.30pm and 8.30am to 12.30pm previously). The report also recommended amending the Rules concerning Subordinate Legislation, Subject Committees and the Committee on Official Languages. It further recommended to include the welfare of transgender people in the Committee on the Welfare Women, Children and Differently Abled. The House adopted these recommendations.

Utter Pradesh Legislative Assembly

On 29 August 2018 the Rules of Procedure and Conduct of Business of the Legislative Assembly were amended to establish a Parliamentary Monitoring Committee. The Committee was established for members to refer answers from the Government to which they are not satisfied (as well as answers not based in fact, or questions which are not answered). Matters of protocol being violated can also be referred to the Committee.

STATES OF JERSEY

A new provision was introduced for answers to questions to be challenged when they are considered to be not "directly relevant" to the question. Evidence may also now be given to scrutiny panels under oath.

NEW ZEALAND HOUSE OF REPRESENTATIVES

New Zealand Standing Orders are typically reviewed, and any changes implemented, before each general election (every three years). The next general

election is in 2020, meaning the next review of Standing Orders will commence in 2019.

In the meantime, the House has adopted sessional orders (temporary rules) as a way of trialling new procedures:

- The House adopted rules for ePetitions on 1 March 2018. This enabled electronic petitions to be accepted by the House for the first time. Petitions can now be either electronic or in paper form, with similar rules applying to both formats.
- On 8 November 2018, the House adopted a rule to recognise Estimates week, when committees hear evidence from Ministers about proposed spending plans. The aim is to have a week when Ministers are available for hearings, in the same way that they are expected to attend and be accountable to the House. The period for examining Estimates is now also extended from 8 weeks to 10 weeks.

It is intended that the above procedures will in time be incorporated into the Standing Orders, but with the benefit of a review to see how they work in practice.

The House also put in place new rules for the operation of the Intelligence and Security Committee, which is the only statutory committee that is involved in the conduct of parliamentary business in New Zealand. The rules clarify the expectations of the Committee, which is a curious hybrid as it is administered by the Cabinet Office but comprises members from across the House and is treated for the most part as a parliamentary committee. The rules were adopted on 1 February 2018, following the coming into force of the Intelligence and Security Act 2017. The new rules dealt with the application of the House's rules to the Committee's activities more thoroughly than previously, and included a general power to report to the House on any matters relating to intelligence and security. They also formalised the House's requirement that it will receive copies of the Committee's records relating to parliamentary business, and for those copies to be treated as records of the House.

UNITED KINGDOM

House of Commons

European Statutory Instruments Committee

The House of Commons agreed a new temporary Standing Order on 16 July 2018 (to run until the end of the 2017 Parliament) establishing the European Statutory Instruments Committee. This decision was taken following recommendations from the Procedure Committee in its Report entitled *Scrutiny of delegated legislation under the European Union (Withdrawal) Act 2018*, which was published earlier that month.

The purpose of this Committee is to sift proposed negative instruments made under the EU (Withdrawal) Act 2018. This new category of proposed negatives was set out in that Act as one of the options by which the Government could make regulations to deal with "deficiencies in retained EU law" which may result from the UK's withdrawal from the EU.

The Committee has 10 sitting days, beginning the day after the proposed negative instrument is laid, to scrutinise the instrument and make its recommendations. If the Committee recommends that a proposed negative should be upgraded to the affirmative procedure, the Minister may either accept the recommendation or reject it—in which case the Minister must make a written statement explaining why.

To date, all the recommendations of the Committee, save some still pending, have been accepted, and over 40 instruments accordingly upgraded, therefore requiring debate in a delegated legislation committee or on the floor of the House, and then approval on the floor before they can come into force.

In the Lords, the role of this Committee has been grafted on to the existing functions of the Secondary Legislation Scrutiny Committee.

Select committee co-operation

On 27 November 2018 the House of Commons agreed an amendment to Standing Order No. 137A, on the power of select committees to work with other committees. This proceeded from a recommendation of the Liaison Committee. While some committees were making occasional use of existing powers to meet concurrently, this change was intended to establish a simpler and more flexible procedure for cooperation between committees.

The change in the Standing Order allows one committee to invite members of another committee to attend its meetings and at the discretion of the Chair to ask questions of witnesses and participate in proceedings (without being able to move any motion or amendment, count to the quorum or vote).

Standards

In July 2018 and January 2019 the House agreed changes to its Standing Orders arising out of developments relating to bullying and harassment within Parliament. The July changes followed reports from the Committee of Standards and a steering group chaired by the Leader of the House, which jointly recommended a new Parliamentary Behaviour Code (applying to all who work for or with Parliament) and an Independent Complaints and Grievance Scheme (ICGS).

The House approved both reports and agreed consequential Standing Order changes to incorporate the Behaviour Code within the Code of Conduct for Members, and empower the Parliamentary Commissioner for Standards to

investigate complaints under the ICGS.

The House also made changes relating to the voting rights of lay members of the Standards Committee. In 2012 lay members were first appointed: the original ratio was three lay to 10 elected members, but since 2015 there have been seven lay and seven elected members. Lay members had the same rights as elected members except that they could not move motions or amendments. However, Standing Orders gave any lay member the right to append their opinion to a committee report.

In its July 2018 report the Committee expressed support for extending full voting rights to lay members, but acknowledged concerns that this might lead to its status as a properly constituted select committee being challenged in the courts. It therefore recommended, as a compromise, a system of indicative votes whereby any formal division in the Committee would be preceded by a non-binding but recorded vote of all members. The House adopted this proposal.

In October 2018 Dame Laura Cox published her report on bullying and harassment of Commons staff by Members. This discussed the system of indicative votes and found it wanting, because it left the final power of decision in the hands of elected members. Cox recommended that MPs should play no part in determining complaints of bullying and harassment by MPs. The Standards Committee published a report in December accepting that the Cox report had created a new situation. It concluded that the advantages of conferring full voting rights on lay members would outweigh the "relatively small risk" of a successful challenge in the courts to the Committee's status. On 7 January 2019 the House accepted this recommendation and conferred full voting rights on lay members. As the Committee had pointed out, this gives lay members an effective majority on the Committee because the (elected) Chair only has a casting vote.

House of Lords

Sifting of proposed negative instruments by the Secondary Legislation Scrutiny Committee

The Procedure Committee, in its report published on 5 July 2018, proposed new arrangements for the scrutiny of certain drafts of instruments laid under sections 8, 9 and 23 (1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") in respect of which the Minister has a choice about the level of parliamentary scrutiny (negative or affirmative) to be applied to them. These proposals built on the House's existing scrutiny arrangements by amending the terms of reference of the Secondary Legislation Scrutiny Committee (SLSC) to enable it to carry out a new sifting function. This will give the SLSC power to recommend that an instrument which the Minister proposes should be a negative instrument (described in the 2018 Act as "a draft of the instrument")

be upgraded to an affirmative instrument.

Schedule 7 to the 2018 Act sets out the sifting arrangements for the scrutiny of proposed negative instruments. The Minister must lay before both Houses "a draft of the instrument" together with a statement that in his or her opinion the negative procedure should apply and a memorandum setting out the reasons for that opinion. The SLSC will then have 10 sitting days in which to recommend, if it so decides, that the proposed negative instrument should be subject to the affirmative procedure. The recommendation is advisory. It will be a matter for the Minister to decide whether to adopt a recommendation to upgrade an instrument and lay it as an affirmative instrument or to reject a recommendation and lay it as a negative instrument.

Under the new scrutiny proposals, the Procedure Committee proposed that the SLSC would undertake two distinct functions:

- first, the new sifting function, whereby it will consider, and make recommendations about, whether any proposed negative instrument laid under the relevant provisions of the 2018 Act should be upgraded to an affirmative instrument; and
- second, in accordance with its current terms of reference, its usual policy scrutiny function, involving making policy observations about whether any statutory instrument laid under any Act (including those instruments that have been subject to the sifting procedure) should be drawn to the special attention of the House.

The timetable for the SLSC to report any recommendation to upgrade within 10 sitting days was potentially tighter than the SLSC's existing timetable for reporting instruments, which is usually within 12 to 16 calendar days of an instrument being laid, although, on occasion, extended by seven days if an instrument is held over by the Committee to the following week. SLSC will however continue to have that longer period afforded by its current timetable to conduct any substantive scrutiny of the merits of the instruments, once those instruments are laid following the conclusion of the sifting procedure, in the same way as it does for all other instruments.

To enable the SLSC to work within the statutory sifting timetable, it was proposed that the sub-committees would be empowered to agree their own reports without requiring the agreement of the main committee. The main committee would nevertheless maintain oversight of the overall scrutiny process, appoint the sub-committees and determine the allocation of instruments and members between the sub-committees.

The proposed sifting arrangements only applied to relevant instruments laid under the 2018 Act and not any other legislation. The proposed changes are temporary and will lapse upon the expiry of the relevant regulation making powers, and are in line with the procedures that were expected to be established

in the House of Commons (and which were, see above).

A further proposal was the introduction of a new Standing Order 70A to allow proposed negative instruments to be laid during a recess which is a provision already set out in the current Standing Orders in relation to negative instruments. This will not have an impact on the scrutiny period available to the sifting committees in either House because the 2018 Act specifies that the sifting committees have ten sitting days to scrutinise and report on an instrument. Therefore, if a proposed negative instrument is laid during a recess, the scrutiny clock will not start until the two Houses are sitting again. The advantage of allowing proposed negative instruments to be laid during recesses is that it enables staff working for the sifting committees to continue their work in recesses in order to provide papers immediately after the return of the House. The same was proposed in the House of Commons.

