# The Table

BEING

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

EDITED BY

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VOLUME XLVII

*for* 1979

ISBN 0 904979 04 0

SOCIETY OF CLERKS-AT-THE-TABLE IN
COMMONWEALTH PARLIAMENTS,
HOUSES OF PARLIAMENT,
LONDON, S.W.1

1979

*Price* £3.50

# USUAL PARLIAMENTARY SESSION MONTHS

| Parliament: | Jan. | Feb. | Mar. | April | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| United Kingdom | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ |
| Northern Ireland | *Suspended* | | | | | | | | | | | |
| Jersey | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | ⊙ |
| Isle of Man | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ |
| Canada — Federal Parliament | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | ⊙ |
| Canada — Ontario | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | | ⊙ | ⊙ | ⊙ |
| Canada — Quebec | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ |
| Canada — Nova Scotia | | ⊙ | ⊙ | ⊙ | | | | | | | | |
| Canada — New Brunswick | | | ⊙ | ⊙ | ⊙ | | | | | | | |
| Canada — Manitoba | | | ⊙ | ⊙ | ⊙ | ⊙ | | | | | | |
| Canada — British Columbia | ⊙ | ⊙ | ⊙ | ⊙ | | | | | | | | |
| Canada — Prince Edward Island | | ⊙ | ⊙ | ⊙ | | | | | | ⊙ | ⊙ | |
| Canada — Saskatchewan | ⊙ | ⊙ | ⊙ | ⊙ | | | | | | | ⊙ | |
| Canada — Alberta | | ⊙ | ⊙ | ⊙ | | | | | | ⊙ | ⊙ | |
| Canada — Newfoundland | | | ⊙ | ⊙ | ⊙ | ⊙ | | | | | | |
| Canada — Northwest Territories | ⊙ | ⊙ | | | ⊙ | | | | | ⊙ | | |
| Australian Commonwealth — Commonwealth Parliament | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Australian Commonwealth — New South Wales | | ⊙ | ⊙ | | | | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Australian Commonwealth — Queensland | | | ⊙ | ⊙ | | | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Australian Commonwealth — South Australia | | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | |
| Australian Commonwealth — Tasmania | | | ⊙ | ⊙ | | ⊙ | ⊙ | | ⊙ | ⊙ | ⊙ | ⊙ |
| Australian Commonwealth — Victoria | | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Australian Commonwealth — Western Australia | | ⊙ | ⊙ | ⊙ | ⊙ | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | |
| Australian Commonwealth — Northern Territory | *No settled practice* | | | | | | | | | | | |
| Papua New Guinea | | ⊙ | ⊙ | | ⊙ | ⊙ | | ⊙ | ⊙ | | ⊙ | |
| New Zealand | | | | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Western Samoa | | | | | | ⊙ | ⊙ | ⊙ | | ⊙ | ⊙ | ⊙ |
| Sri Lanka | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| India — Central Legislature | | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | | ⊙ | ⊙ |
| India — Andhra Pradesh | | ⊙ | ⊙ | | | ⊙ | ⊙ | | | | ⊙ | ⊙ |
| India — Bihar | | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ |
| India — Gujarat | | ⊙ | ⊙ | ⊙ | | | | ⊙ | ⊙ | | ⊙ | ⊙ |
| India — Haryana | *No settled practice* | | | | | | | | | | | |
| India — Kerala | | | ⊙ | ⊙ | | | ⊙ | ⊙ | | ⊙ | ⊙ | ⊙ |
| India — Madhya Pradesh | | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | | | ⊙ | |
| India — Tamil Nadu | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | | | ⊙ |
| India — Maharashtra | | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | | ⊙ | ⊙ |
| India — Karnataka | | ⊙ | ⊙ | ⊙ | ⊙ | | | | | | ⊙ | |
| India — Orissa | | ⊙ | ⊙ | ⊙ | | | | ⊙ | ⊙ | | | |
| India — Punjab | | | ⊙ | ⊙ | ⊙ | ⊙ | | | | | ⊙ | ⊙ |
| India — Rajasthan | | ⊙ | ⊙ | ⊙ | | | | ⊙ | ⊙ | ⊙ | | |
| India — Uttar Pradesh | | | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | | | ⊙ |
| India — West Bengal | | ⊙ | ⊙ | ⊙ | | | ⊙ | | ⊙ | | ⊙ | ⊙ |
| Ghana | | | ⊙ | | | ⊙ | | | ⊙ | | | ⊙ |
| Malaysia | ⊙ | | ⊙ | ⊙ | | ⊙ | ⊙ | | | | ⊙ | ⊙ |
| Sarawak | *No settled practice* | | | | | | | | | | | |
| Sabah | | | ⊙ | | | ⊙ | | | ⊙ | | | ⊙ |
| Singapore | *No settled practice* | | | | | | | | | | | |
| Sierra Leone | | | ⊙ | ⊙ | | | ⊙ | | | | ⊙ | |
| Tanzania | | ⊙ | | ⊙ | | ⊙ | ⊙ | | | ⊙ | | |
| Jamaica | | | ⊙ | ⊙ | ⊙ | | | | | | ⊙ | ⊙ |
| Trinidad and Tobago | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | |
| Barbados | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ |
| Kenya | | ⊙ | | | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | |
| Malawi | *No settled practice* | | | | | | | | | | | |
| Zambia | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | | | ⊙ | ⊙ |
| Bermuda | *No settled practice* | | | | | | | | | | | |
| Guyana | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| British Solomon Islands | | | ⊙ | | | | ⊙ | | | | ⊙ | |
| Gibraltar | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ |
| Malta, G.C. | *No settled practice* | | | | | | | | | | | |
| Mauritius | | | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ | |
| St. Vincent | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Belize | | ⊙ | ⊙ | | ⊙ | ⊙ | ⊙ | | ⊙ | ⊙ | ⊙ | ⊙ |
| Cayman Islands | | | ⊙ | | | ⊙ | | | ⊙ | | ⊙ | |
| Lesotho | *No settled practice* | | | | | | | | | | | |
| Cook Islands | *No settled practice* | | | | | | | | | | | |
| Seychelles | *No settled practice* | | | | | | | | | | | |
| Grenada | *No settled practice* | | | | | | | | | | | |
| St. Lucia | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ |
| Bahamas | *No settled practice* | | | | | | | | | | | |
| Fiji | | | ⊙ | | | ⊙ | | | ⊙ | ⊙ | ⊙ | ⊙ |
| Hong Kong | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | ⊙ | | | ⊙ | ⊙ | ⊙ |

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# The Table

BEING

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

## I. EDITORIAL

One of the articles we are able to include this year deals with the recommendations of the Westminster House of Commons Procedure Committee of 1976–79. These involve major changes in the Committee structure of the House of Commons. In the light of the announcement in the Queen's Speech opening the new Parliament on 15th May 1979 that the House of Commons will be given an opportunity to discuss and amend its procedures particularly as they relate to the scrutiny of the work of Government, it is likely that there will be fundamental changes which will have to be further covered in future volumes of THE TABLE.

The article dealing with possible changes in House of Commons procedures is complemented by one dealing with the work of the Estimates Committee of the Australian Senate. Another Australian article deals with constitutional changes in New South Wales. We also include an article from Canada on the introduction of television coverage of House of Commons' proceedings. It is apparent that this step has brought parliament to a much wider public than ever before. It is this desire which lies behind the steps now being taken at Westminster to provide much fuller information to the public about parliament, and which is the subject of a very full article in the Journal. The Journal also includes interesting articles from New Zealand and Lesotho, as well as one describing a meeting of the Society of American Clerks-at-the-Table.

As a result of our pleas for more contributions this year the Journal is considerably longer than it was both last year and the year before. The Editors are extremely grateful for this encouraging response but nevertheless point out that more than half the articles this year deal with matters at Westminster. We would like to reverse this proportion and, therefore, continue to urge clerks from overseas, whether from small or large legislatures, to let us have their contributions. We always hope to be able to publish most of what we receive.

As we go to press we have received news of the retirement on 31st July 1979 of Sir Richard Barlas, Clerk of the House of Commons. Our next volume will carry a full appreciation of Sir Richard's career. He is succeeded by Charles Gordon, a distinguished former joint editor of THE TABLE. The present Editors would like to take this opportunity of congratulating one of their predecessors on becoming the first Official of the Society to achieve the high office of Clerk of the House.

**G. N. H. Grose**—Graham Grose, Clerk-Assistant of the Legislative Council of Victoria, died on 1st September 1978, aged 52. The Legislative Council had the opportunity on 12th September of paying tribute to Mr. Grose and recording the sense of loss they had suffered by his death.

The Hon. A. J. Hunt, Minister of Local Government and Leader of the House moved the following motion:

That this House place on record their deep sense of the loss they have sustained through the death of their Clerk-Assistant, Graham Norman Hallett Grose, and their high appreciation of the valuable services rendered by him as an Officer of Parliament.

He then spoke as follows:

"No greater tribute can be paid to the late Graham Grose than that reflected in the number of members of this House who attended his funeral service last week. I am sure that his family greatly appreciated the gesture.

Graham Grose was a remarkable man and his death at only 52 years is a very sad loss indeed, leaving, as he does, a widow and young daughters. . .

After service as a clerk of courts, Graham joined the Legislative Assembly staff in 1950 and transferred to the Legislative Council in 1951, serving for some years as Clerk of the Papers, as Usher of the Black Rod from 1962 to 1969 and as Clerk-Assistant from 1969 until the date of his death.

He also served as secretary to quite a number of Parliamentary Select Committees and many members of this House got to know his real worth from the work he did in those committees. Many of us enjoyed his fellowship when committees travelled interstate on their studies.

Graham was an honest, discreet and impartial adviser at all times. One could go to him in complete confidence and the advice he gave was sound. We were aware two years ago that he was suffering a serious illness and honourable members will recall that he came back to this place having lost a great deal of weight. He knew then that he possibly had cancer of the liver and that his life with us could be limited. Although he knew that, I doubt whether many members knew it at the time, because Graham never showed it by his demeanor. He went about his work in the same way as he had done in the past.

A few honorable members who were perhaps a little closer to him visited him during his terminal illness and were shocked at his drawn appearance and the way in which he had lost so much weight, yet Graham himself, knowing that the end was near, remained perfectly cheerful and put all those who visited him completely at their ease. He even made many of the arrangements for his own funeral.

Mr. President, we will miss him and we extend to his widow and his daughters our deepest sympathy and understanding in the sad loss they have suffered."

After several other members had paid their tributes, the President of the Legislative Council said this:

"At 52, Graham Grose was too young to die. At the end of the last sessional period, he took his place at the table right through to the last word on the very last day, but very few of us knew that we would not see him again in that position. However, he knew and he performed his duties with the utmost courage. The late Graham Grose was a modest man. Honorable members have heard the Leader of the House outline his list of achievements and service to the community. Although I was closely associated with the area, I had no idea of his wide involvement in these community affairs. I had met him at functions associated with some of the organizations mentioned and, for example, it was a long time before I discovered that he had been made a Life Governor of the Sandringham and District Memorial Hospital. Certainly, he never told me anything . . .

That was the sort of man he was and that is how he carried out his duties as Clerk-Assistant in this place. He held the scales of justice, as he saw it, with equal poise. He gave equally good advice to members from all sides of the House without fear and without favour. The advice he proferred was the best advice as he saw it. I doubt whether I have ever seen a more dignified man in his position. He had an innate dignity that was respected."

The motion was then agreed to in silence, Members showing their unanimous agreement by standing in their places.

On behalf of all members of the Society of Clerks-at-the-Table in Commonwealth Parliaments, we also would like to record our sympathy for Graham Grose's family especially, but also for the Legislative Council of Victoria.

**A. D. T. Eve**—We have learned with great regret of the death on 30th August 1978 of Mr. A. D. T. Eve, Assistant Clerk to the Bermuda Legislature. He had held this position since 1968. Mr. Eve was married with two sons and a daughter.

**P. Teangabai**—We record with deep regret the death of Peter Teangabai, Clerk of the House of Assembly of the Gilbert Islands, on 4th February 1978. The news of his death reached the Editors only after the previous volume had gone to press.

We also record with regret the deaths of the following former members of the Society:

**Captain Sir Kenneth Mackintosh, K.C.V.O.**—formerly Yeoman Usher of the Black Rod and Serjeant at Arms, House of Lords;

**Sir Alan Turner, C.B.E.**—formerly Clerk of the House of Representatives, Canberra, Australia;

**Sir Francis Lascelles, K.C.B., M.C.**—formerly Clerk of the Parliaments, House of Lords; and

**Henry Burrows, C.B., C.B.E.**—formerly Clerk Assistant, House of Lords.

**A. D. Drummond**—After serving the South Australian Parliament for more than 29 years, Mr. A. D. Drummond retired as Clerk of the Legislative Council of the South Australian Parliament on 25th June,

1978. He joined the Parliament House staff as Office Clerk in the Legislative Council in 1949, after serving in various government departments. In 1952 he was appointed Clerk-Assistant and Sergeant-at-Arms and in 1953 became the first Gentleman Usher of the Black Rod of the South Australian Parliament. He served as Clerk-Assistant and Black Rod until February, 1977, when he was appointed Clerk of the Legislative Council. He attended the Twenty-Sixth Parliamentary Seminar at Westminster in 1977 as an observer and also attended Conferences of Australasian Presiding Officers and Clerks in 1974 and 1978.

**Alcide Paquette**—Mr. Alcide Paquette, Assistant Clerk of the Canadian Senate, retired at the end of 1978. On 24th January 1979 the Leader of the Government, Senator Perrault, paid the following tribute to Mr. Paquette:

"I want to take this occasion to mark the retirement at the end of last year of one of the Senate's most talented and hard-working officers, Mr. Alcide Paquette, our Clerk Assistant.

Mr. Alcide Paquette has served Parliament for forty years. He worked in the office of the Leader of the Opposition and in the Prime Minister's in the other place until 1957. He came to the Senate in June 1958.

His work for us was outstanding. His knowledge was vast, as was his patience. His guidance was often sought and his advice always accepted.

His interest in Parliament was not confined to this place. Mr. Paquette was Executive Secretary of the Canadian group of the Inter-Parliamentary Union from 1960 to 1965, and he was also on the International Executive of the Association of Secretaries General of Parliaments.

Honourable senators, we in this place have always been fortunate in the quality of our officers. Alcide Paquette for 30 years maintained that high quality. I am sure that all honourable senators will wish him a long and fruitful retirement."

Senator Flynn, Leader of the Opposition, spoke as follows:

"I am pleased to join the Leader of the Government in expressing to Alcide Paquette our heartfelt appreciation for his long and devoted services to the Senate.

Indeed, it will be hard for most of us, because he has been here for 20 years – a few of us have been here longer but not many – not to see Alcide Paquette at the clerk's table, not to see him perform his duties with the diligence and competence that were obvious to all.

As the Leader of the Government pointed out, he has had a 40-year career here in Ottawa, half of which was spent at the other place where he served the leader of the opposition and after 1957, where he worked for a while in the Prime Minister's Office.

Alcide was diligent, studious, meticulous and very competent. He was everyone's friend, everyone liked him, as was pointed out by my friend, Senator Bourget, whom I want to greet upon his return to the Senate: he is looking very fit, in very good health.

Alcide Paqette discharged many responsibilities in the Ottawa community. He was extremely active in benevolent organizations which I am sure he will continue to be.

So, on behalf of the opposition, and also joining the whole Senate, I wish him happy years in retirement. I am sure he will fill those years in ways both very useful and very pleasant. I also hope he will come back to see us, which I invite him to do. In addition, I am sure that on occasion, and, even perhaps quite often, the clerk of the Senate or one of us shall want to ask him for his good advice."

Senator Croll also paid tribute to Mr. Paquette:

"I am very pleased to note that we are honouring Mr. Paquette. Mr. Paquette tendered his resignation on December 28th, 1978, but we of the Senate have been fortunate indeed to have had him all to ourselves for 20 years. Throughout that time we have had the benefit of his parliamentary experience and his invaluable services. I personally will miss him very much, because I turned to him a great deal for guidance and advice. He always felt that he was a public servant, and did his utmost to answer any question that was presented to him.

It is fitting that the Senate should express to this scholarly man its appreciation of the remarkable service rendered by him. He served the Senate as Assistant Clerk for the past 20 years, but served Parliament for more than 40 years, with devotion and loyalty and in a gentle and kindly way. He is therefore assured of the Senate's gratitude for those faithful years as Assistant Clerk."

**J. B. Roberts, I.S.O., M.B.E., J.P.**—After serving the Western Australian Parliament for more than 50 years, Mr. John Bertram Roberts retired from his position as the Clerk of the Legislative Council and Clerk of the Parliaments on 31st July, 1978. He joined the Parliament as a messenger in the Legislative Council in May 1928, was transferred to the Joint House Staff in 1929, and returned to the Legislative Council as Clerk of Records and the Accounts in 1936. He was appointed Secretary to the Joint House Committee and Controller of Parliamentary Refreshment Rooms in 1947, then Clerk Assistant of the Legislative Council and Usher of the Black Rod in 1951, and became the seventh Clerk of the Legislative Council and Clerk of the Parliaments in 1956.

He was Honorary Secretary of the Western Australian Branch of the Commonwealth Parliamentary Association, 1969-73, and from 1975 until his retirement in 1978. He served as Assistant Clerk to the Australian Constitutional Covention. He attended a number of Parliamentary conferences and spent several months on attachment at the House of Commons, Westminster.

On 10th May, 1978, Mr. Roberts established a precedent by being invited to address the Members of the Legislative Council from the Floor of the House when replying to a complimentary motion moved by the Leader of the House.

Mr. Roberts had a distinguished military career, serving with the Australian Imperial Force during the 1939–45 War and rising to the rank of Brigadier in the Citizen Military Forces. His other great interest was the work of the National Trust and he served on both the State and national Councils of the Trust.

The Editors have received news of **Mr. George Stephen,** Assistant Clerk of the Saskatchewan Legislative Assembly from 1922–1949 and Clerk of the Legislative Assembly from 1949–1960. He is now 91 years old and is living in London, Ontario. Mr. Stephen is well and has a very clear memory of his years at the Table in Saskatchewan and of his associations with his many colleagues throughout the Commonwealth.

We have also received news of the death at the age of 100 of **Mr. Bertram Edward Sargeant,** M.V.O., O.B.E. Mr. Sargeant was never a member of the Society of Clerks, but he was *ex officio* Clerk of the Legislative Council of the Isle of Man from 1910–1944 and may therefore have been known by older members of the Society.

# II. THE HOUSE OF COMMONS SELECT COMMITTEE ON PROCEDURE, 1976 TO 1979

BY W. A. PROCTOR

*A Senior Clerk in the House of Commons*

## Introduction

One question which considerably preoccupied Members of the House of Commons at Westminster during the short period before the dissolution which followed the defeat of the last Labour Government on 28th March 1979, was whether, when, and to what extent, the House would have an opportunity to reach decisions about the recommendations for procedural reform made by the most recent Select Committee on Procedure, whose main report was published in August 1978.[1]

Despite the political interest surrounding the position of the Labour administration, this primarily domestic matter remained a regular – and sometimes dominant – feature during business questions to the Leader of the House on Thursday afternoons throughout the session, and interest and concern among Members was if anything increased, rather than dissipated, after a long but inconclusive debate on the Committee's recommendations in late February.[2] Indeed, the very precariousness of the Government's position, the inevitability of a General Election within a few months, and the unlikelihood of a further period of minority government, undoubtedly helped to intensify the feeling among at least some supporters of procedural reform that the opportunity for implementing change must be taken while the influence of backbenchers and minority parties was at its greatest and before a new Government, almost certainly with a working majority, was in a position to ignore or modify the proposals contained in the Procedure Committee's Report.

Immediately following the February debate, therefore, the Procedure Committee itself drew up a short list of priority recommendations and suggested a method by which they could be considered and decided upon by the House[3], and in the last few weeks of the Parliament sustained pressure was put upon the then Leader of the House (Mr. Michael Foot, M.P.), himself somewhat unenthusiastic about many of the reforms proposed, to find time for the Committee's priority proposals to be put to a vote in the House.[4] Although immediate action was forestalled by the subsequent dissolution, the supporters of the Procedure Committee's proposals returned to the subject immediately after the General Election, encouraged by a commitment in the first Queen's Speech of the new Conservative administration that Members would be "given an opportunity to discuss and amend their procedures, particularly as they relate to their scrutiny of the work of Government".[5] Within ten days of the opening of the new Parliament no less than 258 Members – including many new MPs and many former Labour ministers – had put their

names to an Early Day Motion urging the new Leader of the House "to ensure that the House has an early opportunity to take decisions on this matter".

**Origins of the Committee**

The Report which generated so much interest was the result of two year's work by the members of the Procedure Committee, whose appointment followed an announcement in the Queen's Speech which opened the parliamentary session of 1975–76 that proposals would be put forward "for a major review of the practice and procedure of Parliament."[6] Although the Labour Government's announcement of the inquiry was generally well received, considerable scepticism was shown by Members during a debate prior to the Committee's appointment both about the form of the inquiry originally suggested by the Government and about the likely results which any inquiry, whatever its form, might have.

In the first place, the then Leader of the House of Commons, Mr. Edward Short, M.P. (now Lord Glenamara), made tentative suggestions for a Committee of Inquiry which, although appointed by the House, and having "some of the characteristics of a Select Committee", might also include "a minority of members from outside the House . . . who can bring fresh views to its deliberations". In his opinion, if the House could find the right people – "for example, from industry, trade union and academic spheres – they would add enormously to an inquiry of this kind".[7] Although several Members did support Mr. Short's suggestion, an overwhelming majority of those who spoke in the debate appeared to regard it as a more or less outrageous constitutional departure, and a challenge to the ability of Members to put their own House in order. It was, in any case, thought to be fundamentally impracticable since an outsider's view of how the House worked was usually incorrect and the inclusion of outsiders would merely involve the Commons Members in a long and probably fruitless attempt to educate them. Even Mr. John Davies, M.P., a former Director-General of the Confederation of British Industry, felt that to try to explain to outsiders (including industrialists) the "informality and intimacy" of the House without directly subjecting them to the experience would be wholly ineffective, and "if it is wholly ineffective, they will be, too".[8] In consequence, Mr. Short's suggestion was, to all intents and purposes, abandoned.

The second worry expressed during the debate in February 1976 was that the "major review" of practice and procedure might merely result – as previous inquiries were alleged to have resulted – in further moves towards an "efficient" machine for processing Government legislation and a consequent further diminution in the opportunities of private Members to scrutinise and criticise Government policies, administration and expenditure, and in the real powers of the House as a whole *vis-a-vis* the Government. Although Mr. Short had laid emphasis on the Government's concern about the "quality of our democracy" and had suggested

that the central theme of the inquiry should be "the relationship between the Executive and the legislature", doubts about the Government's real purpose in proposing the inquiry were encouraged by his description of the respective roles of the Government and the House. In his view, the Government must "be able to secure from Parliament any necessary extension of their executive powers and to implement their election pledges, by legislation or otherwise", and he suggested some ways – such as the use of "framework legislation" – to make that task less burdensome; the job of Parliament, on the other hand, was "to set the limits of executive power and to scrutinise the exercise of executive power, to monitor our activities as a nation and to debate the great issues of the day."[9]

To a number of Members, that approach to the new procedural inquiry placed far too much emphasis on the apparent rights of the Government and on a mainly advisory and critical role for the Commons, and suggested too little interest in strengthening the control exercised by the Commons over the Government and civil service. To some, such as Mr. W. W. Hamilton, M.P., the very idea of the inquiry was a device "to keep us quiet for a while",[10] while to others there seemed a danger that the result of the inquiry would be a strengthening of the position of the Government in the House, rather than of the House over the Government. Mr. John Roper, M.P., for instance, reviewed the experience of Procedure Committees over the previous 125 years, and suggested that in most cases they had tended to produce Reports, close to the wishes of Government for a smooth passage for its business, which largely ignored the wishes of back benchers for "more effective and efficient ways of checking the Executive": "Thus minor changes are adopted. The reformers cry 'Foul', and the Government's position is strengthened. After a few years the argument starts all over again".[11]

Such disenchantment was perhaps inevitable, particularly since the proposed review of procedure, far from being unusual, came at the end of twenty years of more or less continuous inquiry by Procedure Committees, sometimes with broad and far ranging orders of reference, sometimes with narrow and specific tasks to perform. Between 1956 and 1976, in fact, Procedure Committees had been appointed in all but three sessions, and had made no less than forty-four separate reports to the House. In the session in which the new inquiry was announced, a sessional Procedure Committee was, as usual, at work, and produced three further Reports on relatively minor aspects of procedure relating to Questions and to private Members' bills. Winding up the debate for the Conservative Opposition, Sir Derek Walker-Smith, M.P., characterised the changes in practice and procedure since the second world war as "in a sense derogating from the traditional functions of Parliament" – although "basically accepted as necessary and absorbed into our pattern". "On the other side of the balance sheet, the additions to parliamentary opportunity have been rather less significant".[12] The general theme of

the House's response to Mr. Short's proposals was, therefore, that a new inquiry would indeed be a good thing, but it must be an inquiry by Members alone, and must aim at enabling the House as a whole effectively to perform its democratic duties.

**Appointment of the Committee**

The outcome of the debate was the appointment, on 9th June 1976, of a select committee of sixteen Members to "consider the practice and procedure of the House in relation to public business and to make recommendations for the more effective performance of its functions."[13] The Committee was appointed and the members nominated for the duration of the Parliament, and re-appointment and re-nomination were therefore unnecessary in subsequent sessions.

Apart from the powers granted to most select committees at this time, including the power to appoint sub-committees, the new Committee acquired two additional powers designed to facilitate consultation with outsiders and the employment of expert assistance. First, the Committee were empowered "to invite such persons as they may select to attend any of their meetings or meetings of Sub-Committees, and to take part in the deliberations of the Committee and their Sub-Committees", thus breaking the long-standing convention that strangers could not be admitted to the private, deliberative sessions of a select committee, even if the committee wished it. Although the details of the Committee's order of reference were not debated in the House at the time of their apppointment, the clear intention was to go some way towards Mr. Short's original proposal by enabling the Committee to invite eminent outsiders to participate in their work, even though they would not have full membership of the Committee.

Second, the Committee were granted the power to "appoint persons to carry out such work relating to the Committee's order of reference as the Committee may determine". This latter power went some way beyond the powers commonly granted to other committees to appoint part-time specialist advisers "for the purpose of particular inquiries, either to supply information which is not readily available or to elucidate matters of complexity within the Committee's orders of reference". The power granted to the new Committee was wide enough, for instance, to enable them to engage expert assistance on a more or less permanent or full-time basis, or to commission opinion surveys amongst Members or even the general public.

In the event the Committee chose to make no use whatsoever of either the power to invite strangers to participate in their deliberations or the power to recruit specialist assistance.

**Relations with the Lords Committee on Practice and Procedure**

On 19th July 1976, about a month after the appointment of the new Committee in the Commons, a Select Committee on Practice and Pro-

cedure was appointed by the House of Lords, with a slightly wider order of reference (unlike their Commons counterparts, they were empowered also to consider procedure and practice relating to private legislation). The Lords Committee were re-appointed in the three following sessions of the Parliament, and concentrated their attention on a number of specific procedural problems (some relating to private business) and to one matter of common concern to the two Houses, though a source of particular and perennial irritation to members of the upper House – namely the seasonal congestion of legislative business resulting from the introduction of most major Government bills in the Commons.

The two Committees were empowered by their respective Houses "to confer and to meet concurrently" for the purpose of deliberating and of examining witnesses. Although the committees kept in touch through the exchange of papers, they actually met together only once, on 19th April 1978, when they discussed the dates of sittings and recesses, which arose from various proposals made by the Lords Committee to help to ease the congestion in that House at the end of each Session[14], together with certain relatively minor matters relating to legislative procedure. Although one reason for the failure of the two committees to conduct any more extended dialogue may well have been the political differences between the main parties about the future of the House of Lords, in practice both committees concentrated their inquiries on matters largely related to and within the control of their respective Houses, and the scope for joint activity was therefore in any case very limited.

**Membership of the Commons Committees**

The sixteen members of the new Commons Committee were nominated on 15th June 1976, a week after the appointment of the Committee. They included eight Labour Members of the House, six Conservatives, one Liberal and one member of the United Ulster Unionist Coalition, Mr. Enoch Powell, M.P. Apart from Mr. Powell and one or two other very senior Members, the membership included a high proportion of relatively young Members, about half of them having first entered the Commons in or after 1970, and two as recently as 1974. At their first meeting, on 28th June 1976, the Committee appointed as their Chairman Sir Thomas Williams, Q.C., the Labour Co-operative Member for Warrington, who had served almost continuously in the House since 1949. As well as being a barrister of wide repute (and, before becoming an M.P., a minister in the Baptist Church), Sir Thomas was an experienced standing committee chairman in the Commons, chairman of the British Group of the Inter-Parliamentary Union and, subsequently, President of the IPU itself. He remained Chairman throughout the life of the Committee, although as a result of ill-health he was temporarily replaced for about three months in the spring of 1978 by Sir David Renton, QC, MP, a former Minister of State at the Home Office.

After three changes during the first year of the Committee's work

(two before the inquiry was properly underway), the membership of the Committee remained unaltered until their main Report was agreed in July 1978. During this period the Committee sat on no less than sixty-eight separate occasions, normally on Monday evenings, for meetings up to three hours long. In view of their many other commitments, the Members' attendance over such a long period was remarkably high. On average thirteen (out of a total of sixteen) attended each meeting of the Committee between June 1976 and July 1978, and at a large number of meetings the entire membership was present for all or part of the time. One Member, Mr. Michael English, M.P., missed only a single meeting throughout the two year period, and several others were absent for no more than four or five meetings.