The House agreed to the proposals on 11 July 2018.

Scottish Parliament

The Scottish Parliament's Standing Orders were amended in May 2018 to give procedural effect to revisions to the Scottish Parliament's budget process following the devolution of further powers in the Scotland Acts of 2012 and 2016. This included the introduction of a committees' debate following the publication of the Budget Bill and the replacement of "financial proposals" with "proposals for public revenue or expenditure".

National Assembly for Wales

Draft budget statements

Standing Order 20 was amended in March 2018 to formalise a procedure for the statement on the Government's Draft Budget to be debated. Such a statement may be made in plenary as soon as possible after the outline budget proposals are laid, in accordance with Standing Order 20.8.

The new format allows for a statement to be made and debated immediately and for longer contributions from other Members than has previously been the case. There remains an opportunity for a Plenary vote on the draft budget in Plenary after committee scrutiny is completed.

Justice Impact Assessments

Standing Orders 26, 26A and 26B were amended in March 2018 to provide a new requirement for Justice Impact Assessments (JIA) for all Assembly bills—public, private and hybrid—on or before their introduction.

The Member in charge of the bill must make a written statement setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the bill. The Wales Act 2017 required that the new provision be

included in the Assembly's Standing Orders, and that they must also determine the form of the JIA and the manner in which it is to be made. It was agreed that the JIA be laid as part of each bill's accompanying Explanatory Memorandum (EM), which also contains details of other specific Impact Assessments.

S116C Orders in Council

In October 2018 Standing Order 27 was amended, along with consequential changes to Standing Orders 24 and 25, to introduce specific provisions and provide a new procedure for the approval of Orders in Council made under section 116C of the Government of Wales Act (GOWA) 2006 .

This section was introduced to GOWA by the Wales Act 2017 and makes provision for new devolved taxes to be introduced, or the provisions relating to existing devolved taxes to be modified, by means of an Order in Council to be approved by each House of Parliament and the Assembly.

Whist section 116C only requires that a draft Order be laid before and approved by a resolution of each House of Parliament and the Assembly, Standing Orders set out a process for scrutinising and agreeing a draft section 116C Order once it is laid by the Welsh Government. That process is supplemented by formal commitments from the Welsh Government regarding the information that will be provided to the Assembly in advance of that formal procedure being triggered.

The Government's commitments were set out within the report approved by the Assembly on amending Standing Orders. They apply to the pre-introduction period, which is also covered by a separate agreement between the Welsh Government and the UK Government.

The main elements of the new procedure can be found at paragraph 13 of the report approved by the Assembly on 10 October 2018.

EU (Withdrawal) Act 2018 and Brexit-related legislation

In October 2018 the Assembly agreed changes to Standing Orders 21 and 27 and inserted new Standing Orders 30B and 30C to make provision for scrutiny and consent for Brexit-related subordinate legislation.

The Business Committee considered these changes in light of the Constitutional and Legislative Affairs Committee's report *Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: operational matters*.

The Withdrawal Act creates new categories of subordinate legislation:

- regulations made by the Welsh Ministers which need to be subject to a new process of "sifting" (i.e. recommending whether the negative or the affirmative procedure should apply) by a committee;
- regulations made by UK Ministers temporarily restricting the Assembly's competence, which require the Assembly's consent; and

- other regulations made by UK Ministers which do not require Assembly consent but which should be notified to the Assembly.

This meant that Standing Orders had to be updated so that:

- An Assembly sifting committee has to report on sift regulations (i.e. all regulations that will come to the Assembly under the sift process), and to report within 14 calendar days, with Standing Orders which apply to regulations after sifting being disapplied for the sifting process. (Standing Order 21)
- Explanatory Memoranda that accompany regulations to be sifted have to include (a) the statement the Welsh Ministers have to make when laying the draft regulations as to why they think it should follow the negative procedure, and (b) the reasons for that opinion. Where the Welsh Ministers disagree with the opinion of the sift committee as to what procedure should apply, they must explain why (Standing Order 27).
- The process for section 109A and 80(8) regulations/restrictions on competence, and associated consent decisions was established. Welsh Ministers' statements on why the Assembly has refused consent have to be laid before the Assembly, and Welsh Ministers have to lay the UK Government's quarterly reports on competence restrictions. Welsh Ministers also have to inform the Assembly when competence restrictions are lifted (New Standing Order 30B).
- Welsh Ministers have to inform the Assembly of SIs made by UK Ministers in devolved areas where the SIs are laid before the UK Parliament only (New Standing Order 30C).

SITTING DAYS

Figures are for full sittings of each legislature in 2018. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2018.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus HR	0	11	4	0	10	8	0	8	8	8	4	4	65
Aus Senate	0	8	7	0	3	8	0	8	8	4	8	4	58
Aus Australian Capital Territory	0	6	3	3	3	3	1	8	3	5	4	0	39
Aus New South Wales LA	0	6	6	3	9	6	0	6	6	6	6	0	54
Aus New South Wales LC	0	3	6	3	9	6	0	3	6	6	6	0	48
Aus Northern Territory	0	3	6	0	6	1	0	6	0	5	4	0	31
Aus Queensland LA	0	3	6	0	6	4	0	3	6	5	4	0	37
Aus South Australia HA*	0	0	0	0	10	6	7	2	6	6	9	3	49
Aus Tasmania HA	0	0	0	0	6	6	3	6	6	3	6	0	36
Aus Victoria LA*	0	6	6	0	7	6	3	6	6	0	0	1	41
Aus Victoria LC	0	6	6	0	8	8	4	7	7	0	0	1	47
Aus Western Australia LC	0	0	9	3	6	6	0	9	6	8	10	3	60
Can HC	3	14	10	10	17	14	0	0	10	18	16	9	121
Can Senate	2	10	7	6	14	13	0	0	6	11	12	9	90
Can Alberta LA	0	0	9	12	15	4	0	0	0	3	13	4	60
Can British Columbia LA	0	10	9	12	12	0	0	0	0	15	11	0	69
Can Manitoba LA	1	0	10	17	16	12	1	1	0	12	13	6	89
Can Ontario LA*	0	6	13	13	5	0	12	7	10	15	13	8	102
Can Prince Edward Island LA	0	0	0	14	19	6	0	0	0	0	12	2	53
Can Québec NA*	0	9	9	9	12	9	0	0	0	0	4	4	56
Can Saskatchewan LA	0	0	12	13	18	0	0	0	0	5	16	4	68
Can Yukon LA	0	0	17	13	0	0	0	0	0	18	12	0	60
Cyprus HR	1	2	5	1	2	5	5	0	2	1	3	5	32
Guyana NA													28
India LS	5	6	17	5	0	0	9	8	0	0	0	12	62
India RS	5	7	17	5	0	0	9	8	0	0	0	12	63

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
India Kerala LA	5	8	17	0	0	11	0	1	0	0	4	9	55
India Rajasthan LA													21
India Uttar Pradesh LA	0	7	8	0	0	0	0	6	0	0	0	4	25
India West Bengal LA	2	14	3	0	0	0	8	0	0	0	8	2	37
Jamaica HR	2	4	7	3	8	5	4	0	3	5	3	2	46
Jamaica Senate	1	5	4	1	3	4	3	0	2	4	4	2	33
Jersey													34
New Zealand HR	2	9	7	6	12	10	6	8	12	8	7	8	95
Tanzania NA	9		0	61			0	0	9	0	9	0	88
UK HC	16	13	18	10	15	17	15	0	7	15	16	12	154
UK Lords	16	12	18	10	15	17	15	0	8	15	16	13	155
UK NIA	0	0	0	0	0	0	0	0	0	0	0	0	0
UK Scottish Parliament	11	9	13	6	15	12	0	0	12	8	13	9	108
UK NA Wales	8	6	6	4	8	8	6	0	4	8	8	4	70

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

House of Representatives

He wouldn't know how to let Shorten be Shorten.	6 February
And if they don't, they should bloody well be held to account.	7 February
It's in the budget papers, you moron.	7 February
I listened to the contribution of the Member for Wakefield with great interest, and I was reminded of Joseph Goebbels, Hitler's propaganda minister…He was reputed to have said that if you tell a lie enough and keep repeating it people will eventually come to believe it.	12 February
…these jokers can't make up their minds…	14 February
'No Coal' Joel…	14 February
…the Leader of the Opposition has learnt not only how to take money from the CFMEU…	27 February
While the Leader of the Opposition was gifting his commitment to the greenies, they were gifting him a $17,000 holiday, cruising the reef, taking a scenic flight around North Queensland… Who says corruption doesn't pay?	1 March
What a hypocrite the shadow Treasurer is, Mr Speaker! What a pathetic hypocrite!	26 March
Better take your medication!	27 March
You can't change the rules to suit Shifty Shorten.	9 May
...shadow Treasurer scurried under the table there, like the little rat he is. He got under there—	10 May
Even you, shifty Shorten?	21 May
...ALP still pockets their cash.	21 May
...Unbelieva-Bill.	21 May
But the Leader of the Opposition should lead by example, otherwise, he's a fraud!	23 May
...hypocrite.	23 May
...duplicitous...	23 May
…let alone the Leader of the Opposition handing over hardworking members' money to GetUp! without authority. What do they call that down at the court of petty sessions?	30 May
You can't allow for certain levels of stupidity, can you, member for Parramatta?	19 June
Minister, you arrogant, out-of-touch—	21 June
The snake charmer over there...	26 June