**The course of the inquiry**

The Committee were required to make recommendations for the more effective performance of the functions of the House, and they devoted several meetings at the outset of their inquiry to identifying, and discussing the relative importance of, those functions. Although, as they made clear in their Report, they decided not to attempt to produce a precise or rigid definition of the role of Parliament in the working of the Constitution, they nonetheless identified certain major tasks which they believed the electorate expected their representatives to perform, which they summarised in their Report as: "Legislation, the scrutiny of the activities of the Executive, the control of finance, and the redress of grievance."[15] As a first step towards subjecting the procedure and practice of the House in these areas to detailed scrutiny, the Committee decided, on 12th July 1976, to make "the process of legislation" the first subject of enquiry, and on the same day agreed to a Special Report inviting written evidence from Members of the House and any other interested persons on that subject and on any other matter falling within their order of reference. They subsequently addressed specific requests for written evidence, based on a list of questions drawn up by the Committee, to a wide range of organisations involved in or affected by the legislative process such as the Law Societies, the Bar Council and local authority associations.

During the first few months of the next session, the Committee took oral evidence from a small number of senior Members, including the Leader of the House and his immediate predecessor, the Shadow Leader of the House and the Opposition Chief Whip, and Mr. Robert Mellish, M.P., who had previously served, in both Government and Opposition, as the Labour Party's Chief Whip. They also took evidence at the end of January 1977 from Mr. Alistair Fraser, the Clerk of the House of Commons of Canada, who made a special visit to the United Kingdom to give evidence to the Committee about the Canadian system, introduced in 1968, of specialist committees with responsibility for the consideration of bills and departmental estimates.

After the completion of this first series of evidence sessions, the Com-

mittee met in private between February and May 1977 to evaluate the evidence on the legislative process and consider the future course of the inquiry. Although the evidence taken to date had been primarily concerned with the legislative process, it had become obvious at an early stage that much of the argument about the method of examining legislation in the House was to centre on the crucial question of whether the committee stage of bills was to continue to be handled mainly by standing committees using the debating procedures followed in Committee of the whole House, or whether in future the committee stage should be taken in select committees with investigative powers. This problem in turn raised a whole series of questions about the use of select committees for other purposes, such as the examination of expenditure and the investigation of government policy and administration, and it became increasingly clear that it would be difficult, if not impossible, for the Committee to finalise their proposals relating to legislation until other matters – notably the select committee system – had been more fully investigated.

The Committee had been so impressed by the evidence given by the Canadian Clerk, Mr. Fraser, that they decided, on 4th April 1977, to establish a small sub-committee to examine the process of legislation and the committee system in Ottawa. The Canadian experience was felt to be particularly relevant, partly because of the basic similarity and common origins of the procedures of the two Houses, and partly because the new Canadian committee system was similar to that originally contemplated by the Procedure Committee. The sub-committee, under the chairmanship of Mr. Kenneth Baker, the Conservative Member for St. Marylebone (who was also Chairman of the Hansard Society for Parliamentary Government), eventually visited Ottawa from 22nd to 24th June. On 4th July 1977 the sub-committee submitted a Report[16] which drew attention to some of the problems experienced in operating the Canadian specialist committee system, including the uneven workload and the difficulty in the busier committees of combining legislative work with a full study of departmental estimates of expenditure. The sub-committee nonetheless confirmed the Procedure Committee's tentative view that committees on bills in Westminster should be given the power to take evidence, but recommended that they should be able to do so only for a limited period of time in respect of each bill, after which bills should be debated clause-by-clause in accordance with existing practice at Westminster. The sub-committee's conclusions and recommendations formed the basis of the Procedure Committee's final recommendations on public bill procedure, which are explained below.

Meanwhile, in the summer of 1977, the Committee set about the task of examining in detail the operation of the select committee system, and took evidence on that subject from the Clerk of Committees, the Chairmen of the Public Accounts Committee and the Expenditure Committee, and a group of senior officials of the Treasury.

By the time the House rose for the summer recess in 1977 the Procedure Committee's main proposals in respect of the process of legislation were already well advanced, and a report on legislative procedure was therefore drafted during the summer for consideration by the Committee in case their future work was brought to a halt by a sudden General Election, which at that time seemed possible.

The Committee met for a whole day in mid-October, while the House was still in recess. At this meeting they decided not to proceed with the separate report on legislation unless an Election were called. On the same day, after lengthy discussion, they also agreed the outlines of the proposals which they would put to the House about the future structure of select committees. The main proposal, which was not subsequently altered, was that the Expenditure Committee and its sub-committees, together with most other existing investigative select committees, should be replaced by a series of twelve new select committees "each charged with the examination of all aspects of expenditure, administration and policy in a field of administration within the responsibilities of a single government department or two or more related departments." The intention was, and remained, that the House of Commons should replace the collection of committees which had grown up piecemeal, with widely differing orders of reference and powers, and providing only partial coverage of many government departments, with a permanent group of select committees "to provide the House with the means of scrutinising the activities of the public service on a continuing and systematic basis."[17]

Shortly after this meeting the Committee met the chairmen of each of the existing select committees whose replacement they were intending to propose, apart from the Chairman of the Expenditure Committee, who had given evidence during the summer. These meetings were held in private (although the evidence was subsequently published with the Committee's Report) to allow members of the Procedure Committee to explain the proposals under consideration and to seek the views of the chairmen on the advisability and feasibility of what was proposed. At the same time the Committee began a series of deliberative meetings to discuss the precise powers and responsibilities of the new committees, the means by which their work would be meshed into the work of the House as a whole, and a number of other aspects of the procedures of the House which would be, or might be, affected by the changes to be proposed.

**Preparation of the Committee's Report**

It was agreed in December 1977 that in order to avoid unnecessary delay in the consideration of a Report, work should begin in the new year on drafting those sections of the Report where detailed decisions had already been made, while the Committee would continue to meet regularly to discuss other matters requiring further consideration, including such major topics as the procedure for considering statutory instruments and European Communities legislation, the control of public expenditure,

and the hours of sitting of the House. In order to make this a manageable process, a summary record was kept of the Committee's preliminary decisions on matters other than public bill procedure (which had already been incorporated in the separate draft Report prepared the previous summer), together with a list of outstanding topics still to be considered. As matters were dealt with they were removed from the latter list and a note of the decisions reached were added to the 'running minute', which served as a guide in the preparation of the first draft of the Report. In addition, a detailed summary of the Committee's discussions on each topic was maintained, and this too was up-dated whenever the Committee returned to the topic concerned.

A further sub-committee, chaired by Mr. Michael English, M.P., was appointed in February 1978 to consider detailed aspects of procedure relating to European Communities legislation and statutory instruments, and proposals for reducing the amount of contentious business taken on the floor of the House after 10.00 p.m. The Report of this sub-committee[18] was considered by the Committee during examination of the relevant sections of the main draft Report.

As a result of the unusually extensive – albeit informal – record of the Committee's discussions, a fairly complete picture was built up both of the attitude of the Committee towards the wide range of questions before them and the lines of argument which had led up to the preliminary decisions reached by them. It was accordingly hoped that the consideration of the draft Report could be completed reasonably quickly once all discussions on new topics were out of the way. Again, however, it proved necessary to depart from normal practice by informally considering a preliminary draft Report – to which numerous amendments were proposed and debated – before the formal consideration of the Chairman's draft Report could be embarked on. The examination of the preliminary draft Report occupied eleven meetings of the Committee between 10th April and 3rd July 1978. The Chairman's draft Report was finally approved after thirteen-and-a-half hours of meetings on 12th and 17th July, during which the Committee divided no less than forty-four times and a total of 373 amendments was debated.

The Report was published on 3rd August 1978, on which day the House rose for the summer recess. It was widely expected that a General Election would be called before the session was due to re-open in the autumn, and that consideration of the Report would therefore, of necessity, be a matter for a new Parliament.

### Summary of the Report

The Committee's Report is divided into nine chapters, the first comprising an introduction and statement of aims together with some general observations on the use of committees and on the problems created by the increasingly heavy workload faced by the House and by individual Members. The three following chapters deal successively

with three main aspects of the legislative process – public bill procedure (chapter 2), the scrutiny of delegated legislation (chapter 3), and the scrutiny of legislation made by the Commission and Council of the European Communities (chapter 4). There then follows a long section comprising three separate chapters on matters relating to select committees. Chapter 5 examines the existing select committee system and makes recommendations for a new, permanent select committee structure. Chapter 6 discusses matters relating to the organisation of the work of select committees, including relations between committees and the House, procedure in select committees, liaison between committees, and staffing and accommodation. Chapter 7 deals with the power of select committees to send for persons, papers and records and proposes new procedures to enable committees to seek to enforce those powers, in particular in respect of information sought from government departments.

Chapter 8 of the Report discusses a number of matters relating to the control of public expenditure and includes specific proposals relating to the role of the Comptroller and Auditor General and his department. The final chapter discusses the organisation of sessions and sittings of the House, and in particular hours of sitting and the dates of recesses.

The general observations on committees in the introduction are of some interest since they explain the Committee's approach towards the use of investigative committees and debating committees and seek to take account of arguments occasionally put forward that any increase in committee work would detract from the importance of the work of the House itself. Although the Committee observe that "the overwhelming weight of evidence has favoured the development and rationalisation of the committee system", they acknowledge that any proposals to that end must take "realistic account of the size of the pool of Members available and willing to serve", and suggest that the reluctance amongst Members to serve on some existing committees is due to the fact that "in too many fields, apart from primary legislation, the House has handed to committees the responsibility of investigating or debating matters, without providing adequate means by which the conclusions of those committees' deliberations can be brought to bear directly on the work of the House itself". Accordingly, "more formal, practical and immediate links are needed between the work of committees of all kinds and that of the House which has appointed them."

The Committee reject the notion that they have sought to respond to the demands of those who regard work in committees as inherently preferable to work in the Chamber, and claim that their aim has been to ensure that committee work should make "a constructive contribution to the work of the House", that it "does not impose an unnecessarily heavy burden on Members" and that "Members are not compelled to serve on committees if they believe that their contribution to the work of Parliament can be made more effectively in other ways". Taken as a whole, the Committee claim, their proposals "should not lead to any

significant overall increase in committee membership."[20]

The Report's introductory chapter also comments briefly on the increasing workload of Members and of the House and draws attention to "one over-riding factor" which has to be taken account of in any broad inquiry into the procedure and practice of the House, namely "the ability of Members, and of the institution as a whole, to undertake the total volume of work required to fulfil the traditional functions of the House, the new demands and expectations of constituents and interest groups, and any new functions designed to improve the efficiency of the House as a representative assembly". The Committee draw attention to the increase in workload in the post war period in almost every major area of activity of the House, and acknowledge both that their own proposals "are unlikely to lead directly to any significant reduction in the burden of work", and that such a reduction could only be achieved by "a major reversal of the trend towards the growth of governmental activities and intervention which has characterised all industrial societies during the last thirty years at least", which seems to them unlikely. In the light of this increasing, and apparently unavoidable, workload, the Committee suggest that "what is required is an acceptance by the House – and by the country at large – of the urgent need to provide Members with adequate assistance in performing the increased work required of them", and, although they regard the provision of such assistance as largely outside their own terms of reference, they believe that "unless Members are provided with information services and staff support capable of relieving them of much of the routine and essential preparatory work, they will not be able to do their work properly whether under present arrangements or under the changes we propose."[21]

**Public Bill procedure**

The main recommendation in chapter 2 of the Report, relating to public bill procedure, concerns procedure in standing committees, to which the majority of bills are now committed after second reading, only the most and least contentious bills being committed to a Committee of the whole House. Despite their title, "Standing" committees are, in modern times, entirely *ad hoc* bodies, whose membership (normally sixteen, but occasionally greater) is separately nominated by the Committee of Selection in respect of each bill committed. Standing committees have no investigatory powers, and examine bills, and the amendments proposed, clause by clause and schedule by schedule. At the end of its discussions a standing committee reports the bill back to the House, with or without amendment, and submits no commentary on, or explanation of, the decisions it has reached. The standing committee is in effect merely a device for saving time on the floor of the House, performing its functions in exactly the same way as they would be performed in Committee of the whole House. As an alternative, present standing orders provide for the committal of bills to select committees, with full investiga-

tory powers and the power to report their opinions, and motions to that end may be moved immediately after second reading. In practice, very few bills are committed to select committees, and in many sessions none at all.

Much of the evidence taken by the Procedure Committee on the subject of public bill procedure suggested more or less radical changes in the committee stage of bills, and some of the criticism of the existing standing committee procedure was severe. Mr. John Peyton, M.P. (then the Conservative Shadow Leader of the House) referred to the standing committee as "the most horrible blot" on the procedures of the House; apart from standing committees on Finance Bills it had "never been my good fortune to serve on any standing committee which has not been a disgraceful operation and time wasting without any other virtue at all". Mr. Peyton preferred "to leave to select committees the business of the committee stage rather than the rabble of a standing committee."[22] The central problem, recognised by most of the Committee's witnesses, was well expressed by the Study of Parliament Group: "Government bills vary widely in character, and the totally adversary character of present proceedings in standing committees is very often inappropriate to a thorough investigation by backbenchers of the merits of particular bills."[23]

A variety of solutions was offered to the Committee. Some witnesses favoured the committal of a larger number of bills to *ad hoc* select committees under the existing procedures; some favoured the establishment of a group of permanent, specialised, select committees who would, amongst other functions, handle the committee stage of all relevant bills; some favoured the committal of each bill first to a select committee, who would hear evidence and report their opinions on the bill to the House, and then to a standing committee of the present kind; and others favoured the committal of bills to standing committees, but with new powers to hear evidence.

The Procedure Committee in the end opted for the last of these proposals, although they admitted that the choice was not an easy one to make. Although they recognised the advantages of the more relaxed and informal procedures adopted in select committees, they felt that this very informality "could lead to acute problems of timing", and, if it were to become the normal practice for bills to be committed to select committees, "would almost inevitably lead to pressure from the Government for the timetabling of all legislation", to which development, as explained below, the majority of the Committee was strongly opposed. This consideration applied in particular to the third option mentioned above, for the committal of bills to select committees and subsequently to standing committees. The committee also felt that the committee stage should not be taken in permanent specialised committees, whether of the select committee (investigative) or standing committee (debating) kind, partly because they believed that all Members of the House should

have an opportunity to serve on committees on particular bills in which they were interested and partly because they wished to ensure that specialised select committees could continue to concentrate on work of their own choosing, rather than on legislative work initiated by the Government, and could continue to operate in an atmosphere relatively free from party conflict.

The Report therefore recommends the introduction of a new kind of standing committee, to be known as a "public bill committee", which would be empowered to devote not more than three two-and-a-half hour sittings to the examination of witnesses on the subject of the bill before it, before proceeding to the clause-by-clause consideration of the bill in the normal way. The Committee suggest that the investigatory sessions of a public bill committee should be limited in this way, unless the House otherwise orders, in order to avoid unduly extending the time taken on each bill in committee. On the other hand the rights of the Opposition to use the time available to them for this purpose would be protected by a provision that even if the majority of the Members on a public bill committee were opposed to taking evidence, a motion to make use of the new powers would be decided in the affirmative if supported by a third of the committee's membership. A public bill committee, unlike a standing committee, would also be able to receive and publish written evidence. The new standing orders would provide that all public bills would be committed automatically to public bill committees unless a motion were moved immediately after second reading to commit a bill to a Committee of the whole House, or a select committee (as can be done under existing standing orders), or to a standing committee of the conventional type.[24]

A second major issue considered by the Procedure Committee in relation to public bill procedure concerned the introduction of timetables for bills which would, in effect, provide the Government with a guaranteed date for third reading but might also ensure a more orderly and balanced division of time between different parts of a bill at the committee and Report stages. The existing provisions for timetabling the stages of a bill (the so-called "guillotine" procedure), although of considerable antiquity, have always been regarded as suspect by backbenchers and the Opposition front bench, and, perhaps for that reason, have usually been resorted to by Governments only after apparently interminable debates in committee have demonstrated the impossibility of proceeding without a guillotine, or when, because of the importance of a bill (such as the Scotland Bill and the Wales Bill in session 1977–78), the likelihood of interminable delay can be anticipated.

Under the existing procedure, the Government may at any stage during the passage of a bill table a Motion providing for the allocation of time to the remaining stages of the bill. In the case of a bill already allocated to a standing committee the detailed allocation of time to

different parts of the bill is performed by a business sub-committee (nominated by the Speaker), whose report is voted upon by the committee without debate. In the case of a bill committed to a Committee of the whole House (or at any other stage) the detailed allocation may either be included in the Government's original Motion, or prepared by a similar Business Committee, whose recommendations must again be put to the vote in the House without debate. Most important, standing orders limit the time of debate on the Government's allocation of time order (which may concern proceedings on more than one bill) to only three hours, and the allocation of time order may itself provide for the limitation of time for debate on any further motions in respect of the same bills (e.g. for the allocation of time to the consideration of Lords Amendments) to some shorter period, such as one or two hours.

The Committee comment that "the Government enjoy great facilities in obtaining a guillotine under these provisions." Nonetheless a substantial amount of evidence to the Committee argued for an extension of the guillotine procedure to provide for the timetabling of all or most legislation, much of this evidence coming from members of the Government and Opposition frontbenchers, but some coming also from backbenchers who, like Mr. John Wakeham, M.P., felt that the House could usefully "trade time . . . for better scrutiny". There were indeed some members of the Procedure Committee who shared this view, and the Committee twice divided on Amendments to the draft Report which proposed the introduction of timetabling for all bills, one of the Amendments being rejected only on the casting vote of the Chairman.

In the end, however, the Committee concluded that the objections to an extension of timetabling to all bills were too great to outweigh the advantages of a more orderly passage of legislation through the House, noting, in particular, that the resulting loss to the Opposition of the power to delay bills – and hence to force concessions from the Government – "would amount to a significant constitutional development, to the detriment of all non-Ministerial Members". Although the Committee believed that "much could be done by agreement through the usual channels to provide for the informal timetabling of legislation", they felt that if formal guillotines were to be imposed "there should be reasonable opportunities for proposed timetables to be adequately considered by the House". Accordingly, far from giving greater powers to the Government in this respect, the Committee recommended a number of marginal changes in the standing orders to make the existing procedures "more acceptable to Members as a whole", in the hope that the House might react more favourably in future to any suggestion that the guillotine procedure should be adopted in respect of particular bills. The changes proposed include the imposition of a minimum period of five sitting days' notice for such motions, a prohibition on dealing with more than one bill in any one motion, and the nomination of the Business Committee (to sort out the detailed allocation of time between parts of

a bill) on a motion moved by the Committee of Selection, who would be required "to have regard to the composition of the House."[25]

The Report includes a number of other proposals – many of a technical nature – relating to the consideration of public bills, including an experiment in imposing a time limit (of 10 minutes) on backbench speeches on second reading, and a provision to enable a standing committee (or public bill committee) to reconvene, after the conclusion of the committee stage and before the 'Report' stage in the House, to consider amendments arising from Government undertakings during the committee stage, drafting amendments, and amendments consequential on changes agreed during the committee stage, this latter proposal being designed to relieve the House from having to consider detailed and largely textual amendments during its final consideration of a bill.

**Delegated Legislation and European Communities Legislation**

Chapters 3 and 4 of the Procedure Committee's Report are devoted to a detailed discussion of the procedures for examining the technical propriety and vires, and for consideration of the merits of, United Kingdom delegated legislation (normally known as "statutory instruments") and legislation made by the Commission and Council of Ministers of the European Communities. In both areas the very large and increasing volume of legislative instruments has created problems for the House, and many instruments are either not debated at all despite the wishes of Members, or are thought not to be debated adequately.

In respect of UK statutory instruments, which are subjected to technical scrutiny by a Joint Committee on Statutory Instruments (first appointed in its present form in 1973) the Report makes a number of proposals to ensure that the results of this scrutiny are taken into consideration before any decisions are taken in the House. These would provide, first, that no statutory instrument should be brought before the House or its committees until the Joint Committee have completed consideration of the instrument, and this prohibition would apply both to instruments subject to approval by the House (that is, those which do not come into force or continue in force *unless* approved by the House) and to instruments subject to "negative procedure" (that is, those which come into force or remain in force unless within a specified period of time, the House resolves that they should be annulled). Second, the Report suggests that if the Joint Committee have "drawn the special attention of the House" to an instrument subject to the negative procedure (which the Committee are empowered to do on certain specified grounds) then either the period of time during which the House can seek to annul the instrument should be extended, or the instrument should automatically become subject to the positive approval of the House if it is to remain in force. Either of these latter changes would require legislation to be brought into effect. While the first would merely extend the opportunity for Members to seek to "pray" against an instrument subject to the

negative procedure (and the provision of time for a debate on such a prayer would still be dependent on the Government), the second proposal would ensure that all negative procedure instruments to which the special attention of the House had been drawn by the Joint Committee would be debated, whether or not the Government wished it.

The Committee paid particular attention to the procedures for considering the merits of UK statutory instruments. Under existing procedures, statutory instruments are normally debated after ten o'clock in the evening and subject to a time-limit of, at the most, one-and-a-half hours, or in a standing committee on statutory instruments, with a similar limit on the time for debate. The one-and-a-half hour time limit was introduced in 1954 in respect of negative procedure instruments and in 1967 in respect of instruments requiring approval by the House. The reference of statutory instruments to standing committees was first introduced in 1973 with the intention of providing more opportunity for debates on negative instruments. Under this procedure an instrument may be referred to a standing committee on an undebatable Government motion, which may be rejected by a mere twenty members rising to object. The standing committee debates the instrument on a non-effective motion, "That the Committee have considered the instrument", and after one-and-a-half hours debate it is reported back to the House. Thereafter the appropriate motion, either to approve or to seek to annul, the instrument, is put forthwith in the House, and may be taken after Ten o'clock. Normally such motions are only put down in respect of instruments requiring approval (and therefore moved by the Government), usually towards the end of business a few days after the standing committee have reported. The Procedure Committee drew attention to the evident drawbacks of the system – notably the short time for debate and the inability of a standing committee on statutory instruments to report any kind of recommendation to the House – and referred to the opinion of the Chairman of the Joint Committee on Statutory Instruments that the system was "an unsatisfactory procedural device which has failed to meet the real needs of the House". They accordingly favoured a "comprehensive reform" of the system and referred to a sub-committee the task of preparing detailed proposals to that end.

As a result of the sub-committee's work, the Committee recommended a reform of the procedure for referring statutory instruments to standing committees, which, they believed, would "ensure the effective expression of opinion on the merits of statutory instruments" but at the same time would allow "the reference of a larger number of statutory instruments to a committee (or the reference of more contentious statutory instruments)". The main features of the proposed new procedure are (i) that a standing committee should be free to meet for up to two-and-a-half hours to consider an instrument; (ii) that each instrument should be considered on a substantive motion appropriate to the procedure to which it would be subject in the House (e.g. "That the Committee

recommend that the instrument be approved") and in the case of instruments subject to approval, such motions should be amendable, to allow for "reasoned" amendments (e.g. "That the Committee recommend that the instrument be not approved, because . . ."); (iii) that in the probably very rare cases where a committee either do not recommend the approval of an instrument, or recommend the annulment of an instrument, a one-hour debate should be allowed in the House before the appropriate motion is voted upon. In return for these improved procedures, the Committee recommended that it should no longer be possible for a motion to refer an instrument to a standing committee to be 'blocked' by twenty Members rising in their places.[26]

The present procedures for considering European Communities legislation in the House are in many ways similar to those relating to UK statutory instruments, with the important distinction that although the legislative acts of the Communities have legal force in the United Kingdom, the UK Parliament has no direct role in their preparation and approval, or even any legal right to be consulted, and can seek only to influence Ministers in the exercise of their own legislative functions in the Council of Ministers.

Since 1974 the House has made use of a Select Committee on European Legislation, &c., to scrutinise all legislative proposals and other documents submitted by the Commission of the European Communities to the Council of Ministers, "to report their opinion as to whether such proposals or other documents raise questions of legal or political importance, to give their reasons for their opinion, to report what matters of principle or policy may be affected thereby, and to what extent they may effect the law of the United Kingdom, and to make recommendations for the further consideration of such proposals and other documents by the House". Although the European Legislation Committee is able to take evidence, it is not empowered to consider the merits of Community legislation, except to the extent that it assesses whether each instrument requires further consideration by the House.

The consideration of the merits of Community legislation is governed by procedures almost identical to those relating to statutory instruments. Time for debate is normally limited to one-and-a-half hours (unless the debate begins before 10.00 p.m.), and since November 1975 provision has been made for the reference of Community documents to standing committees on statutory instruments although in practice this latter provision has been employed infrequently, partly because many Members have regarded the standing committee procedure as inadequate. Despite the powers of the European Legislation Committee to recommend that particular instruments be debated the Government are not required either to provide time for a debate on the floor of the House or to move the reference of those instruments to a standing committee, although the Government have undertaken not to agree to any Community proposal recommended for debate before a debate has been held unless

"the Minister concerned is satisfied that agreement should not be withheld for reasons which he will at the first opportunity explain to the House". In practice most instruments recommended for debate are eventually debated in the House or in a committee, although occasionally *after* they have been approved by the Council of Ministers.

The Procedure Committee suggest that the procedure for considering Community Legislation should have two over-riding objectives: "First, the House, or if it so decides, a committee, should be able to debate all legislative proposals of legal or political importance before final decisions are made in the Community; second, as far as possible, such debates should normally be held on motions which allow the House to express an opinion on the merits of the proposals". To this end the Report recommends, first, that the Government should in future be bound by a "declaratory Resolution" of the House defining the circumstances in which they should be permitted to give their approval to Community legislation, thus subjecting the Government to a degree of formal control by the House in the exercise of their legislative functions in the Communities. Second, the Report recommends that debates in the House or in standing committees should "normally take place on a Government motion to approve, to approve with modifications or qualifications, or to disagree with the Commission proposals concerned". Third, the Report recommends a reform of the procedure for considering Community legislation in standing committees on similar lines to the changes proposed in respect of statutory instruments but with certain differences, the most significant being that a "standing committee on European Communities Legislation" should be free to hold up to three two-and-a-half hour meetings in respect of any one Commission proposal, and that any Member of the House should be able to move a motion to agree with a Resolution of such a standing committee on any sitting day at the commencement of public business or at Ten o'clock, the question on such motions being put without debate.

**Proposals relating to select committees**

Chapters 5, 6 and 7 of the Report deal with the select committee structure, and the powers of select committees. In chapter 5 the Committee review the development of the select committee system since the second world war and draw attention to the quantitative and qualitative changes in recent years in this aspect of the work of the House. They note, for instance, the great increase in the numbers of meetings of select committees (294 in session 1960–61, 825 in session 1975–76), the number of Members involved (180 in 1960–61, 294 in 1975–76) and the number of substantive Reports made to the House (14 in 1961–62, 55 in 1976–77), the increasing freedom of select committees to travel in the United Kingdom and overseas to gather information, the powers to recruit specialist advisers, the practice of taking evidence in public and the resultant increase in media coverage of select committee work, and – "perhaps

the most significant qualitative change in the work of select committees" – "the growing practice of hearing evidence, in public, from departmental Ministers, as well as from their civil servants, thus bringing policy as well as administration within the scope of questioning".

The Committee comment, however, that despite the growth of select committee work, "the development of the system has been piecemeal and has resulted in a decidedly patchy coverage of the activities of government departments and agencies, and of the major areas of public policy and administration", largely because "the House has at no point taken a clear decision about the form of specialisation to be adopted". Certain committees, such as the Select Committees on Science and Technology and on Nationalised Industries, had been appointed to consider subjects involving some but not all the responsibilities of a number of different government departments, while other committees, such as the Committee on Overseas Development and some of the sub-committees of the Expenditure Committee, covered the activities of certain government departments in detail, although some other departments were hardly subject to select committee scrutiny at all. The various select committees had been first appointed at different times, in response to different pressures and with different intentions, and little attempt had been made to co-ordinate their work. The Committee conclude that a new start should be made, and that the select committee structure should "in future be based primarily on the subject areas within the responsibility of individual government departments or groups of departments".

The Report therefore recommends the abolition of the Expenditure Committee (appointed in 1970 in succession to the Estimates Committee), the Select Committee on Nationalised Industries (first appointed in its present form in 1956), the Select Committee on Overseas Development (1969), the Select Committee on the Parliamentary Commissioner for Administration (the "Ombudsman") (1967), the Select Committee on Race Relations and Immigration (1968), and the Select Committee on Science and Technology (1966). These committees are to be replaced by twelve new committees, appointed under permanent standing orders and their members nominated for the duration of each Parliament, to consider expenditure, administration and policy in the following fields: Agriculture; Defence; Education, Science and Arts; Energy; Environment; Foreign Affairs; Home Affairs; Industry and Employment; Social Services; Trade and Consumer Affairs; Transport; and the Treasury (including the Civil Service Department). Other committees, such as the Public Accounts Committee, the Joint Committee on Statutory Instruments, the Select Committee on European Legislation, &c., and the various 'domestic' committees such as the Select Committee on Sound Broadcasting and the Select Committee on House of Commons (Services), are unaffected by these proposals.

The Procedure Committee recommended that the new committees,

as well as inheriting the responsibilities of the Expenditure Committee and its sub-committees, should also assume responsibility for the work previously undertaken by the five other committees proposed to be abolished. To this end, the Report recommends that although the reports of the Parliamentary Commissioner for Administration on individual cases should be considered by the appropriate "departmentally-related" committee, the Treasury Committee should assume responsibility for considering the powers and functions of the Commissioner and other committees should draw the Treasury Committee's attention to any general matters requiring examination in this field. The Committee also recognised that certain aspects of the work of the nationalised industries (such as the nature of their relationship with Ministers) would be better considered on a cross-departmental basis and recommended the establishment, perhaps on a permanent basis, of a joint sub-committee representing the committees most directly concerned with the nationalised industries. They also recommended that the Foreign Affairs and Home Affairs Committees should be empowered to appoint sub-committees to deal, respectively, with Overseas Development, and Race Relations and Immigration.[28]

The new committees were to be small, with an average size, at least initially, of about ten members, the Procedure Committee refusing to subscribe to the view that all backbenchers should be expected to serve on at least one committee. Taking account of the other committees which would continue in existence, new committees of this size would involve only a marginal increase in the total number of Members serving on select committees, although the Committee hoped that the new committees "would in the long run attract a larger number of Members to select committee work". Most of the committees would not, in any case, be empowered to appoint investigative sub-committees, although the Report suggests machinery for enabling a committee to seek the approval of the House for the appointment of a sub-committee or, in co-operation with another committee, of a joint sub-committee for inquiries of limited duration.