I hear an interjection from the African Queen of—	26 June
...Crankymite.	27 June
…ignorant, prejudiced, scuzzbucket, brain-dead moron and bottom feeders.	13 August
Why are you slowly killing these children?	17 October
…screw over the workers…	22 October
…I get one member for Ballarort! The member for Ballarort—sorry; a Freudian slip; I apologise. The member for Ballarat—'rat'.	23 October
…a gaggle of nut jobs, a gaggle of right-wing nut jobs—	24 October
In their time—and they've had four years—we've had more corruption than we have ever had, more congestion than we have ever had, and more crime.	24 October
…from the biggest boofhead on that side of the parliament.	3 December
Well, I'm happy to nominate the member for O'Connor as a Neanderthal as well…	5 December

Australian Capital Territory Legislative Assembly

Crap	21 February, 12 April
When organisations like the MBA and their Liberal allies engage in these fetishes, people get killed on site. Some days I struggle to believe that is not their goal.	31 July
Nasty piece of work	23 August
It is outrageous, and it shows just how strong the cartel behaviour is between the Australian Labor Party and the leaders of the CFMMEU.	22 August
You are a joke	18 September

New South Wales Legislative Assembly

failed lawyer and a failed politician	15 February
buffoon	15 February
motormouth	3 May
gutless wonder	3 May
They are a bunch of spivs, lurk merchants and ratbags. It is a party that is rotten to the core with no need to change.	22 November

New South Wales Legislative Council

Protection racket	2 May
You goose	15 August

Queensland Legislative Assembly

… They are another example of a Labor political act of bastardry	15 February
… hiding behind his lies	6 March
It is not good enough for the LNP federal government to lie about something this important	6 March
It must be the world's biggest bloody cusp	21 March

The Table 2019

… we are run over by B-doubles full of their crappy rubbish	21 March
Be quiet, grub	22 March
Why do the minister's union mates keep getting grubby deals from departments under his control?	1 May
Pathetic!	1 May
It beggars belief …	1 May
It was a gutless and shameful act.	1 May
The member for Warrego is telling lies there.	1 May
They lied to the people of Queensland—	2 May
They will give this mob over there the finger.	2 May
Someone is lying: who is it?	15 May
the entire LNP front bench—was a conga line of suckholes sucking up to Malcolm Turnbull and Queenslanders—	16 May
'Her Majesty Princess' Palaszczuk has arrived in Western Queensland	16 May
You were the biggest peanut there	12 June
"They can't. They're muppets" and "I take that interjection. They are muppets"	14 June
Can you shut this squawking parrot up, Mr Deputy Speaker?	14 June
I'm not afraid to use the c-word for coa"	15 June
Pantomime man. You goose.	21 August
We have had a gutful of the LNP's deep and divided affront to the states.	21 August
Lies, damned lies and statistics.	22 August
…there is no excuse for using lies to justify their position.	22 August
… indeed that was a blatant lie.	23 August
You're a lazy sod.	23 August
Someone help her; she's dying.	18 September
Hell yeah, it is relevant to this debate!	18 September
… we cannot even get the Premier and certainly the Treasurer to mention the c-word [reference to coal].	19 September
… okay to tell porkies to the people of Queensland	20 September
If we do not quit coal and gas we are screwed. It really is as simple as that	16 October
For God's sake	17 October
What about Caltabiano—$700,000 for lying!	18 October
After hearing the Treasurer's ministerial statement this morning, I cannot think of any other title to call her other than the 'Comical Ali' of the Queensland parliament	30 October
…earlier we heard from the insipid member for Stretton	30 October
Of course, she is coming as a jellyfish, because they do not have a spine	31 October

… just shows what type of a coward he is	31 October
Porky No. 1:	1 November
… the Premier more or less told me to bugger off	1 November
…a councillor who was a bit of a dropkick	1 November
…put up or shut up	1 November
I say to the member for Burleigh to not be a coward	1 November
They cannot say the 'c' word because of their flip-flopping attitude on this	13 November
A 'gormless show pony'	15 November

South Australia House of Assembly

let them eat cake	20 June
muppets	3 July
nasty face	3 July
dolphin killers	5 September
let them eat chips	6 September
rabies ridden canine	16 October
geese	17 October
snoozer	24 October
mad dog	6 December

Victoria Legislative Council

Bullying	8 February
I do not know if you have been on the sauce at lunchtime.	8 May
Photobomber	10 May
You're a pig	24 May
Drinking [reference to a Member]	25 May
Tool	25 May
Sir Les Patterson of the Victorian Parliament	25 May
The Premier should recognise the error of his judgement in backing the shyster six	9 August
A Nazi sympathiser and as a supporter of white supremacists	9 August
Crooks	9 August
Goons	22 August

CANADA

House of Commons

What does the Prime Minister call those sorts of people? Where I come from, we call them liars.	6 February

Why does the Prime Minister not just say the truth and tell indigenous peoples that he does not give a fuck about their rights?	25 September
Mr. Speaker, apropos that last exchange, it is a shame Maclean's magazine did not have a hypocrite of the year award for parliamentarians.	7 November
I believe that is called sucking and blowing at the same time, and Canadians are not buying it.	22 November
When will the member tell them to get their heads out of their asses and do something for these families?	26 November

British Columbia Legislative Assembly

pooh-pah	19 February
pooh-pooh	19 February
by taxing the crap	28 February
K-tel coalition	29 October
crock	20 November

Manitoba Legislative Assembly

he tried to paint himself as a hero, when it turns out, he's really a zero	20 March
the falsehood in the earlier statement	20 June
our kids bloody well deserve	25 June
member deliberately puts misinformation on the record	25 June
is going literally to hell in a handbasket	25 June

Prince Edward Island Legislative Assembly

For Christ's sake	11 April

Québec National Assembly

Hide (an agreement)	21 February
Misappropriation of money	14 March
Shit	29 March
Corruption (speaking of the Government)	9 May
Meanness	16 May
Deceit	12 June

Saskatchewan Legislative Assembly

Norma new girl	15 March
Here we have the organ grinder, Brad Wall is gone, but now we have the monkey, you know	29 March
bloody bill	19 April
Order. We're in the middle of a bill introduction. F***. When shall this bill be read a second time?	15 November

…because they want to make stuff up	21 November

Yukon Legislative Assembly

censor	8 March
harangue	20 March
hiding under a rock	18 April
Pinocchio	21 November

INDIA

Lok Sabha

... If it is coming from Treasury Benches, it is something else, but coming from the Chair is very unbecoming ... (Aspersion on the Chair)	4 January
... You have said that we do not want a solution; we are politicking it ... (Aspersion on the Chair)	4 January
... That is a comment from the Chair itself ... (Aspersion on the Chair)	4 January
... A comment from the Chair is very unbecoming ... (Aspersion on the Chair)	4 January
... A comment from the Chair said they do not want a solution; they want to politicize it. We can understand if a comment comes from the Treasury Benches... (Aspersion on the Chair)	4 January
... You have said it on the mike... (Aspersion on the Chair)	4 January
... Irresponsible attitude ...	4 January
... Deadwood ...	4 January
... Shame ...	4 January
... Bulldog ...	4 January
... Casino Judiciary ...	4 January
…Lie…	6 February, 20 July, 24 July
…Liar…	6 February, 31 July
…Leader out of jail …	7 February
…The poster boy for corruption of India…	7 February
…You are doing this like fools…	8 February
…Goon…	18 July
…Tainted…	20 July
…Untruth…	20 July
…Fraud…	20 July, 7 August
…Madness…	20 July

…Hawker…	20 July
…Looting…	20 July
…Mad…	20 July
…Action Great Drama…	20 July
…Why are you so biased?... (Aspersion on the Chair)	20 July
…That drama, block-buster, actor…	20 July
…Drama, artist, great cinema artist…	20 July
…Goons…	24 July
...Lawlessness…	26 July
…Fascism…	1 August
…Puppets…	1 August
…Scoundrel…	3 August
…He never got elected…	9 August
…Shame…	9 August
…Thief…	9 August

Rajya Sabha

Mad	2 February
पागल (Mad)	2 February
बुद्धि पिशाच (Wit Vampire)	2 February
Shamefully	5 February
बेवकूफ़ (Fool)	7 February
उल्लू (Idiot)	7 February
धोखा (Deceit)	7 February, 8 Februar , 9 February, 6 August
Betrayal	7 February
राष्ट्रीय शर्म (National Shame)	7 February
शर्म (Shame)	7 Februar , 9 February
Cheated/ Cheating/ Cheat	8 February, 25 July
विश्वासघात (Betrayal)	8 February
गुमराह (Misleading)	9 February
बुजदिल (Coward)	1 August