Although, as indicated above, the Procedure Committee rejected proposals for the regular committal of bills to the new committees, they did expect them to undertake more work related to the ongoing business of the House and fewer lengthy inquiries of the "Royal Commission" variety which had characterised the work of many of the existing select committees. The Report recommends, *inter alia*, that "all departmental Estimates should as a matter of course be referred to the appropriate departmentally-related committee" but the Committee rejected, on a division, a procedure which would have required each select committee to report on the relevant Estimates before they were approved by the House.[29] The Report also recommends that a procedure should be available for the formal reference of statutory instruments to the appropriate select committee instead of to a standing committee on statutory instruments and proposes improved machinery for "alerting"

the new committees to all statutory instruments and European Community documents within their fields of interest.

In the expectation that the new committees would undertake more work of a topical nature, the Report also recommends the introduction of eight "allotted days" each session for debates on the Reports of select committees, advice on the selection of Reports for debate on these days, and on other organisational matters relating to select committees (such as staffing, overseas travel, etc.), being provided by an official "Liaison Committee", comprising the chairmen of all permanent select committees and a number of Members added to ensure party balance.[30] Several other recommendations are made concerning the organisation of committee work. These include a proposal that the preparation of nominations for membership of select committees should in future be entrusted to the all-party Committee of Selection (which at present nominates Members to standing committees), rather than to the party whips; that select committee chairmen should be paid an additional salary on the level of junior Government Ministers; that committees should have more or less unlimited powers to appoint specialist advisers and should be able to seek permanent assistance from the staff of the national audit office (the Exchequer and Audit Department), which would in future come under direct parliamentary control.[31]

Finally, the Procedure Committee reviewed the effectiveness of the powers of select committees to "call for persons, papers and records" particularly when applied to requests for information from Government departments, and in chapter 7 of their Report made a number of recommendations designed to ensure that any refusal to produce information could, at least, be freely debated in the House. Their main recommendations are (i) that select committees should be empowered to order the attendance of Ministers to give evidence to them and to order the production of papers and records by Ministers including Secretaries of State, and (ii) that in the event of a refusal by a Minister to produce papers and records required by a select committee the committee should be empowered to claim precedence over public business for a debate on a motion for the Return of Papers unless time is provided by the Government by the sixth sitting day after the first appearance of the motion. The Committee say that they expect the latter procedure to be invoked very rarely, if at all, but "it would stand as an ultimate weapon to be used by a committee when all demands to persuade a department to produce the evidence required by them had failed".[32]

### Other matters

Chapter 8 of the Report relates to financial procedure, and calls for a further comprehensive inquiry into the procedure for considering and approving the Government's expenditure proposals. Meanwhile, the Committee – largely endorsing earlier proposals by the Expenditure Committee[33] – call for new legislation to bring the Exchequer and Audit

Department under parliamentary control, to amalgamate the E & AD with the audit of local authority expenditure, and to "establish the principle that the accounts of all bodies in receipt of funds voted by Parliament should be subject to examination by the Comptroller and Auditor General."[34] These proposals were met in part by an announcement by the Government in January 1979 of a review of the role of the Comptroller and Auditor General and the Exchequer and Audit Department with a view to bringing forward new legislation.

In the final chapter of their Report, the Committee discuss a number of suggestions for reducing the number of late sittings of the House and producing a more even spread of sittings and recesses during the year. They consider, for instance, the revival of the practice of holding morning sittings under a procedure used between 1967 and 1969 (but since abandoned) and the more radical possibility, which was rejected on a division, of moving forward the normal hours of sitting, initially on two days each week, so that the House would meet at 11.00 a.m. (instead of 2.30 p.m.) and rise at 7.30 p.m. (instead of 10.30 p.m.). Nonetheless, the Committee felt that some attempt should be made to avoid very late sittings after the normal time of rising, and recommended that standing orders should be amended to provide that "if a division is called on a motion that specified business, though opposed, may be proceeded with after Ten o'clock, the question on the motion shall not be decided in the affirmative unless not less than 200 Members vote in the majority in support of the motion". The Committee also argue for more voluntary agreements between the parties to limit the time of debate on less contentious business, and, in order to remove at least three all-night sittings, they recommend that the debate on the second reading of Consolidated Fund Bills should in future be taken during normal hours in a committee which all Members would be free to attend. In only one respect do the Committee suggest any permanent change in sitting hours: in consideration for Members who have to travel long distances to their constituencies, the Report recommends that the House should meet on Fridays from 9.30 a.m. to 3.00 p.m., instead of the present hours of 11.00 a.m. to 4.30 p.m.

**Implementation of the Report**

The Report was debated, for a total of fourteen hours, on a Motion for the Adjournment of the House on 19th and 20th February of this year, when widespread support was shown for certain of the major proposals, and in particular those relating to the select committee structure, although some opposition was expressed to the proposals for abolishing certain committees, such as those on Science and Technology and Nationalised Industries. In their subsequent Special Report to the House, the Procedure Committee recommended that the highest priority should be given first to the select committee proposals (including those relating to the powers of committees to summon Ministers), and second to the proposals relating to public bill committees and standing committees

on statutory instruments.

Soon after the opening of the new Parliament, the Conservative Leader of the House (Mr. Norman St. John-Stevas, M.P.) made clear the Government's intention to bring forward proposals to implement the Committee's recommendations concerning select committees, and a Motion was eventually put down by the Government on 18th June, and debated in the House on Monday 25th June. The Government's Motion proposed the appointment of twelve new committees almost exactly on the lines of those proposed by the Committee, together with the Committee on the Parliamentary Commissioner for Administration, which the Committee had suggested need not be re-appointed. The new committees were to range in size from nine to eleven Members, with an average of ten, and three of the committees (on Foreign Affairs, Home Affairs, and the Treasury and Civil Service) were to have power to appoint one sub-committee. In addition, as recommended by the Procedure Committee, provision was made for a joint sub-committee to consider "any matter affecting two or more nationalised industries".

The Government's proposals were debated until One o'clock in the morning, and, following the rejection of nine groups of amendments, the original Motion was approved by 248 votes to 12. Most of the rejected amendments sought to re-establish, in more or less their original form, the committees on Nationalised Industries, Science and Technology, Race Relations and Immigration, and Overseas Development. A further group sought to establish a Committee on Scottish Affairs, which the Government resisted on the ground that inter-party talks were to continue, following the repeal of the Scotland Act, although such a committee might eventually be established. The final amendment sought to implement the Procedure Committee's proposals relating to the power of select committees to summon Ministers. This was rejected by 158 votes to 100, the Government nonetheless undertaking to abide by the spirit of the proposals. The next evening, following the repeal of the Wales Act, the House established an additional permanent select committee on Welsh Affairs. Moreover, all these new committees were to be nominated on a motion tabled by the Committee of Selection, as the Procedure Committee had recommended, and the Government undertook to propose the establishment of a formal Liaison Committee to consider administrative problems in the operation of the new committee system.

The new committees are expected to become fully operational in the autumn of 1979. Meanwhile, the Government have made clear their intention to bring further batches of Procedure Committee proposals before the House during the present parliamentary session.

1. First Report from the Select Committee on Procedure, Session 1977–78 (House of Commons paper 588–I).
2. *Hansard*, 19th and 20th February 1979, cols. 44–213, 276–386.
3. First Special Report from the Select Committee on Procedure, Session 1978–79 (House of Commo paper 257).
4. e.g. *Hansard*, 22nd March 1979, cols, 1711–1728.
5. Votes and Proceedings, 15th May 1979, p.27.

6. CJ 232 (1975–76), 5.
7. *Hansard*, 2nd February 1976, col. 975.
8. *loc. cit.*, col. 1013.
9. *loc. cit.*, cols. 964–6.
10. *loc. cit.*, col. 1001.
11. *loc. cit.*, col. 1029.
12. *loc. cit.*, col. 1085.
13. CJ 232 (1975–76), 371.
14. *see* First Report from the Select Committee on Practice and Procedure, Session 1976–77 (House of Lords paper 141).
15. Report, para. 1.7.
16. Appendix A to the Committee's Report.
17. Report, paras. 5.22, 5.15.
18. Appendix B to the Committee's Report.
19. Appendices to the Minutes of Evidence taken before the Select Committee on Procedure, Session 1977–78 (HC 588–II, pp.1–20). The Study of Parliament Group, established in 1964, comprises a roughly equal number of senior academics and officers of both Houses of Parliament. The Group's evidence was submitted on behalf of the academic members only.
20. Report, paras. 1.8–1.12.
21. Report, paras. 1.13–1.15.
22. Minutes of Evidence (HC 588–II, 1977–78), Q. 50.
23. Report, para. 2.11.
24. Report, paras. 2.11–2.20.
25. Report, paras. 2.31–2.38.
26. Report, paras. 3.15–3.18.
27. Report, paras. 4.12–4.17.
28. Report, paras. 5.22–5.54.
29. Report, para. 8.24.
30. Report, paras. 6.2–6.13, 6.54–6.59.
31. Report, paras. 6.19, 6.33, 6.40, 6.44 and 8.21.
32. Report, paras. 7.19—7.27.
33. Eleventh Report from the Expenditure Committee, Session 1976–77 (HC 535), paras. 153–160.
34. Report, para. 8.14.

# III. THE HOUSE OF LORDS SELECT COMMITTEE ON PRACTICE AND PROCEDURE, 1976–1979

BY D. R. BEAMISH

*A Clerk in the House of Lords*

Following the statement in the Queen's Speech on 19th November 1975 that "Proposals will be put forward for a major review of the practice and procedure of Parliament", a debate was held in the House of Lords on 11th March 1976 on a motion to take note of the proposal.[1] The Leader of the House, Lord Shepherd, opening the debate, said that the Government had in mind that the review should be conducted by select committees in each House, with power to hold joint meetings. He made a number of suggestions as to the general direction which the inquiry might take. He considered that "the House functions very well within its existing framework, except, perhaps, in abnormal times like June and July", and went on to suggest "that we should scrutinise that framework itself; that we should look beyond the traditional internal procedures of the House, and ask whether Parliament itself requires fundamental structural changes to enable it to perform more effectively in the last quarter of the 20th century". Among the matters which Lord Shepherd suggested might be considered were: increased use of statements of principle and general rules in legislation; more use of delegated legislation, possibly subject to amendment by Parliament; the appointment of specialist committees to cover the activities of certain Government departments; the possibility of a more satisfactory timetable for the Session; increased use of committees off the floor of the House for the consideration of public bills; the introduction of some form of preliminary procedure for considering domestic legislation at a pre-legislative stage; and ways of making Parliament aware of the views of interested parties who want to comment on aspects of business before the House.

Lord Carrington, Leader of the Opposition, expressed a widely held view when he said: "We do not think there is all that much wrong with the procedures of the House". He added that "if there is to be an alteration in the procedure of Parliament or of this House, we in this House should be consulted", and he therefore had "no objection whatever to the formation of a committee". Lord Byers, Leader of the Liberal peers, was especially concerned about "the allocation of business between the Houses; but it is not just that – it is the sheer volume of legislation which we are foisting on to the public, Session by Session". Like Lord Carrington, he was not convinced of the need for a committee, but was willing to support it.

The Earl of Listowel, Chairman of Committees, drew attention to the difficulties likely to confront Parliament in dealing with private bills

for general powers promoted by local authorities. The Local Government Act 1972, re-organising English and Welsh local authorities, had provided that existing general powers legislation should cease to have effect after 1984 in non-metropolitan counties, and after 1979 in the six metropolitan counties. The new local authorities would therefore be obliged to promote private bills to re-enact essential powers. The first such bill, the County of South Glamorgan Bill, had consumed a great deal of time in committee, and many more would follow. Lord Listowel suggested that "both Houses of Parliament and the Government should now be seeking ways of reducing the bulk of private legislation and of devising more appropriate procedures to satisfy the legitimate needs of local authorities". Later in the debate Earl Cathcart, who had served on two committees considering the County of South Glamorgan Bill, returned to the same subject. He suggested a procedure for dealing with the general powers bills to be promoted by the new local authorities. All such bills should be required to be deposited by a fairly early and reasonable date. "Then, on an arranged programme spread over, say, the next five years, your Lordships could appoint select committees to deal with the clauses by subject matter across the board and not with each bill in turn". Lord Douglas of Barloch thought that local legislation should be limited to grants of powers for "some special transitory purpose", and that such legislation should automatically lapse after five or ten years.

Lord Pannell, having quoted the Earl of Oxford and Asquith's description of addressing the House of Lords as "like speaking by torchlight to corpses in a charnel house", considered that Parliament's main trouble was over time. His solution was that legislation should not be required to be finished by the end of the Session, subject to the condition that legislation which was taken up again should face another Second Reading in the Commons.

Lord Tranmire thought that the Parliamentary timetable and the distribution of bills between the two Houses should be reconsidered; consideration should also be given to a "turn back stage" at which "either House would look at the Bill, as amended, for its drafting and the arrangement of its clauses, and would try to make something better out of the mess left by the legislative process". Lord Wigg was concerned that the rules of the House should be universally applied, perhaps enforced by a chairman. Viscount Amory believed that the House could usefully consider proposed legislation at the Green Paper stage, and expressed concern about the volume of legislation.

Lord Shepherd, in winding up, suggested that the House could if desired meet at different times from the House of Commons: "This House could rise for July and August and come back early in September, to take the load then".

On 6th July 1976, following the appointment of a select committee by the House of Commons, the House of Lords agreed to appoint a

select committee "to consider the practice and procedure of the House and to make recommendations for the more effective performance of its functions".[2] These terms of reference differed from those of the corresponding Commons Committee in that they were not confined to public business. The Committee was formally set up on 19th July,[3] with sixteen members. Lord Hughes, a Labour peer and former minister in the Scottish Office, was appointed chairman. The Committee's terms of reference gave them power to appoint sub-committees, to meet concurrently with the Commons Committee on Procedure or any Sub-Committee, and to appoint specialist advisers. This last power was never used.

The Committee met for the first time on 21st July. At the time, business in the House was very heavy, as major bills were coming up from the Commons late in the Session. It was therefore almost inevitable that the Committee should begin by considering what might be done to alleviate this problem. At their first meeting the Committee agreed to a First Report,[4] inviting evidence on four matters to which they had decided to direct their attention. The first was "the seasonal congestion of legislative business, and the consequences for the Parliamentary timetable". The others were: "private legislation procedure, with particular regard to the consequences of the Local Government Act 1972", "the application to domestic legislation of the existing procedures of the House for scrutinizing European instruments", and "the possibility of subjecting to Parliamentary scrutiny the more important issues raised in local public inquiries".

The Committee held two further deliberative meetings in the 1975–76 Session, on 6th October and 10th November, at which the problem of legislative congestion was considered. On 6th October, a sub-committee of 5 members was appointed to consider private legislation procedure, with Lord Champion as chairman. On 10th November, the Committee agreed to a Second Report[5] in which they asked to be re-appointed in the new Session of Parliament.

A motion to reappoint the Committee was agreed to on 25th November 1976, and the Committee was formally set up again on 2nd December. Lord Hughes had by then become Chairman of the Royal Commission on Legal Services in Scotland, and was replaced as chairman of the Committee by Lord Shepherd, who had resigned as Leader of the House. An additional power was given to the Committee in their terms of reference – to co-opt any Lord for the purpose of serving on a sub-committee. This power was made use of at the first meeting of the Committee, on 8th December 1976, when the Earl of Listowel, who had resigned as Chairman of Committees, was added to the membership of the reappointed sub-committee on private legislation procedure.

From December 1976 to April 1977 the Committee held ten meetings, devoted to the problem of the congestion of legislative business, and on 26th April 1977 they agreed to a First Report[6] dealing with this matter. The Clerk of the Parliaments, Sir Peter Henderson, presented a paper

canvassing a number of ideas, which he discussed with the Committee. Among possible reforms were different sitting periods for each House, a change in the timing of the Session so that it would conclude at Christmas-time and not after the summer recess, the carrying over of bills from one Session to the next, a scheme to remove a larger number of relatively uncontroversial Government bills from the party-political arena, greater use of Public Bill Committees off the floor of the House, and a new method of scrutiny of bills involving their consideration by select committees both before and after their introduction in the House. In the early part of 1977 the Committee held a private discussion with Sir Freddie Warren (Private Secretary to the Government Chief Whip in the Commons, and as such a key figure in the management of Government business) and his predecessor, Sir Charles Harris, and heard evidence from the Leaders and Whips in the Lords, and from Baroness Tweedsmuir of Belhelvie, chairman of the European Communities Committee.

The Clerk of the Parliaments was asked by the Committee to develop in a further paper his suggestion of a new system of Committees. The Committee's consideration of this suggestion embraced the third of the matters which they had originally decided to consider, the application to domestic legislation of the existing procedures of the House for scrutinizing European instruments.

The proposal was that there should be seven or eight sessional committees matching groups of government departments or policy areas. The appropriate committee would be seized of a Commons bill at an early stage in its progress through the Commons, and would report on it before it received a Second Reading in the Lords. One kind of report would indicate what scrutiny had been given to the various parts of the bill in the Commons, where there were Government undertakings to be implemented in the Lords, etc. This report might enable debate in the Lords to be less diffuse and to concentrate on what the Commons had not done or had only partially done. A second kind of report, also to be made before Second Reading in the Lords, would result from the hearing of any evidence, and might report whether there were substantial grievances among interested parties which had not been met.

Following Second Reading in the Lords, a bill would again be referred to the appropriate committee, which would perform the function of a Public Bill Committee, with modifications. The appropriate Ministers, and others, would be added to the committee. The committee might, by consensus, direct their attention mainly to the areas recommended for further scrutiny in their earlier reports. Where appropriate, matters might be reserved for decision on the floor of the House. This stage would replace the present committee stage in the passage of bills. A modified procedure would apply to Lords bills. The use of these committees could help to reduce legislative congestion because some of the House's scrutiny of bills would be undertaken at an early stage, so reducing the amount remaining to be done after bills were brought up

from the Commons.

In their First Report the Committee began by discussing a number of changes which might help to alleviate the seasonal congestion of legislative business. They recommended that there should be minimum intervals between the stages of bills which should not be departed from without explanation. This recommendation was later taken up by the sessional Procedure Committee of the House (see below) and has been adopted. The Committee also recommended that in a number of respects the rules of the House should be more strictly observed; for example, Standing Order 27, restricting the right to speak more than once in debate, should be more strictly observed on Report stages. They suggested that the possibility of Sessions to coincide with the calendar year, or the modified arrangement of the session proposed in 1968 by the House of Commons Procedure Committee, might be discussed with the House of Commons Select Committee on Procedure. They opposed any arrangement whereby the two Houses sat at different times. They also opposed the carry-over of public bills from one Session to the next. They recommended that bills to re-enact statutes with drafting improvements and corrections of inaccuracies should follow the same procedure as consolidation bills, and that the Government should experiment with the introduction of non-controversial legislation without any commitment to its enactment during the Session in which it is introduced. They considered that the use of Public Bill Committees, in place of consideration of bills in Committee of the Whole House, would improve the quality of the legislative work of the House, but that the function of such a committee would be most profitably performed within the context of a new committee structure.

The latter part of the Committee's First Report was devoted to a discussion of the proposed new committee system outlined above. They commented (in paragraph 47 of the Report): "This scheme envisages an approach to domestic legislation similar to that of the European Communities Committee to Community legislation. The House could bring the varied experience and interests of its members to bear, in order to make informed and constructive proposals for improving legislation . . . Amendments to Bills might be fewer if this method of scrutiny were adopted but they would be more likely to be accepted by the Government and by the House of Commons. In view of the success of the European Communities Committee and its sub-committees, the Committee regard it as a sensible and logical development to approach domestic legislation in the same way". They suggested that initially two or three committees might be appointed, and bills not within their remit could continue to be considered as before. Once any difficulties had been resolved, the number of committees could be increased, and thereafter bills would in the normal course be subject to the new procedure. The details of how the scheme should be brought into operation could be considered by the sessional Procedure Committee, once the

House had endorsed the proposal.

On 5th July 1977 the First Report of the Committee was debated in the House of Lords, on a motion moved by the Chairman, Lord Shepherd, to take note of the report.[7] Lord Windlesham tabled a second motion, to resolve that in the next Session of Parliament there should be established "one or more Select Committees matching policy areas in order to scrutinise Bills and other proposals within those areas as proposed in Part III of the First Report . . ." The motion went on to propose that the implementation of the resolution be referred to the Procedure Committee. The two motions were debated together.

Lord Carrington, for the Opposition, did not think that the proposed new committee system would remedy the congestion of legislative business at the end of a Session. He was in favour of an experiment with a single committee, though he had certain reservations. He did not think a committee of the kind proposed could take the committee stage of a controversial bill. Moreover, the composition of the committee when dealing with a politically controversial bill would be awkward to determine, especially when a Labour government was in power.

Lord Byers, leader of the Liberal peers, also supported an experiment with either a single bill or a single policy area. He differed from Lord Carrington in thinking that a committee of the sort proposed might be able to "achieve a greater measure of consensus in what otherwise might be very controversial legislation". Both he and Lord Carrington hoped that Lord Windlesham would agree to withdraw his motion.

Lord Windlesham explained that his motion had been tabled on behalf of the Committee as a test of opinion. After listening to the debate, he and other members of the Committee would decide whether to move it.

A number of members of the House who were not members of the Committee took part in the debate, and in general were rather less enthusiastic about the proposed committee system than the Committee had been. Several speakers favoured an experiment, while advising that the House should proceed slowly and with caution; one or two were against the proposal altogether.

Lord Peart, the Leader of the House, winding up for the Government, said he was not convinced that European style scrutiny was suitable for domestic legislation, but he was not opposed to a limited experiment, provided it was in the context of bills and not of other proposals as well. He suggested that the proposal for an experiment should go to the sessional Procedure Committee for detailed consideration of the problems involved, with a view to establishing a select committee in the next Session: this was on the understanding that Lord Windlesham did not press his motion. Lord Windlesham indicated that he would rest on the good faith of the Leader of the House, and his motion was not moved.

On 28th July 1977 the Procedure Committee reported that they had agreed that a Sub-Committee under the chairmanship of the Chairman of Committees should be appointed in the next Session of Parliament to

consider the proposed select committees on public bills.[8] The Procedure Committee also made a number of recommendations arising out of the earlier part of the First Report of the Practice and Procedure Committee. These included a recommendation that there should be the following minimum intervals between the stages of public bills: two weekends between the introduction of a bill, or of a bill brought from the Commons, and the debate on Second Reading; fourteen days between Second Reading and the start of the committee stage; on all bills of considerable length and complexity, fourteen days between the end of the committee stage and the start of the report stage; and three sitting days between the end of the report stage and Third Reading. Notice would have to be given by the Lord in charge of the bill whenever these minimum intervals were departed from.

The report of the Procedure Committee was agreed to by the House on 10th November 1977.

On 26th July 1978 the Procedure Committee reported that they had considered the report of their sub-committee, which had recommended that one experimental committee should be set up in the next session to consider public bills within a particular policy area. The report continued: "The Committee are of the opinion that no action should be taken to implement the recommendation of the Sub-Committee until the House has had the opportunity of studying any proposals made by the House of Commons Select Committee on Procedure".[9]

The report of the Procedure Committee was considered by the House on 14th November 1978,[10] when Lord Northfield, a member of the Practice and Procedure Committee, complained that one Session had already gone by, and it seemed that yet another was to go by, with the promise given by the Leader of the House unfulfilled. Lord Aberdare, as chairman of the Procedure Committee, said that "that Committee took the view, and took it very strongly, that to go ahead at this moment, when there was another committee in another place considering similar proposals, would not be in the best interests of the relations between the Houses". On the motion to agree to the Procedure Committee's report, a division was called, but no tellers for the not-contents were appointed, and the motion was agreed to. And there, for the moment, the matter rests.

After making their First Report, the Committee turned to a number of other matters on which submissions had been made to them. Evidence was heard from Lord Kennet on a proposal put forward by him and four other members of the House that there should be established a Foreign Affairs Committee of the House of Lords. Such a committee would review aspects of United Kingdom foreign policy and report on them to the House.

On the fourth of the matters which the Committee had originally decided to consider, "the possibility of subjecting to Parliamentary scrutiny the more important issues raised in local public inquiries", Lord Molson re-submitted a paper which he had previously submitted

to the Joint Committee on Delegated Legislation in 1973, and gave evidence to the Committee. Lord Molson was concerned that local public inquiries followed by administrative decisions were not subject to any form of Parliamentary control even when they concerned matters of national interest; while hearings before Parliamentary select committees were expensive and often less apt for the purpose than the holding of a local public inquiry. He proposed that the existing procedures by which local powers were granted – private bills, provisional order bills and special procedure orders – should be replaced by a new system of Parliamentary control which should at the same time remedy defects in the existing petitioning procedure and also enable Parliament to deal with questions of national importance raised by administrative decisions.

The Committee heard evidence from Lord Harmar-Nicholls on the subject of "tacking". House of Lords Standing Order 49, dating from 1702, provides that "The annexing of any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to and different from the matter of the said Bill of Aid or Supply, is unparliamentary and tends to the destruction of constitutional Government". Lord Harmar-Nicholls, on the Second Reading of the 1976 Finance Bill,[11] had expressed concern at the inclusion in the bill of provisions giving powers of entry and search to tax inspectors. He regarded this as tacking, since the House of Lords was prevented, because they were included in a supply Bill, from amending provisions affecting the freedom of the subject. He invited the Committee to consider three possible safeguards – that all Finance Bills should be certified by the Speaker as Money Bills within the meaning of the Parliament Act 1911; that the Speaker should be assisted by Counsel when considering whether to certify a bill under the Parliament Act 1911; and that members of the House of Lords should have the right of access to the Speaker so as to be able to make representations to him as to whether a bill should be certified.

On 26th July 1977 the Committee agreed to a Second Report[12] dealing with the above matters. They expressed support for the suggestion of a Foreign Affairs Committee, which they thought would enable the House to play a more useful role in the field of foreign affairs. However, they considered that it would be wise to defer any decision until the Commons Select Committee on Procedure had reported, having regard to the possibility of the setting up of a Joint Select Committee on Foreign Affairs.

The Committee considered that the point raised by Lord Molson was an important one, and that a solution suggested by the Clerk of the Parliaments – the adoption of a modified form of Special Parliamentary Procedure – should be seriously considered. But as legislation and the alteration of the procedure of both Houses would be necessary, any action ought to be taken by a joint committee. The Committee recommended that the Government should give careful attention to Lord Molson's proposals and recommend a course of action to Parliament.

Up to the present time, the proposals have not been pursued.

The Committee did not endorse any of the three suggestions made by Lord Harmar-Nicholls to prevent the risk of "tacking". They considered that the procedures of the House of Commons were effective to ensure that nothing outside its proper scope could be included in a Finance Bill. The particular provisions to which Lord Harmar-Nicholls had objected were well precedented in previous Finance Bills, and he had accepted that they did not infringe Standing Order 49.

On 15th May 1978 a Short Debate, limited to two and a half hours, was held on the Second Report of the Committee.[13] The debate was on the motion of Lord Harmar-Nicholls, "to call attention to the Second Report . . . with special reference to tacking; and to move for Papers". In opening the debate Lord Harmar-Nicholls renewed his three suggestions for change. Lord Peart, Leader of the House, in winding up for the Government, said that he was satisfied with the present position. He did not accept that Lord Harmar-Nicholls's anxieties were well founded or that any measures needed to be taken to protect the interests of the House in this area.

Lord Peart also referred to the proposals put forward by Lord Molson and Lord Kennet. An inquiry into Lord Molson's proposal would, he thought, be a considerable undertaking, which would need to be conducted jointly by both Houses. He did not hold out much hope that either House, or the Government, would wish to embark upon such an inquiry in the immediate future, though he considered that the proposals ought to be carefully looked at. On Lord Kennet's proposal for a Foreign Affairs Committee, Lord Peart agreed with the Committee that any decision should be deferred until the Commons Select Committee on Procedure had reported.

Lord Harmar-Nicholls, replying to the debate, was not prepared to accept Lord Peart's view that nothing should be done, and insisted that some way should be found to protect the House more effectively against tacking. Up to the present time, no action has been taken on Lord Harmar-Nicholls's proposals.

A new Session began on 3rd November 1977, and on 8th November the House again agreed to the reappointment of the Committee, which was formally set up on 14th November. The Committee met on 15th November, and reappointed the sub-committee on private legislation procedure, which had met three times in the previous Session.

The Committee did not meet again until 28th February 1978, when they considered the report of the private legislation sub-committee, which had held five further meetings. The sub-committee had considered in particular how the burden of dealing with the general powers bills promoted in consequence of the Local Government Act 1972 might be reduced. They recommended that there should be more public legislation dealing with local authorities' powers, either miscellaneous provisions bills or bills dealing with particular topics. Arrangements which

had already been introduced for considering together clauses common to a number of private bills should be continued and extended, and the possibility of enacting in general legislation some of the agreed common clauses should be considered. The sub-committee considered that there was no need for fundamental change in private legislation procedure, which, by and large, worked effectively and satisfactorily, and most of their recommendations were for no change or for comparatively minor changes.

When the report was considered by the Committee, concern was expressed that the composition of Unopposed Bill Committees had not been considered. These committees consisted, under Private Business Standing Order 121, of the Chairman of Committees "and such Lords as think fit to attend"; this in practice meant the Chairman of Committees alone, assisted by his Counsel. The Committee decided to hear evidence from the Chairman of Committees, Lord Aberdare. In evidence he agreed that the present formal composition of Unopposed Bill Committees was not entirely satisfactory, and he submitted a note suggesting an amended Private Business Standing Order to deal with the point. This would empower the Chairman of Committees to invite members of the panel of Deputy Chairmen to serve with him on an Unopposed Bill Committee when desirable, rather than allow any member of the House to serve. Two other reforms proposed were that the role of Counsel to the Chairman of Committees as adviser to Unopposed Bill Committees should be expressly recognised by Standing Order, and that Unopposed Bill Committees should be empowered – as Select Committees already were – to make a Special Report to the House when they were of opinion that there were any special circumstances which should be drawn to the attention of the House. The Committee endorsed all three proposals.