Rajasthan Legislative Assembly

Theatrics	6 February
Will be made slaves	6 February
Would we worship Deendayal Ji? He might be a great man but in the history of this country, in this development and in this freedom, Deendayal Ji clearly has no contribution	6 February
Pandit Jawaharlal Nehru Ji, too, was not a big gun…It is because of Pandit Jawaharlal Nehru that the country suffered grave loss.	6 February
What is the situation in Kashmir because of Jawaharlal Nehru?	6 February
The minister having petrol pump is sweeping money using his 'Vivek' (brains)… He has indulged in corruption… Piling up money using his 'Vivek' (brains)...	6 February
Amassing money	6 February
The minister who has a petrol pump… is earning money using his 'Vivek' (brains)… The minister, who has a petrol pump is piling up huge money nowadays using his 'Vivek' (brains)… of corruption...	6 February
Twenty Lakhs have been given, the minister will come back to Kishangarh, your job will be done	6 February
You should drown in shame	6 February
Should drow	6 February
Poor fellow	6 February
Contract for killing	7 February
Nehru ji… Indira ji… Rajiv ji… Sonia ji… Sonia ji… Sonia ji… went to Italy taking Rajiv with her… took refuge in Italian embassy with Rajiv ji	7 February
Taking Rajiv ji with	7 February
The Prime Minister deserted his wife after marrying her… Your Prime Minister after marrying… Neither I'll keep my wife nor I'll let others keep theirs…	7 February
With how many (women) does your crown prince roam abroad	7 February
Is the Question Branch not even that sensible	8 February
Lie	8 February
Involved in corruption	9 February
Even his brother-in-law died. He didn't go to meet. Didn't even go to meet	9 February
Didn't make agreements in the interest of the Country	9 February
Bark	9 February
Cunning	9 February
Roaming around with briefcase	14 February
Five-five crore rupees	14 February
Of two crore	14 February
Head of the government and its C.M.D. consultant	14 February

It is Hon'ble Chief Minister's instruction… is C.M.D.'s instruction	14 February
You, too, have employed a person.. is a Pareek	14 February
Hon'ble Chief Minister giving such a deadly blow… It doesn't suit her	14 February
Is it being made for the palace over there?	14 February
Of Robert Vadra	14 February
Of Pappu… About Pappu and about Sonia as well	14 February
Ministers are helping in it	14 February
A hotel worth 35 crore rupees has been built… Six bigha land in Panchola	14 February
Either it is some MLA's firm or some minister is involved	14 February
The Midway of Behror was handed over to some minister's relative	14 February
An IAS officer of CMO	14 February
Rahul Gandhi	14 February
Mother Sonia Gandhi Rahul Gandhi… Of Rahul Gandhi	14 February
Amit Shah's son Jay Shah	14 February
Sonia Gandhi	14 February
Rahul Gandhi...	14 February
Bharat Shah	14 February
It's matter of big shame	14 February
A very serious matter, just now the orders have been received that hon'ble Health Minister has imposed restrictions on the media persons from entering and taking photographs in SMS. Just a photograph making mockery of Swachh Bharat got published in a newspaper today...	14 February
Hon'ble Deputy Speaker sir, this order came today itself that the media persons can't enter SMS, can't click photographs. This is a black law over another black law. One (law) was handed over to the Select committee and you have come out with another black law, therefore minister sir, elaborate a little that how did you become so allergic to Media?	14 February
Sir, let him answer. How was (it) issued, why do they want to restrict media, why do they want to bring one black law over another black law? Let them tell.	14 February
The M.D. is corrupt of the high order	16 February
Bastard	16 February
The carpet which the Chief Minister has taken away with herself, let that matter of carpet be examined	16 February
You are not bringing the House to order intentionally. You are instigating the ruling side deliberately.	16 February
As if the House belongs to only their fathers?	19 February
Patidar ji… by some give and take...	20 February
Of blabbering	20 February

Murderers	22 February
For how long you would take their side	22 February
To save those scamsters	22 February
To hell with	23 February
Worthless	23 February
Then what are you yelling from	23 February
Liar	23 February
Child spirit	23 February
You posted a Chief Engineer, the thief, at our lift canal	23 February
Thief and corrupt like this	23 February
Thief	23 February
Is he your milch cow?.... If a thief is not called thief then should we call him an honest man.	23 February
Telling lie	23 February
Why do you discriminate	23 February
Mr. Samit Sharma	26 February
Of lie… Lie	26 February
Keep yelling outside	26 February
Lie on lie	26 February
Why are you jumping like a rat?	26 February
By yelling	26 February
Were yelling	26 February
Swearword by a fool should be averted by laughing. Means you laugh like a stupid, like a foolish man.	27 February
Like stupids...	27 February
Turram Khan (Hindi slang for Smart alec)	27 February
Was yelling	27 February
The poor fellow cried	27 February
In your court	27 February
Court	27 February
The Chair must be ashamed	5 March
From CMO…	5 March
Some business of kickbacks transacts	5 March
By twisting the arm	5 March
Was ashamed	6 March
Shame	6 March

Lie	6 March
White lie	6 March
I know, Vasundhara ji deflates, she promotes only once, and thereafter deflates. Now, Yunus Khan ji is being given importance, he too will be brought down, she doesn't promote for many days, she is too shrewd a lady. Not a big deal, It is madam's great fortune that she keeps each one deflated.	6 March
R.G. Gupta	7 March
Murderers	7 March
Her hands are stained with the blood of Gurjars	7 March
Your national president of R.S.S. Mohan Bhagawat ji says that this system of reservation is required to be abolished after reviewing it	7 March
Idiot of high order	7 March
He has been appointed by the government	7 March
Dotasaraji can be their among the insanes.	9 March
Idiomatic expression for a person who makes undue interferences in others matters (Poking nose)...	9 March
When the pestle strikes…	9 March
Whose virtues were imbibed by Maderna ji and Babulal ji?	9 March
Sandip Bakshi	9 March
People who did slavery of the British, praised them,	6 September
Who stood by the British in 1857… That the Scindia family had cooperated with the British in 1857	6 September

Uttar Pradesh Legislative Assembly

Gunde	15 February

STATES OF JERSEY

It is a typical self-loathing statement from the Islington Left

talking with a forked tongue

There are too many people in here for themselves, not for the good of the Island

I am not sure if the Deputy hangs around the public toilets

NEW ZEALAND HOUSE OF REPRESENTATIVES

dicked	30 January
piss-weak	31 January
an $11.6 billion hole could only come from someone whose talent in economics, if he has any, is with the truth	1 February
Keep deflecting, old man	1 February
Sir Humphrey	21 February
tosser	29 March

bring back the Brylcreem	4 April
Pink Panther	4 April
junior weedeater	11 April
Settle petal—settle	23 May
Mates' rates	26 June
Are you that useless	31 July
Here's a party-hopper—party-hopper in the House	7 August
chauvinistic pig	15 August
You're a bunch of idiots	5 September
Shifty	12 September
Ho, ho, Billy Bunter	26 September
Slippery	17 October
Tetchy, Grant, tetchy	24 October
You nitwit	4 December
Mr Hardcore	18 December

BOOKS ON PARLIAMENT IN 2018

AUSTRALIA

Annotated Standing Orders of the New South Wales Legislative Council, by Jenelle Moore and Susan Want, edited by David Blunt, The Federation Press, ISBN: 9781760021566

Extraordinary ordinary women: pioneering women in the Parliament of Victoria, Peter Johnston, Department of Parliamentary Services, ISBN: 9780646984247

House of Representatives Practice (Seventh Edition), edited by David Elder, Clerk of the House of Representatives, CanPrint Communications Pty Ltd, ISBN: 9781743666548

The People's House—Queensland's Parliament House in Pictures, published by the Queensland Parliament, as part of the 150th anniversary of Parliament House celebrations

Reflections: 30 years of Australian Parliament House, Department of Parliamentary Services, Parliamentary Library, Department of Parliamentary Services

The veiled sceptre: reserve powers of heads of state in Westminster systems, by Anne Twomey, Cambridge University Press: Port Melbourne, ISBN: 9781107056787

CANADA

At the Centre of Government: The Prime Minister and the Limits on Political Power, by Ian Ross Brodie, Montreal: McGill-Queen's University Press, ISBN: 9780773552906

Avocats, société et politique au Québec, 1763-1867 : colloque du lieutenant-gouverneur soulignant les 225 ans de parlementarisme au Québec, by J Michel Doyon, Éditions Yvon Blais. $42, ISBN: 9782897304454

The Charter Debates: The Special Joint Committee on the Constitution, 1980–81, and the Making of the Canadian Charter of Rights and Freedoms, by Adam Dodek, ed., Toronto: University of Toronto Press, ISBN: 9781442628489

Les élections au Québec: 150 ans d'une histoire mouvementée, by Jean-Herman Guay and Serge Gaudreau, Presses de l'Université Laval, $39.95, ISBN: 9782763733814

House of Commons Procedure and Practice, Third Edition, 2017, Edited by Bosc, Marc and André Gagnon, House of Commons, Éditions Yvon Blais, ISBN: 9782897303006.

Indépendant et imputable: Moderniser le rôle des agents du Parlement et des legislatures, Forum des politiques publiques. Free, available online. ISBN: 9781988886190

Power, Primer Ministers and the Press: The Battle for Truth on Parliament Hill,

by Robert Lewis, Toronto: Dundurn, ISBN: 9781459742642

Selected Decisions of Speaker Andrew Scheer, 2011–2015, House of Commons, House of Commons, ISBN 978-0-660-09549-3.

Le Vérificateur général du Québec: Une institution au cœur de l'histoire, by Sophie Imbeault, Vérificateur général du Québec, ISBN: 9782550824442

INDIA

Election Atlas of India: Parliamentary Elections, 1952–2014; 1st Lok Sabha to 16th Lok Sabha: updated till October 2017, edited by R.K.Thukral, Datanet India, Rs 9500/-, ISBN: 9789386683922

Provides information on data of election results for Parliamentary Constituencies and Legislative Assembly Constituencies in India.

Inside Parliament: views from the front row, by Derek O'Brien, Harper Collins Publishers, Noida, Rs 499/-, ISBN: 97899352773817

Provides information of some political issues the country has grappled with in the last-three and half years.