With the addition of these recommendations concerning Unopposed Bill Committees, the report of the sub-committee was, with few changes, adopted on 3rd May 1978 as the First (and in the event the only) Report of the Committee, Session 1977–78.[14] The recommendations concerning Unopposed Bill Committees were considered by the Procedure Committee, which agreed with them and proposed an amendment to Private Business Standing Order 121.[15] This amendment was agreed to by the House on 20th February 1979.

The Committee's Report on private legislation procedure alluded to the fact that the Committee had (on 19th April 1978) held a concurrent meeting with the House of Commons Select Committee on Procedure. This was the only occasion on which the Committees made use of their power to meet concurrently. It was purely a deliberative meeting. Sir David Renton, who had been acting as Chairman of the Commons Committee, was appointed chairman. The principal subject of discussion was the possibility of altering the dates of Sessions or the periods of sitting within the Session. Consideration was also given to a paper submitted to both committees by Lord Simon of Glaisdale, formerly chairman

of the Joint Committee on Consolidation Bills, on the recommendations in the Report of the Committee on the Preparation of Legislation[16] relating to consolidation procedure. In the event no report was made on this matter.

Since the Commons Select Committee on Procedure had been set up for the duration of the Parliament, the Practice and Procedure Committee was set up again on 21st November 1978 in order that it should be able to meet concurrently with the Commons Committee if that proved desirable. In the event the Committee did not meet during the 1978–79 Session, and it came to an end when Parliament was dissolved on 7th April 1979. Apart from the establishment of recommended minimum intervals between stages of bills, and the change in the Standing Order dealing with Unopposed Bill Committees, it has so far had very little impact on the "practice and procedure of the House" which it was appointed to consider. It remains to be seen whether there may yet be an experiment with the proposed new committee structure for considering public bills.

1. Official Report, Vol. 368, columns 1413–60.
2. Official Report, Vol. 372, columns 1140–1.
3. Official Report, Vol. 373, columns 512–17.
4. H.L. (1975–76) 299.
5. H.L. (1975–76) 379.
6. H.L. (1976–77) 141.
7. Official Report, Vol. 385, columns 166–265.
8. Second Report, Session 1976–77, H.L. 274.
9. Second Report Session 1977–78, H.L. 259.
10. Official Report, Vol. 396, columns 659–62.
11. Official Report, Vol. 373, columns 1211–16 & 1255–8.
12. H.L. (1976–77) 256.
13. Official Report, Vol. 392, columns 6–44.
14. H.L. (1977–78) 155.
15. First Report, Session 1978–79, H.L. 33.
16. Cmnd. 6053.

# IV. THE AUSTRALIAN SENATE COMMITTEES AND THEIR INSISTENCE UPON GREATER EXECUTIVE ACCOUNTABILITY

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As the President of the Australian Senate, Senator the Hon. Sir Condor Laucke, indicated during the Fifth Conference of Commonwealth Speakers and Presiding Officers, held at Canberra in August–September last year, the trial period of the Australian Senate's new Committee system, embarked upon in 1970, and developed under a policy of gradualism, is now over.

Until 1977, the Committees were established by Resolution.

On 16th March, 1977, following a recommendation of the Standing Orders Committee, the Senate gave permanency to the new system by adopting Standing Orders providing for the appointment in each Parliament of its eight Legislative and General Purpose Standing Committees, and its six Estimates Committees.

These newly-made permanent Committees, along with *ad hoc* Select Committees appointed from time to time, and the Regulations and Ordinances Committee first appointed in 1932, provide the Senate with an impressive and formidable Committee system – impressive in its work and output, and formidable in the strong, pervasive and continuing pressure it has been exercising upon the Government and the Executive Departments for greater accountability.

Much has already been written about the formative and developing years of the Senate's new Committee system, and more recent developments have been described by my colleague, Mr. Alan Cumming Thom in his article in the 1977 issue of THE TABLE, and by the President of the Senate, Senator the Honourable Sir Condor Laucke, in his address at the Commonwealth Speakers Conference to which I have already referred. The Senate President's address, and a paper which he distributed prior to the Conference, have since been combined in an article which appeared in the January–March issue of the Indian Journal of Parliamentary Information.

My purpose in writing yet again about Senate Committees is to refer to an area which I believe should be recorded in some detail *viz.* — the actual reports and recommendations of the Committees, and more particularly the Estimates Committees, where this pressure for greater accountability has been exercised. I am prompted to do so because of the strong impression, if not conviction, I gained at meetings of the Association of Secretaries-General held at Prague in conjunction with the Spring Meetings of the Inter-Parliamentary Union, that, in their development, the Australian Senate Committees have virtually broken

new ground in the modern day search for greater executive accountability; also that the success of the system is somewhat unusual in a period when so many other systems appear to be undergoing patchwork operations or major surgery.

The impression I gained at the Prague Conference was reinforced when, in subsequently visiting Westminster, my attention was directed by the then Clerk of the Commons Overseas Office, Mr. Clifford Boulton, to evidence given by Mr. Alistair Fraser, Clerk of the Canadian House of Commons, before the British Commons Committee on Procedure in January 1977. In his evidence, Mr. Fraser indicated that the Canadian Committees consideration of the Estimates had not come up to expectations. "I do not think", he said "that there is anybody in the Canadian Parliament who would take the view that the reference of legislation . . . has not been successful. I can speak, I am quite sure, without fear of contradiction there. As far as legislation is concerned it has been successful. As far as the Estimates are concerned . . . it just has not been successful", and he went on to say "I implore you not to send your Spending Estimates to your Committees that are considering Bills, if you ever had such an idea in contemplation."

When asked to elucidate this, Mr. Fraser replied: "What I said was that I hope if you set up Committees to consider legislation that you do not overload those Committees at the same time by sending Estimates to them. If you want to send Estimates to Committees, that is fine, but do not log-jam yourselves by having Estimates and legislation."

The Australian Senate's Legislative and General Purpose Standing Committees have been more General Purpose than Legislative, but Mr. Fraser's point is well taken. The prime reason for the success of the Senate system is that the different Committees have functioned and developed in a corroborative, cohesive and definitely complemental fashion rather than at odds or overlapping, or "log-jammed".

As earlier articles on the formative years of the new Committees pointed out, the two new types of Committees were originally put forward as alternative proposals by the then Government and Opposition, neither of whom had an absolute majority in the closely divided Senate. The voting on the two proposals resulted in both being accepted. By accident at birth, as it were, the Senate was presented with twin sets of Committees – a blessed event it would now appear – and this explains the apparent contradiction, referred to by Mr. Cumming Thom in his 1977 TABLE article, that both the original 1970 motions and the new 1977 Standing Orders refer to the examination of estimates of expenditure. It was early thought that as the system developed, the Legislative and General Purpose Standing Committees, might eventually take over the functions of the Estimates Committees, but the 1977 adoption of the new Standing Orders was a clear and positive indication that the Senate is satisfied that the Estimates Committees should continue as separate entities.

**Estimates Committees**

From the very first hearing of the Estimates Committees in 1970, it was apparent that the Senate would, in future, be probing the Government's Estimates of Expenditure in a far more detailed manner than had ever taken place in the past, when the proposed expenditure was considered in Committee of the Whole. Under the new procedure, the Committees meet, several at a time, each with the relevant Minister in attendance, flanked by a phalanx of Departmental officers who directly answer many of the questions asked – a very different situation to the time when Ministers answered all questions in the Senate Chamber itself.

The Estimates Committees Reports are brief, very much to the point, and are considered when the Appropriation Bills are being examined in Committee of the Whole. Insistence upon greater Executive accountability has been demonstrated in a variety of ways, as the following will indicate.

(*a*) *Explanatory Notes*

After the first meetings of the Estimates Committees in 1970, Committee C reported:

> "Having seen the documents circulated by some Departments to this and other Estimates Committees, the Committee considers that future operations of the Estimates Committees would be greatly helped if all Departments were to prepare and supply members of the relevant Committee with advance copies of detailed explanations of Estimates, and that, so far as possible, Departments should present such documents in a uniform, itemised and indexed form."

Since that date, Explanatory Notes have been provided by all Departments.

Until very recently, however, the Committees have been constantly stressing the need for the Notes to be made available early and in a standardized form.

In 1976, Committee A reported that the operation of the Estimates Committee system would be greatly enhanced if the notes were made available at the time of the presentation of the Appropriation Bills to the Parliament, and it subsequently expressed its pleasure at the initiative taken by the Treasury in organising the early production of the notes. It also expressed appreciation of the action of the Leader of the Government in the Senate in *tabling* the notes in the Senate – quite an important step as it thereby made them public documents and available generally. "Public access to the information contained in the notes", the Committee reported, "conforms with the basic principle of accountability of governments to Parliament".

In October 1977, Committee F in referring to the variable quality of the Explanatory Notes expressed some criticism of the Budget documents themselves. "The Committee's discussion of the question of the inadequacy of departmental notes", it reported "was prompted, in part,

by difficulties encountered in reconciling the Estimates included in the Budget Documents with the notes provided. The Committee was further disturbed by the inadequacy of the Budget Documents themselves. It elicited the information that, under certain conditions, persons without access to departmental explanations and oral advice from officers would find it impossible to reconcile previous outlays with current estimates".

Committee A, in its report of the same time, proposed to the Senate that the Government be called on to give an undertaking to the Senate to table the Explanatory Notes on the day immediately following the presentation of the Appropriation Bills to the Parliament, and that the Department of Finance review recent reports of the Estimates Committees and submit to a meeting of Estimates Committees Chairmen a style of notes, embracing both form and content, which would then be used as a model for all departments and statutory authorities.

On 9th June 1978, the Estimates Committees Chairmen presented to the Senate a report to which was attached a style of Explanatory Notes submitted by the Department of Finance to which the Chairmen had agreed. All Departments were advised by the Department of Finance that Notes prepared in that style were required by the Estimates Committees as soon as the Appropriation Bills were introduced into the House of Representatives.

On 22nd August 1978, one week after the 1978–79 Budget Papers had been presented, the detailed explanatory notes of 45 departments and authorities, reaching about two-thirds of a metre high, were tabled in the Senate. They represented a measure of Departmental accountability far removed from the pre-1970 period, when Senators examining the Estimates, had little beyond the Budget Documents and some annual reports to refer to.

*(b) Departmental Reports*

The Estimates Committees, seeking also to have available to them, in their consideration of the votes, the latest reports of Departments, have consistently been critical of instances where annual reports have been unduly delayed.

Indicative of this is the following reference in the October 1977 report of Committee A:

> "The Committee still finds itself concerned at the lateness in the presentation to the Parliament of the annual reports of some departments and statutory authorities. Whilst annual reports do not stand referred to Estimates Committees, they are nevertheless one of the tools used by the Committees in exercising their responsibility to the Senate of scrutiny of Government expenditure.
>
> The Committee feels compelled to brings to the Senate's notice that the discharge of that responsibility is being hindered by what can only be interpreted as a somewhat cavalier approach on the part of some Government bodies to the accountability of the Executive to the Parliament."

Committee F considered the delays in many cases to be "inexcusable",

gave details of a specific case, and suggested that the Senate give consideration to deferring passage of the vote of the Department concerned until details of progress on the report had been provided to the Senate.

In November 1978, Committee C expressed the opinion that where it was anticipated that the tabling of annual reports may be delayed for one reason or other, interim reports should be tabled to ensure that adequate information on the operations of the departments and statutory authorities was available.

Particular importance has been attached to the Auditor-General's report as the following comment by Committee C in October 1977 will indicate:

> "In October 1976, the Committee reported that it would be desirable for the Report of the Auditor-General for the previous financial year to be available for a reasonable time prior to the examination of Departmental Estimates in future so that members of the Committee and other Senators have time to peruse the Report, and ask any questions arising out of it which may be relevant to the Expenditure the Committee is considering. This year the Report was not available until 13th September 1977, one week after Estimates Committees had commenced. The Committee reiterates the need to have the report available for a reasonable time prior to examination of Departmental Estimates. If the report is not available, it could be that Departments may have to be re-examined at inconvenience to both the Members of the Committee and to the many witnesses appearing."

The Estimates Committees have not been alone in pressing for early reports. The Legislative and General Purpose Standing Committees have also done so, and the Joint Committee on Publications and the Senate's Standing Committee on Finance and Government Operations have brought down strong recommendations in this regard.

On 22nd March 1977, the Senate resolved that all annual reports of Government departments and authorities, including statutory corporations, laid upon the Table of the Senate, should be referred to its Standing Committees which "may at their discretion, pursue or not pursue inquiries into reports so received". Further reference to subsequent action in this regard will be made later.

*(c) Departmental representatives*

The Committees early made it clear that they expected the Senate Ministers attending their hearings to be accompanied by senior departmental officers. In many cases they have, in fact, been accompanied by the Departmental Head.

The Committees continuing insistence on appropriate witnesses may be illustrated by two relatively recent instances.

In October 1976, Committee A, in referring again to the level of departmental representation before the Committee — a subject which it said, had been raised on previous occasions – reported that although it was obviously necessary for such representation to consist primarily of officers who were familiar with the detailed areas of proposed investigation, the Committee believed "that the Minister should be accompanied by an

officer or officers of the most senior levels of the Second Division who should be able to give answers of a breadth and responsibility not necessarily available to officers of lesser levels within the Department".

In May 1978, Committee B expressed some criticism of the Australian Broadcasting Commission for not providing a witness who was currently engaged in the television area and who could of his own knowledge answer questions relevant to that area. "The Committee is of the opinion", it reported "that Departments and Statutory Authorities and bodies are recreant in their responsibilities to Parliament if they do not provide competent witnesses for such obvious areas of questioning". In November 1978, "appreciation and pleasure" was expressed at the high quality of both the written and oral evidence given by officers of the Australian Broadcasting Commission.

In April 1979, the Standing Orders Committee reported to the Senate on the matter in the following terms:

"The Committee draws to the attention of the Senate the opinions expressed in Report[5] of a number of Estimates Committees concerning the failure by departments and statutory authorities, on occasion, to provide witnesses of sufficient authority and with sufficient information to reply adequately to questions asked by Senators. In the main, the Committee considers that departmental representation before Estimates Committees has been adequate. However, the Committee agrees with the opinion previously expressed by Estimates Committees that departmental witnesses appearing before the Committees should be of sufficient seniority to ensure that the fullest possible information is provided."

It might be appropriate here to refer to practice in connexion with the Expenditure Committee of the Australian House of Representatives. In an article in *The Parliamentarian* of October 1978, the Hon. R. V. Garland, M.P., former Chairman of the Committee, wrote that it was the practice of the Committee to require the Permanent Head of a Department to be responsible for the preparation of submissions and to appear before the Committee: "They have been invited to bring any officers they wish and they have brought other officers along, but in practice have answered most of the questions themselves. If departments are to be held accountable for efficient administration then it is the Permanent Head who is accountable."