State of the Nation: democracy and Parliament, by Subhash C. Kashyap, Vitasta Publishing, Rs 995/-, ISBN: 9789386473325

Contains information on Practices and Protocols followed in the Indian Parliament and the deviations and aberrant behaviour of legislators noting what their actual duties are and ought to be.

UNITED KINGDOM

Exploring Parliament, edited by Cristina Leston-Bandeira and Louise Thompson, (Oxford University Press, ISBN: 9780198788430

Matthew Hamlyn, a clerk in the House of Commons, writes:

On 19 December 1666 the diarist Samuel Pepys was talking to Sir Richard Ford, MP for Southampton, who "did make me understand how the House of Commons is a beast not to be understood, it being impossible to know beforehand the success of any small plain thing". 350 years later people are still struggling to understand this beast, and its fellow-beast the House of Lords, and many books have been produced to help the process. The latest is Exploring Parliament, edited by two distinguished members of the Study of Parliament Group based at the Universities of Leeds and Surrey. It brings together a large group of experts—about 60 in all—who between them have interesting things to say about every aspect of Parliament. The contributors include academics and current and former parliamentary staff, as well as a Member of the House of Lords and a BBC journalist. It is this range and depth of expertise which gives the book much of its authority and insight. Although the editors refer to it as a "textbook", and it is principally aimed at students and teachers, the text is refreshingly accessible and anyone interested in the workings of parliaments, or

who works in a parliamentary setting, would benefit from studying it.

The book is divided into short chapters covering subjects such as the organisation of Parliament, law-making, scrutiny, representation and "Challenges and Reform". In addition, there are 31 case studies which illustrate the issues described in the book, suggestions for further reading, lists of primary sources and links to online resources. And as a bonus, there is an excellent glossary of parliamentary terms. Exploring Parliament is not limited to descriptions of procedure, although it is very good on topics such as how legislation is passed, the work of select committees and questions to Ministers. It spreads its net much further. For instance, Professor Philip Norton (Lord Norton of Louth) writes on the "political organisation" of Parliament, including the role of political parties in both Houses, and the chapter on "Design and Space" explores Parliament in a literal sense, discussing the impact of the Parliamentary space on how Parliament and politics function. The authors note how the physical space even influences parliamentary language—Members can be "frontbenchers" or "backbenchers", "table" a bill and "cross the floor". I was especially struck by the suggestion that the Gothic style was adopted in the rebuilding of the Palace of Westminster in the 19th century as the classical style was associated with "revolution and republicanism", as in the USA. Colleagues may want to ponder the design of their own buildings at this point, and what kind of statements they make.

One of my favourite parts of the book is the lively and thought-provoking chapter co-written by Emma Crewe (an anthropologist) and Paul Evans (a vastly experienced Commons Clerk) on rituals in Parliament, including a detailed case study of the State Opening of Parliament and its multiple "meanings". (Full disclosure: I sponsored Dr Crewe's House of Commons pass when she was researching her earlier book, *The House of Commons: An Anthropology of MPs at Work*.) This is a fascinating reflection on many aspects of ritual, including how Members vote, the way in which Royal Assent to Acts is announced, the oath of allegiance to the Monarch and the way rituals are used as "markers of power, hierarchy and identity". The authors even include the role of Erskine May in this context, describing it as being "written and guarded by the clerks". For Lord of the Rings fans, or for this one at any rate, the phrase "guarded by the clerks" summons up an image of a giant Clerk, like Smaug the dragon, sprawled over his heap of procedural gold. But I am glad to say that, by the time this review appears, we will have stopped guarding Erskine May and thrown it open to the world by publishing the 25th edition online, for free. We will continue jealously to guard the accuracy of the text, of course. In the same chapter I raised an eyebrow at the assertion that the practice of the Commons in slamming the door shut in the face of Black Rod, when he comes to summon them to the upper House, signifies the House's right to deny entry

to the Queen's messenger. Erskine May states that "successive Speakers have ruled that this custom is to allow the Commons to establish Black Rod's identity rather than being, as is often supposed, a direct assertion of that House's right to deny Black Rod's entry". Though as Crewe and Evans point out, Erskine May is invariably referred to as the 'Bible of procedure', and the Bible can be subject to varying interpretations.

The section on representation includes a valuable analysis of the role of women in the House of Commons, and a reminder that, more than a hundred years after the UK legislated to allow women to vote and become MPs, the under-representation of women is ongoing. "There is also plenty to do in transforming the gender sensitivity of the UK Parliament (and for that matter the political parties)". I was pleased that the section on scrutiny included a chapter about the media's scrutiny of Parliament, another example of the imaginative way in which the editors have approached their task. It is written by the doyen of Parliamentary correspondents, the BBC's Mark D'Arcy, who cites useful data about the increasing audience for parliamentary coverage and presciently (writing in 2018) notes "it is not over-speculative to suggest that Brexit will keep interest high". It certainly has.

In their concluding chapter, the editors pose a series of challenging questions about the future of Parliament and note that "an understanding of Parliament—of its functions, roles, puzzles and limitations—is vital to the vibrancy of democracy in the UK. Exploring Parliament is a hugely valuable contribution to that vital understanding.

Essays on the History of Parliamentary Procedure, in Honour of Thomas Erskine May, ed. Paul Evans, Hart Publishing, £85.00, ISBN: 9781509900206

Charles Robert, Clerk of the House of Commons in Canada, writes:

Sir Thomas Erskine May is a name well known to all experienced procedural clerks and table officers in the parliaments of the Commonwealth for more than 170 years thanks to the publication in 1844 of the *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. Since then, through its many editions, the text has been widely recognized as the preeminent authority on the traditions and practices of the UK Parliament at Westminster. At a time when Westminster served as a model for colonial legislatures across the Empire, the *Treatise*, more commonly referred to simply as *Erskine May,* quickly assumed near-biblical status. Even as the colonial parliaments gradually became mature legislatures of independent nations within the Commonwealth, with many having their own procedural manuals, *Erskine May* retained its importance as a guide and template. Though it was and is the authority for Westminster practice, the long history of *Erskine May* has helped to sustain a strong link among the legislatures and assemblies which adhere to the British parliamentary tradition. This shared heritage is a remarkable feature within the Commonwealth and is attributable

in no small measure to the continuing influence of *Erskine May*.

The 25th edition of *Erskine May* has just appeared. The new edition bears little resemblance to the *Treatise* that Erskine May originally wrote. This is largely, though not exclusively, a natural consequence of the many changes to procedure that have occurred since 1844. When the first edition of the *Treatise* was published, its object was to "describe the various functions and proceedings of Parliament in a form adapted, as well to purposes of reference, as to a methodical treatment of the subject." In setting itself this ambitious goal, the *Treatise* supplanted all earlier works on the subject including John Hatsell's four volume *Precedents of Proceedings in the House of Commons*, last published in 1818. Despite its growing renown through the nine editions produced during the lifetime of Erskine May, the challenge of serving as a constitutional authority as well as being a practical manual remained daunting for those succeeding Clerks of the House of Commons who became the principal editors of the subsequent editions. By the time the 14th edition appeared in 1946, under the editorship of Sir Gilbert Campion, the Erskine May of his century, it had become necessary to reorganise and rewrite virtually the entire work. All later editions have largely followed the approach established by Campion and have been focused on being a useful manual to the current practices of both Houses of the UK Parliament.

The enduring reputation of Erskine May prompted the publication in 2017 of *Essays on the History of Parliamentary Procedure in Honour of Thomas Erskine May*. Originally intended to celebrate the 200th anniversary of May's birth, 8 February 1815, it is a tribute to the man, the profession, and the book. The collection of seventeen essays arranged in five parts is edited by Paul Evans, Clerk of Committees and one of the current and former Westminster clerks who, together with several academics, explore Erskine May's career, the history of the *Treatise* and some earlier manuals, the history of the Standing Orders as well as the reform and development of certain parliamentary practices during May's long professional life and beyond. The final essays are on the use of select committees and recent assessments of parliamentary privilege.

Erskine May first came to Westminster to work in the library of the House of Commons at the age of sixteen in 1831, just a few years before fire destroyed the original Palace. Appointed assistant librarian, May's major task was to prepare an improved index of the Journals of the House of Commons dating back to 1547. The work on the arrangement of the index in addition to his familiarity with other parliamentary sources in the library laid the foundation for his knowledge of, and approach to, the precedents and practices that are at the core of his *Treatise*. The comprehensive and systematic structure of the *Treatise* represented a significant advance over previous manuals of parliamentary procedure and quickly established the work as an indispensable authority. Its timely appearance in 1844 also coincided with the ongoing

transformation of Westminster that had started in 1832 with the Great Reform Act into a more representative Parliament composed of professional political parties dominated by some major figures and statesmen including Gladstone and Disraeli. Succeeding editions of the *Treatise* produced by Erskine May up to 1883 grew ever thicker and more detailed as they traced the reforms put in place to allow Parliament to function more effectively as governments gradually asserted more control over the time and agenda of the House of Commons. The accumulation of precedents with each edition further solidified the work as an authority.

Despite his great industry, proven ability, and professional capacity, Erskine May's advancement to the clerkship was not particularly rapid. He moved from the Library to become Examiner of Petitions in 1847 and only became Clerk in 1871, after being overlooked for the position in 1850. The course of Erskine May's slow advancement is recounted by Sir William McKay, himself a former Clerk of the House (1998–2002), author, and editor of the 23rd edition of Erskine May. The growing professionalisation of the officers within Parliament exemplified by Erskine May himself was haphazard and intermittent and it did not prevent appointments based on patronage, party allegiance, or family connections. This certainly explains the appointment of Sir Denis Le Marchant, who had no previous procedural experience, as Clerk in 1850 on the recommendation of Lord Russell, the Prime Minister. However, when the opportunity arose, Speaker Shaw Lefevre, an admirer of May, managed to recommend his appointment as Clerk Assistant in 1856.

In recounting the trajectory of May's climb to the clerkship, McKay reveals some interesting information about the culture of Westminster. After a failed proposal made by a select committee in 1833 to transfer the appointment of the Clerk from the government to the Speaker, the reach of the government's power over such positions in Parliament only seemed to increase. At the time of Le Merchant's appointment, the Chancellor of the Exchequer succeeded in obliging the new Clerk to surrender his patent right to appoint the Clerks Assistant. From 1850 these positions were nominated by the Crown though the Speaker was allowed a veto and when May was appointed in 1856 the law was altered to confirm this arrangement.

Erskine May himself was not above using his position to advance appointments that favoured his suspected, but sufficiently discreet, Whig/Liberal preferences. Though, as McKay observes, May was impartial and unbiased in carrying out his duties at the Table, of the seventeen positions made by May while Clerk, six had close connections to Liberal Members or Peers and several others were relatives of serving Clerks. As well, in addition to having a somewhat ponderous and dull personality, he was also inclined to be obsequious. Due to his talent and industry, this aspect of his character is aptly captured in the title McKay uses

for his biographical chapter of May, quoting Sir Barnet Cocks, "a sycophant of real ability". In keeping with this trait, Erskine May remained keenly interested in accumulating honours and remuneration for himself and he was successful to a degree that was unprecedented. As he advanced his career and built his reputation, he received a CB that was subsequently augmented to KCB and, while still Clerk in 1884, he was made a Privy Councillor, the only Clerk to ever receive this distinction. Finally, as Baron Farnborough, he was the first Clerk elevated to the peerage, an honour that has been conferred only twice since.

Part II of the *Essays on the History of Parliamentary Procedure* underscores the significance of the *Treatise* by placing it in historical context. While there were various sources accounting for the procedures of the House of Commons, the most important single source were the largely uncodified customs, usages, and precedents that had developed in Parliament over the centuries. These were accessible mainly through the Journals of the Commons. Attempts to digest the information of the Journals and organize their contents through the preparation of indexes were challenges that became significantly more manageable once the decision was made to print the Journals in 1742. This task of "information management", as Martyn Atkins notes, really began shortly thereafter and continued into the nineteenth century culminating in the efforts of Erskine May and Thomas Vardon, the Librarian who had hired him. The laborious process followed by those assigned to the task are recounted by Paul Seaward, British Academy/Wolfson Research Professor at the History of Parliament Trust, in his chapter on "Parliamentary Law in the Eighteenth Century". Once the indexes were finally brought up to date, managing them became an activity performed by the office of the Clerk of Journals where Atkins is currently a clerk. Without these properly organised indexes, it would not really have been feasible for Erskine May to write the *Treatise*.

The limited availability of the records and their poor organization are reflected in the content and scope of the manuals printed from the late Tudor period through the end of the seventeenth century. Sir David Natzler, recently retired Clerk of the House of Commons and editor of the latest edition of *Erskine May*, provides a summary account of the various texts that were published at this time beginning with John Hooker's publication in 1570 of the fourteenth century text known as the *Modus Tenendi Parliamentum* and continuing through to George Petyt's *Lex Parliamentaria* printed in 1690. Of course, none of these precursors to the *Treatise* came close to matching it in scope and breath; they are all relatively brief accounts that are meant to furnish practical information about the procedures followed in the passage of public and private bills as well as some other aspects of Parliament that are now bits of arcane curiosity. One such example taken from *The Manner how Statutes are enacted in Parliament by Passing of Bills* by William Hakewell and published in 1641 explains how clerks

were sometimes assisted by Members who actually stood over them as they wrote out (engrossed) amendments to bills at third reading.

Aside from these manuals, some more assiduous parliamentarians prepared commonplace books, a collection of notes on procedure that they kept for their personal use. These books were like those sometimes prepared by lawyers; they contained information on various aspects of parliamentary practices. Seaward describes some of them compiled during the eighteenth century including one by Arthur Onslow, Speaker of the House from 1728–1761. The principal objective of these handy aides was, in the words of Onslow, commenting on the study of law, to help sort out the "bundle of unintelligible, and confus'd stuff". Almost fifty years later, another Speaker, Charles Abbot (1802–1817) also found it useful to keep commonplace notes and they, in turn, were used and annotated by his successor, Charles Manners Sutton (1817–1835) a few years before the *Treatise* was first published.

Erskine May's career spanned the decades of transformative change in Parliament. As the industrial revolution took hold in Victorian Britain, governments found themselves managing a global empire sustained by commercial and trading interests as well as dealing with domestic social upheaval in the wake of large-scale industrialisation. This included the long-resisted expansion of the electoral franchise (through legislation in 1832, 1867 and 1884), and, with it, the establishment of modern political parties. These political and social changes placed increasing pressure on Parliament. Reforms became necessary to "sweep away the elaborate forms and manifold opportunities of debate" that had survived from an earlier time and replace them with more efficient procedures and practices. Simply put, government had to assert more control over the time of the House. Erskine May, as the author of the *Treatise*, was well placed to provide advice and make recommendations. In his second contribution that begins Part III of the Essays, William McKay recounts the part that May played through several episodes at reform which arose during his decades of service from the 1840s into the 1880s. There were proposals made to different Speakers, appearances before committees, and, on one occasion, an anonymous submission to the Edinburgh Review. For all this, McKay recognises that May's approach was generally restrained. While acknowledging the need to alter practices to improve the capacity of the House to make decisions, May tended to push for amendments to correct obvious abuses, but was otherwise reluctant to forsake underlying principles. As McKay puts it: "Reform was necessary, but should only be implemented with the upmost caution."

One procedure that desperately needed reform related to the management of the business of supply. Here May was less resistant to push for change, believing that control of the House over supply was among its most important functions. These proceedings took place in the Committee of Supply and the House

resolved itself into this committee through the motion "That the Speaker do leave the Chair." This motion was debatable and susceptible to almost endless amendment often leading to frustrating, obstructive delay in getting to the substantive business of Supply late in the sitting day. As Colin Lee, currently the Clerk of the Table Office in the House of Commons, notes in his thoroughly researched essay "May on Money" various efforts advanced by May to bring in changes to reduce the inordinate time taken in debate on this motion proved difficult and had only limited success. The fundamental problem, at least at the beginning of his reform efforts, was that May was fighting an entrenched position that held to the view that grievances had the right to be raised before Supply. Even if this right was clearly being abused through debates that appeared "extraneous, desultory and often unimportant" the case for reform could not overcome the natural reluctance of the House membership to gag itself and keep it from fully expressing the feelings and opinions that preoccupied the nation. In the end, what was achieved was the beginning of an effort to create greater certainty in the conduct of supply business by having Committee of Supply meet at specific times after moving the motion for the Speaker to leave the Chair without putting the question.

A final push for change during May's tenure as Clerk occurred in the wake of the systematic and constant obstruction of the Irish nationalists during Gladstone's second administration. Following the extraordinary tactics of the nationalists in 1881 and the use of closure for the first time by Speaker Brand, May proposed a whole series of procedural reforms including several dealing with Supply. Adapting a recommendation to create Grand Committees which could sit separate from the House, May suggested that the Committee of Supply also be allowed to sit separate from the House with the power to adjourn from time to time. This proposal was too much for the government. Instead, it agreed to a Standing Order change based on what May had first suggested thirty years earlier. This reform measure sought to limit amendments to the first day of debate on each Estimate and required that they be relevant to the Estimate in question. Again, this proposal failed to curb debate and reduce the time spent on Supply since the debates that had previously occurred on the motion and amendments to have the Speaker leave the Chair now took place in the Committee of Supply itself. In his assessment of May's attempts to introduce a more rational and structured approach to the consideration of Supply, Lee identifies a fundamental weakness in the process that plagued May and that continues to stifle effective change: "by seeking to combine the function of scrutinising and authorising public expenditure with that of debating policy and grievances, the House of Commons guaranteed dissatisfaction with the performance of both."

For the most part, Erskine May was a tentative innovator, a characteristic that

is still generally in line with how Westminster adapts its practices and develops its Standing Orders in dealing with outmoded or unsatisfactory procedures. This preference for cautious or reluctant change is explored in several of the *Essays* that recount the development of procedure during May's time and since up to the present day. Simon Patrick, a former clerk at Westminster who retired in 2016, writes how the Standing Orders eventually became the vehicle for reform and modernisation due in some measure to May's *Treatise*. What had previously been an understanding of procedure based on a loose collection of practices, precedents and resolutions relating mostly to private bills were now being assembled into more explicit rules to establish clear practices as explained in the Treatise. This development was recognised with the publication of the authorized collection of standing orders of the House of Commons for private business in 1830 and public business in 1854. Relying on the work of Sir Edward Fellowes, Clerk of the House of Commons from 1954 to 1961, Patrick reviews the changes to practice over the last 170 years and the first edition of *Erskine May*. What stands out was the shift in approach to updating procedure. Once reliance on ancient usage was abandoned, changes to procedure came to be managed through explicit amendments to the Standing Orders. The Standing Orders themselves have increased substantially in number and complexity over time; there are now well over two hundred and fifty of them. And as Mark Egan, a sometime clerk at Westminster who is now the Greffier of the States of Jersey, describes in his contribution to the *Essays* the work of considering changes to practice mainly through amendments to the Standing Orders is routinely performed through procedure committees often at the instigation of the government of the day. The intention behind most of these efforts is to discard obsolete practices and propose alternatives aimed at facilitating the management of government business. It is rare for consideration to be given to the interests of the simple backbencher. Generally, the focus of the procedure committee deliberations is on a specific problem irksome to the government. However, the piecemeal nature of these reforms, due to a reluctance to undertake a broader, more comprehensive assessment of established practices, has hampered attempts to bring about more successful and effective change. As Egan notes in his conclusion: "The challenge … is for the Commons to be more assertive in deciding its own procedures; to be braver in ditching procedures whose day has passed and in trying new things; to look outside Westminster at alternative ways of debating and scrutinising; and to be more nimble at adjusting rules and procedures to suit new political developments." It is a worthwhile goal though it seems to be beyond the reach of today's Parliament as is evident from the limited success of the modernisation efforts of the Blair government or the retreat of the Cameron government from its commitment to codify parliamentary privilege.

Indeed, the subject of parliamentary privilege is one that has often bedeviled Westminster since the days of *Stockdale v. Hansard* (1839), the trials that first identified the role asserted by the courts to define the scope of privilege while leaving its exercise to the discretion of Parliament, a proposition that the House of Commons first found decidedly unsatisfactory and about which it still seems uneasy. In fact, however, the roots of the difficult relationship between Parliament and the courts go back further to a time when the courts lacked real independence and often operated under the arbitrary authority of the Crown. Used by the Crown in the seventeenth century to thwart the claims of Parliament in its struggle with Kings who denied the right of Parliament to constrain their royal powers, Parliament was determined on its insistence to be free of any interference by the courts when the Bill of Rights bringing William and Mary to the throne was negotiated in 1688–9. Article 9 of the Bill of Rights explicitly provided that "freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." The defence of Article 9 and the restrictions placed on the courts to keep them from intruding into the affairs of Parliament animate much of the understanding as to the purpose for parliamentary privilege.

The enduring mistrust of Parliament towards the courts is the focus of much of Eve Samson's essay entitled "Privilege: The Unfolding Debate with the Courts." This is the first of two chapters that comprise Part V of the Essays, "The Lex Parliamentaria Revisited". There are probably fewer clerks better qualified to represent the prevailing view of Westminster about privilege than Samson. A clerk since 1986, she was the Commons Clerk on both the 1997 and the 2012–13 Joint Committees on Parliamentary Privilege. The first joint committee attempted a "radical" modernisation of privilege with a recommendation for its codification closely based on the Australian Parliamentary Privileges Act 1987. Among the other positions taken by the committee in its report was that privilege should not shield Parliament from ordinary law and that privilege should be limited to what is properly necessary. Samson leaves little doubt that she finds such recommendations a capitulation of Parliament's rights and interests. As she puts it: "The proposals of the Joint Committee would have entailed a radical shift of power from Parliament to the courts. In place of the difficult, obscure and contestable privileges which Parliament asserted, there would be a new statute, which the courts themselves would interpret. Furthermore, following the other recommendations of the Joint Committee, the courts would "be able to use parliamentary proceedings so far 'as they relate to the interpretation of an Act … or judicial review of government decisions … or the non-critical use of statements where no legal liability is involved.'" This would amount to a near-total surrender of Article 9. In the end, nothing was done since the report was not adopted by either House and its recommendations were never implemented.

The conclusions of the second Joint Committee were far from radical. To the contrary, its report amounted to a repudiation of the proposals put forward by the earlier joint committee. The second Special Joint Committee was established following the 2008–09 expenses scandal involving several Peers and MPs who claimed immunity from prosecution for submitting false claims for parliamentary expenses. Prior to the decision in *R v. Chaytor and others* (2010), the Conservatives had pledged action to change parliamentary privilege and possibly codify it if the trial of the parliamentarians was prevented because of parliamentary immunity based on the doctrine of exclusive cognisance. While this did not happen, the Cameron/Clegg coalition government nevertheless decided to issue a Green Paper on Parliamentary Privilege. The Green Paper backed away from the suggestion that substantive codification of privilege was needed. This position was subsequently endorsed by the Joint Committee on Parliamentary Privilege appointed to review the Green Paper. In language that bespeaks of an underlying suspicion that the courts might overreach their jurisdiction, the report explained that it "did not consider that comprehensive codification is needed at this time." Should legislation be considered, it "should only be used when absolutely necessary, to resolve uncertainty or in the unlikely event of Parliament's exclusive cognisance being materially diminished by the courts." The joint committee's concern about court intrusion was influenced by the examples of Australia and New Zealand. Both resorted to legislation, Australia in 1987 and New Zealand in 2014, to restrain the perceived overreach of the courts following judgments that were determined to have gone too far in reducing the protection of privilege. Samson notes how, in the case of New Zealand, its Parliament reacted to what it saw as a breach in the mutual comity that should exist between Parliament and the courts. If this comity is not sufficiently respected, Parliament will have little choice but to provide a statutory remedy to keep the courts within proper bounds. However, legislation is not seen as a preferred option at Westminster. In fact, it should be resisted. This is for two basic reasons: legislation would limit flexibility with respect to the scope of privilege and it would be subject to interpretation by the courts. Codification of parliamentary privilege, therefore, should be avoided if possible.

Unease about the courts and concern for comity also motivated Erskine May in considering how to balance the relationship of the courts to Parliament. Writing soon after the *Hansard v. Stockdale* judgments that had brought Parliament near to a constitutional crisis, May found the problem deeply troubling. As he put it in the opening lines of his chapter on Parliament and the courts in his *Treatise*, "The precise jurisdiction of the courts of law in matters of privilege, is one of the most difficult questions of constitutional law that has ever arisen. Upon this point the precedents of Parliament are contradictory, the opinions and decisions of the judges have differed, and the most learned and experienced men of the

present day are not agreed." Part of the problem, as May recognised and as Samson acknowledges, is that Parliament itself can be doubtful in certain cases about its claimed authority and might hesitate in its exercise for this reason as well as for fear of public opinion. In the end, May concluded that codification was the better approach in resolving the relationship between Parliament and the courts. After all, a statute, the Parliamentary Papers Act 1844, had brought about an uneasy resolution of the *Stockdale* case.

Through the nine editions of the *Treatise* authored by May, the chapter on Parliament and the courts changed little except for taking note of any relevant court decisions made between the editions. Codification remained the answer that he thought could settle this constitutional standoff between Parliament and the courts. A law on privilege could establish the parameters of privilege that would protect the interests of Parliament and be respected by the courts. The risk of losing the flexibility attributed to unwritten, uncodified privilege did not outweigh his preference for codification. Indeed, Article 9, a statutory assertion of privilege, has effectively protected Parliament for almost 350 years. Nor should it be forgotten that the Stockdale cases and their controversial judgments arose from a claim that was found to be difficult, obscure and contestable. And the solution to the serious crisis arising from *Stockdale* was the enactment of the Parliamentary Papers Act 1844. However, like other initiatives for reform, his proposal to codify privilege in statute was not seriously considered. Nonetheless, his chapter on Parliament and the courts survived another forty years through the thirteenth edition that appeared in 1923.

The shift away from codification came with the Campion edition of the *Treatise* published in 1946. Since then, the notion that flexibility is preserved as an advantage if parliamentary privilege remains unwritten has taken hold and remains the dominant view at Westminster. Australia and New Zealand, who share the same basic position as Westminster that parliamentary privilege must be protected from interference by the courts, have enacted statutes defining privilege to limit the role of the courts in challenging the authority of Parliament. While the two approaches are motivated by the same misgivings about court intrusion into the affairs of Parliament, neither definitively precludes intervention by the courts. What is obscure might require clarification and what is statutory is subject to interpretation. But does this really continue to be a legitimate concern in the 21st century? Should Article 9, a seventeenth century law expressing hostility to courts controlled by the Crown, remain the prism through which to define the relationship between Parliament and the courts? Perhaps the time has come, in the words of Mark Egan, for Parliament to be bolder and more daring in evaluating the supposed tension between Parliament and the courts. The temptation to be bolder might be encouraged if David Howarth's proposal to think of the operations of Parliament and more

specifically the House of Commons as a legal system were accepted. A former MP and now professor of Public Law at Cambridge, Howarth believes that treating the workings of Parliament in this way would "help to focus more attention and effort on reforming Parliament." Howarth's is the final chapter of the collection of *Essays* and it is perhaps a fitting way to conclude. In suggesting reforms to improve the effectiveness of proceedings and provide greater satisfaction to Members, Howarth is maintaining the approach of May himself to use his knowledge and experience to enhance the role of Parliament in sustaining democratic governance.

Other chapters in the collection of the Essays not assessed in this review explore different aspects of the career and legacy of Erskine May, including the influence of his Treatise as a model for manuals in other parliamentary jurisdictions, as well as the history of some procedural developments at Westminster. Oonagh Gay, former Clerk of the House of Commons Library, writes a solid account of the Library within the House of Commons from the time of May and the different challenges it has faced in establishing its role to support MPs in their work. The modern profession of clerks and the talents required to perform the multiple duties associated with it are explored by Emma Crewe, Professor of Social Anthropology. There are also assessments about modern procedures followed in the passage of bills written by Jacqy Sharpe, a former clerk in the House of Commons, and Paul Evans. Part IV is taken up with two chapters on Select Committees. In a second contribution, Colin Lee recounts the brief history of select committees between 1880 and 1904 when consideration was given by some, including Lord Randolph Churchill, to use them to scrutinize departmental expenditures. The history of select committees is further examined by Mark Hutton, Clerk of the Journals in the House of Commons, whose chapter provides a fascinating prelude to the current status of select committees which, since 1979, have a departmental profile.

John of Salisbury, a twelfth century English churchman, is credited for the literary image of dwarfs standing on the shoulders of giants to suggest how advancement can sometimes depend on successors building on the authority and wisdom of past accomplishments. Thomas Erskine May was no giant and his successors, among them the many clerks and academics who contributed to the Essays, are no dwarfs. Rather it is the Treatise itself that is out of scale and truly monumental. Having gone through 25 editions over 170 years, it remains the standout authority on parliamentary practice. As the different contributions to the Essays suggest, it is the *Treatise* that anchors the history of modern procedure at Westminster and the development of its clerks as the knowledgeable and experienced practitioners upon whom the Members rely for information and advice. First written and updated by May alone, from about the seventh edition onwards it became a task shared with other clerks and

this practice has only grown over time. The *Essays* are an acknowledgement of the sustained importance of the *Treatise* and a fitting tribute to its first author. Equally important, it is also undeniable evidence of the dedication and commitment of today's clerks to build on that history and continue in their service to Parliament at Westminster.

Gwynoro a Gwynfor, Gwynoro Jones, Y Lolfa, £9.99, ISBN: 9781784614218

How Parliament Works (8th edition), by Robert Rodgers and Rhodri Walter (edited by Nicolas Besly and Tom Goldsmith), Routledge, £35.99, ISBN: 9780815369646

Ayeesha Bhutta, a clerk in the House of Lords writes:

"I shouldn't think too much more about politics, it can only make you ill."[1]

First published in 1987, *How Parliament Works* aims to provide a straightforward and readable analysis of the structures, work, and daily life of Parliament. The book is aimed at those thinking, perhaps too much, about Parliament and politics whether through professional necessity, the demands of study, or general interest. It is a testament to the growing interest in, and complexity of, the institution, that the book has grown from a moderate 272 pages in the first edition, to touching 450 in this, its eighth incarnation.

The latest edition is the work of new authors: the baton has passed from the, now retired, clerks Robert Rodgers (now Lord Livsane) and Rodhri Walters to Nicolas Besly and Tom Goldsmith, currently clerks in the House of Lords and House of Commons respectively. Messrs Besly and Goldsmith have, in their own words "comprehensively revised and updated" the text.

Governance and Parliamentary actors

"A man may speak very well in the House of Commons, and fail very completely in the House of Lords. There are two distinct styles requisite."[2]

To fulfil its aims, and meet the needs of its wide audience, the book covers a huge range of ground over its 12 chapters. Each considers the workings, process, or procedures of each House. The workings of the House of Commons—perhaps inevitably—dominate, but the House of Lords is not neglected: the distinct character of the upper House, its relevance and importance are clear.

The book starts with a whistle-stop tour through 750 years of parliamentary buildings, and the fragility of the modern-day parliamentary estate, before moving to describe the key actors within the governance and administration of each House. As well as the formal arrangements, the book analyses the other influences on MPs and Peers: party groups, regulation of behaviour, lobbying.

1 Terry Pratchett, *Dodger* (2012)

2 Benjamin Disraeli, *The Young Duke* (1831)

All shape how Parliamentarians act.

The authors gently probe controversial areas. They note that the UK ranks 39th in the world for gender balance in its lower house, and that 70 more ethnic minority MPs would be needed to make the House of Commons representative of the country as a whole. The authors calmly explore whether this matters or whether the job of an MP, of any race or gender, is to represent those different to herself. Elsewhere contentious issues are passed over with restraint and understatement. For example, some "politicians regretted the lack of forewarning" that Big Ben's chimes would be silenced (at the time a headline grabbing major controversy).

Parliamentary business

"He never went very far astray … because he always obeyed the clerks and followed precedents."[3]

The meat of the book is the lucid exposition of the business of Parliament: from legislation in all its forms to written questions, debates, and committees. This explanation of what Parliament does day-to-day forms the core of the book.

These sections illustrate the importance of procedure in providing order, certainty, and consistency in the work of the House. The procedural theory is linked to parliamentary reality. Examples of order papers, motions and bills helpfully illustrate the text. The work carried out in a committee room is not just described, the layout of the room is provided. Specific, and for the most part, recent, examples are used. The EU (Withdrawal) Act 2018 provides the model for the anatomy of a bill; the Prevention of Terrorism Act 2005 the example of high-stakes ping-pong.

In these chapters, as throughout the book, data are used to provide further insights. Some trends are expected—the highest number of government defeats in the House of Lords occurred in the 2001–2005 Parliament. Others show the exponential growth of Parliamentary business: only 62 written questions were tabled in the House of Lords in 1961–62; over 8000 in 2015–16 (a 13,000 per cent increase).

Inevitably, given the amount of ground to be covered, the full complexity of some areas cannot be fully detailed; the intricacies of ping-pong and byways of privilege cannot be explored in the available space. This also means that the reader can be tantalised by unexplained procedural peculiarities (why does the House of Lords give the Select Vestries Bill a first reading on the day of the Queen's speech…?).

[3] Anthony Trollope, *The Prime Minister* (1876)

Parliamentary effectiveness

"And I would have you always remember the purport for which there is a Parliament elected in this happy and free country. It is not that some men may shine there, that some may acquire power, or that all may plume themselves on being the elect of the nation….You are there as the guardian of your fellow-countrymen—that they may be safe, that they may be prosperous, that they may be well governed and lightly burdened—above all that they may be free. If you cannot feel this to be your duty, you should not be there at all."[4]

The book also attempts to go beyond setting out processes, facts and figures and analyse the purpose and effectiveness of the parliamentary operations described. The figures provided throughout the text give a clear idea of the quantity of the UK Parliament's work. The quality of that work is a trickier area. In some aspects (select committee work) it is acknowledged that "objective measures of effectiveness of influence are impossible".

Case histories, for example of select committee influence and House of Lords legislative scrutiny, provide concrete examples of how Parliament can improve how the country is governed. On the former, it is noted that "this process of accountability is never comfortable for those being scrutinised; and should not be", but, as noted by the late Rt Hon Robin Cook "Good scrutiny makes for good government".

The case is made for the value of debates in both Houses. They provide challenge, exposure, testing, and the chance to influence. In the Lords a careful analysis of the experience and expertise that Peers bring concludes that "it is more apposite to regard the House of Lords as currently composed as a chamber where experience abounds. It is, for the most part, a knowledgeable place in in a way that distinguishes it from most other parliamentary assemblies around the world."

Nonetheless, the authors bring a degree of sceptical realism to their analysis and acknowledge frankly areas of deficiency. For example, the meaningful "opportunities for debate and consideration" of expenditure "are almost non-existent"; a complaint of a century's standing. There is "unease" about how closely MPs scrutinise the written questions asked in their names; and acceptance that, the unique utility of this devise has been largely superseded by greater government digital publication, the effect of the internet, and the rights of citizens to make freedom of information requests.

Areas were improvements could be made are spread throughout the book: from electronic voting, to Private Members Bill procedures. The book concludes with a short section on the wider issues related to the reform to each House.

[4] *Ibid.*

Many would agree with the proposals the authors outline: more scrutiny of delegated legislation or select committee power in the House of Commons.

The book notes that any changes to procedure are only as good as the willingness of MPs and Peers to use the tools at their disposal. The use of existing processes to influence the Brexit debate shows the adaptability and limitations of the current system. There can be little doubt that the workings of the UK Parliament have been stretched by the focus on Brexit: adapting the deferred votes procedures to allow 'indicative votes' on Brexit options, the challenge of Brexit to the rules of the debate in the House of Lords; the usurping, by backbench MPs, of the Government's virtual monopoly of the Order Paper. These are matters, no doubt, for the ninth edition.

The Public Law of Wales: Legislating for Wales, by Thomas Glyn Watkin and Daniel Greenberg, University of Wales Press, £62.83, ISBN: 9781786833006

Wales—The First and Final Colony, by Adam Price, Y Lolfa, £9.99, ISBN: 9781784615925

CONSOLIDATED INDEX TO VOLUMES 83 (2015) – 87 (2019)

This index is in three parts: a geographical index; an index of subjects; and lists of members of the Society who have died or retired, of privilege cases, of the topics of the annual questionnaire and of books reviewed.

The following regular features are not indexed: books (unless substantially reviewed), sitting days, amendments to standing orders and unparliamentary expressions. Miscellaneous notes are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory;	NI	Northern Ireland;
Austr	Australia;	NSW	New South Wales;
BC	British Columbia;	N. Terr.	Northern Territory;
Can	Canada;	NZ	New Zealand;
HA	House of Assembly;	PEI	Prince Edward Island;
HC	House of Commons;	Reps	House of Representatives;
HL	House of Lords;	RS	Rajya Sabha;
LA	Legislative Assembly;	SA	South Africa;
LC	Legislative Council;	Sask.	Saskatchewan;
LS	Lok Sabha;	Sen.	Senate;
NA	National Assembly;	Vict.	Victoria;
NF and LB	Newfoundland and Labrador;	WA	Western Australia.

GEOGRAPHICAL INDEX

For replies to the annual questionnaire, privilege cases and reviews see the separate lists.

SUBJECT INDEX

Sources and authors of articles are given in brackets.

Sources and authors of articles are given in brackets.

LISTS

Members of the Society

Abbreviations: R retirement, O obituary.

Privilege cases