In this context one might also note a comment made in a memorandum submitted to the House of Commons Select Committee on Procedure in June 1977 by Mr. James Boyden, M.P., Chairman of the then Commons Expenditure Committee:

"I detect in departmental witnesses appearing in public the realisation that there is scope for more than mere defensiveness. They have an opportunity to make clear the policies of their Departments, to demonstrate why they think they are the right ones, and to secure wider support for them. They have, as it were, a free platform. To best use that platform their evidence must be positive and frank".

The same comment holds good in Australia.

(*d*) *Statutory Authorities*

Perhaps the most important matter commented upon by the Estimates Committees has been the accountability of Statutory Authorities, an issue encountered at the very beginning of the new Committee system.

In its first Report, Committee B informed the Senate that there appeared to be a lack of understanding by officers of the Australian Broadcasting Commission and the Broadcasting Control Board of this issue. "The Committee is of the opinion", it stated, "that whilst it may be argued that these bodies are not accountable through the responsible Minister of State to Parliament for day to day operations, Statutory Corporations may be called to account by Parliament itself at any time and that there are no areas of expenditure of public funds where these corporations have a discretion to withhold details or explanations from Parliament or its Committees unless the Parliament has expressly provided otherwise." The Committee of the Whole accepted and confirmed this opinion further resolving that in its opinion "unless the Parliament has expressly provided otherwise, there is no area of expenditure of public funds by Statutory Authorities which cannot be examined by Parliament or its Committees". The Senate adopted the report of the Committee of the Whole to this effect on 9th December 1971.

Inevitably where Senators sought details which they regard as necessary, but the Authorities regarded as involving commercial confidentiality, difficulties arose. The Estimates Committees were required, under their enabling Resolution, to hold their hearings in public. Could such evidence be taken *in camera?* Committee B raised this question in 1972. The Senate referred the matter to its Standing Orders Committee which recommended that *in camera* evidence be taken only with the concurrence of the Senate. The Senate adopted the Standing Orders Committee's recommendation, and although the matter was recently reviewed by the Standing Orders Committee the position still remains that *in camera* evidence can only be taken with the prior approval of the Senate. To date no such prior approval of the Senate has been formally sought.

During debate on this matter, it was pointed out that *in camera* evidence could only have limited value because the evidence may not be known to the whole Senate, and it was the Senate – not the Estimates Committees – which had the responsibility of passing the Estimates.

In October 1974, a witness sought to be excused from answering a question relating to art purchases for the National Gallery on the grounds that provision of the information could jeopardize negotiations in hand. He offered to supply the information on paper. The Chairman ruled the question need not be answered; a dissent motion was moved and the Committee met in private where the motion was negatived; upon resumption of the hearings, the Chairman announced that although the Committee had clear power to insist upon an answer, it had exercised its discretion and resolved not to do so.

The Committees have never been happy with "one line appropriations" that apply in respect to some of the authorities, and the lack of detail supplied. Committee B reported in May 1978 that over the years it had been apparent that, both in format and detail, explanations from certain statutory authorities and bodies had been found wanting, and that despite a number of generalised suggestions made on the way such details of estimates could be set out, in many cases the explanations were still found wanting. In view of the difficulties it had encountered with "one line" appropriations, it noted with pleasure that the Standing Committee on Finance and Government Operations was considering whether it was appropriate and feasible for those estimates to be set out in the Appropriation Bills in similar form to the estimates of Departments.

Further reference will be made to the Report of the Standing Committee on Finance and Government Operations. Suffice at this stage to state that that Committee agreed with the Estimates Committees that the appropriations should be more detailed. The explanatory notes could then, it stated, be on similar lines to those set out for Departments pursuant to the report of the Estimates Committees Chairmen. "We do not suggest", the Committee reported "that authorities should be regarded by the Parliament in exactly the same way as departments. However, unless Estimates Committees are able to examine authorities' estimates in proper detail, then the accountability of authorities to Parliament is reduced".

(*e*) *Evaluation of Government programs*

Concern and criticism have been expressed at the manner in which some government programs have been funded.

Committee D reported in October 1977 that throughout its consideration of the Estimates, it had noted that the funding of many government programs consistently took place in the absence of stated objectives and without subsequent evaluations as to the effectiveness of the programs. "The Committee believes", it stated "that all programs which involve the expenditure of Commonwealth moneys should only be undertaken in line with stated government policy or departmental objective and that appropriate evaluations as to the effectiveness of the programs should regularly be undertaken".

In November 1978, Committee C reported that it was concerned that evaluations were still not carried out in a satisfactory manner, particularly in relation to the programs proposed to be funded by three Departments which it listed. "In general" it reported "the Committee is concerned at the lack of evaluation of many government projects, the general inability of officers to answer questions to the satisfaction of the Committee concerning the need for evaluations and the extent to which they are being applied, and the apparent lack of implementation of programs on the basis of evaluations done to test both

their feasibility in the first instance, and their effectiveness in the second".

Computers constitute one particular area to which Committees have directed attention. Committee D reported in November 1978 on evidence given to it and other Estimates Committees in relation to an Inter-Departmental Committee which scrutinizes the purchase and use of computers, and attached papers which had been supplied on the Public Service Board's review on computer expenditure and use. The Committee considered that the Government should report regularly to the Parliament on the activities of the Inter-Departmental Committee and the Public Service Board in this regard, and that the report should include figures showing total Commonwealth expenditure.

(*f*) *Content of Appropriation Bills*

The form and content of the Appropriation Bills have been closely watched by the Committees for a special reason based on the Senate's constitutional powers.

Under the Constitution, the Senate may amend any Bill, other than a Bill imposing taxation or appropriating revenue or moneys for the ordinary annual services of the government. As a consequence, two Bills are introduced at the time of the Budget or Additional Estimates or when supply is sought for the early months of the next financial year – the first for the ordinary annual services of the Government, which the Senate may not amend, and the second for other proposed expenditure which the Senate may amend.

The Senate has always guarded its right of amendment and watched to see that items are not included in the non-amendable Bill which should, in its opinion, more correctly be included in the amendable Bill.

Two recent instances of Estimates Committee watchfulness may suffice to demonstrate this.

During the Estimates Committees' examination in the latter part of last year, the Senators in Committee C questioned the inclusion in the non-amendable Bill of an amount for Publicity Expenses for the International Year of the Child, contending that the expenditure was neither "ordinary" nor "annual"; and similarly questioned an amount for another item included in an earlier Bill. As a result of the Committee's concern, the Department of Finance was asked to provide advice on the reasons for the inclusion of the items in the non-amendable Bills. The Committee reported that after considering the reply, it felt that there was sufficient "doubt" for the first of the items to have been included in the amendable Bill, and it endorsed the suggestion contained in a 1967 Report by Government Senators on the Appropriation Bills that when "doubt" exists, items should be included in Bills which can be amended by the Senate.

Earlier in the year, Senators in Committee A again raised for the consideration of the Senate a matter which had also been referred to in the 1967 Report, *viz.* – the appropriateness of the Parliamentary

vote appearing in the non-amendable Bill. They reported that they firmly held the view expressed in that Report that the appropriation for Parliament is not an ordinary annual service of the Government. "Parliament", they reported, "is a separate arm of Government to which the executive is accountable, and it must be master of its own affairs", and they suggested to the Senate that the time was overdue for the appropriation for Parliament to be excluded from the non-amendable Appropriation Bill for the ordinary annual services of the Government, and included in a Special Appropriation Bill subject to Senate amendment.

Questioned on this and other issues relating to Parliament's autonomy in respect of its own budget, the President of the Senate, Senator Sir Condor Laucke, indicated at hearings held later in 1978, that he and the Speaker of the House of Representatives, Sir Billy Snedden, had already taken up the matter with the Government. In its report in November 1978, Committee A noted the efforts being made by the Presiding Officers to give the legislature greater control over the expenditure of the Parliament and stated that it looked forward to when the President was able to make a further statement on the progress made.

**Future Operations of the Estimates Committees**

The Estimates Committees have been aware that in covering the broad spectrum as well as the details of votes, their examination of proposed expenditure has in many respects been superficial only, with the criticism that many questions lack depth and many sections of votes have been skimmed over. They are also aware that the annual Budget proposals cover only a portion of the total expenditure – Committee F in October 1976 pointed out in its report that the 1975–76 Special Appropriations were 36% greater than the Annual and Additional Estimates and the Advance to the Treasurer – and they have, as already indicated, long been concerned with government-funded authorities.

In October 1976, Estimates Committee F reported that while it believed that the Estimates Committees, as miniature Committees of the Whole, had played an important role in scrutinizing proposed expenditure, they had been unable, because of the intermittent nature of their operations and the increasing complexity of government administration, to carry out the scrutiny fully and effectively. The Committee indicated that it agreed with the recommendation made earlier that year by a Joint Committee on the Parliamentary Committee System that the scrutiny function of the Estimates Committees could be enhanced and made more effective by providing them with both a full-time function and full-time staff.

It should be mentioned here that the Committees, at their twice yearly hearings involved with the annual Estimates and Additional Estimates respectively, had up to that time been assisted by a Secretary only, appointed pro-tem from the Senate procedural staff for the duration of each period of hearings and with the duty simply of acting as Clerk

to the Committee. No questions, for instance, were prepared by the Secretary, nor background research done for the Committee. The Committees operated, as Committee F indicated, as miniature Committees of the Whole with Senators asking such questions as they wished.

In November 1976, the Senate referred the question of full-time staff to the Standing Orders Committee, which in February 1977 recommended that for the time being no action be taken.

In October 1977, Committee F recommended that the Senate again refer the matter to the Standing Orders Committee, suggesting that in the event of there being constraints upon the immediate provision of a full-time secretariat to service the operations of Estimates Committees, staff of the Senate Committee Secretariat – normally engaged on the Legislative and General Purpose Standing Committees – be seconded as an interim measure only to the Estimates Committees "to examine the extensive documentation provided by Departments, and to assist Committee members in preparation for the hearings particularly in relation to the listing of matters arising in previous hearings and needing further examination."

Staff restrictions prevented the engagement of full-time staff, but interim arrangements were made as suggested by the Committees. Following the April-May 1978 examination of the Estimates, the Committees expressed appreciation of the provision of a research officer assigned to each Committee, stating that the experiment had proved worthwhile and of benefit to the Committees. Committee A indicated that it looked forward to a further decision of the Senate towards a full-time function and full-time staff for the Committees.

In April 1979 the Standing Orders Committee reported that matters under consideration by the Committee included "The operation and staffing of Legislative and General Purpose Standing Committees and Estimates Committees."

**Legislative and General Purpose Standing Committees**

As indicated at the outset of this paper, the different Senate Committees have developed in a corroborative, cohesive and supplemental fashion. There are many instances where the Standing Committees have followed up, and reported upon, matters earlier referred to by the Estimates Committees. Both sets of Committees have taken a strong line on Executive accountability.

Before giving examples of this – and the examples must be brief in view of the already long length of this article – several background points must be made in regard to the Standing Committees and their reports, *viz.*:—

(1) Like the Estimates Committees, the Standing Committees each consist of six Senators, three from each side of the House; but unlike the Estimates Committees, their role is a continuing one and they are each serviced by a staff of three– Secretary, Research Officer and Stenographer. Between them, the eight Committees encompass

the whole area of Governmental responsibility and the portfolios of the entire Ministry, respectively covering Constitutional and Legal Affairs; Education and the Arts; Finance and Government Operations; Foreign Affairs and Defence; National Resources, Science and the Environment; Social Welfare; and Trade and Commerce. Since the first of the Committees were appointed in 1970, over 100 reports have been presented to the Senate.

(2) The Committees may deal only with matters referred to them by the Senate but any Senator may give Notice of a Motion to refer a matter to one of the Committees. That in itself may not be unusual, but what is of interest is that such a Notice is listed under Business of the Senate on the next day's Notice Paper and, as such, takes priority (unless postponed) of Government and General Business. In other words, any Notice of Motion for the reference of a matter to a Standing Committee must receive early consideration.

(3) The list of current references before each Committee is impressive. The daily Notice Paper of each House of the Australian Parliament shows on its final pages a full list of all Committees in their various categories. The Senate listing of its Legislative and General Purpose Standing Committees shows the membership, current inquiries of the Committees, the dates the inquiries were referred to the Committees, and where reports have been presented, the dates of those reports. This up-to-date daily listing has proved an invaluable ready reference for Members, Parliamentary staff, departmental officials and public alike.

(4) A motion for the consideration or adoption of any Committee report receives precedence, under the Senate Standing Orders, of any other General Business on the day on which it is set down on the Notice Paper.

(5) A government response, outlining action proposed to be taken, must be given to each Committee report within six months of its presentation. This follows from a statement made by the Prime Minister on 26th May 1978. As far back as March 1973, the Senate had passed a resolution requesting the Government to make such a response within three months, and it had reiterated this request in stronger terms in May 1978, shortly before the Government announcement. Recently (April 1979), the Senate Standing Orders Committee reported that it had accepted the Government's decision, and noted that, since that decision, the Senate Records Office had established a register which records the tabling dates of appropriate Parliamentary Committee Reports and the date of presentation to the Senate of any Government statement thereon. The Committee endorsed this procedure and proposed that the President, from time to time, as considered necessary, inform the Senate when Government statements are not presented within the prescribed time.

It might be noted in passing that the House of Commons Procedure Committee recommended in its 1978 report that the British Government make such a response within two months.

(a) *Examination of Annual Reports*

The annual reports of departments and authorities clearly constitute one area where the various Senate Committees have taken a consistently firm attitude. As already indicated, the Senate, on 22nd March 1977, resolved that all such reports laid on the Table of the Senate should be referred to its Standing Committees which "may at their discretion, pursue or not pursue inquiries into reports so received."

Several committees have presented reports pursuant to this resolution, and subsequently had Government responses.

The Science and Environment Committee has presented three such reports. In its first report tabled in March 1978, it advised that three of the thirteen reports it had examined had been at least a year out

of date when presented to Parliament; but in its second report tabled in June 1978, it stated that the position was generally better, as only one of the eight reports this time examined had been similarly out of date. In presenting the Committee's third report on 22nd March 1979, the Chairman of the Committee, Senator Jessop, referred to comments made by the Committee on the content of reports. Among issues raised in the two earlier reports were: the need for annual reports to describe how they are fulfilling declared objectives and statutory obligations; the need to describe not only what has been done, but also what is planned to be done in the future; the need for a listing of major publications issued and published during the year; and the need for appendices giving information on such matters as organisational structure, staff numbers, a brief history of the organisation, and routine statistical information.

"With some exceptions", Senator Jessop stated "the Committee continues to find shortcomings in the annual reports reviewed . . . The Committee believes that all organisations should outline in their annual reports the powers, functions and objectives of their charter, whether statutory or otherwise, indicating how each is being exercised and fulfilled. Although this may seem obvious, it is rarely done."

(b) *Government Responses*

The first report of the Science and Environment Committee was the first Senate report to receive a response from the Government in keeping with its May 1978 pronouncement. On 14th November 1978, the Leader of the Government in the Senate, Senator Carrick, assured the Senate that the matters raised had been brought to the attention of the Departments and authorities concerned, which had given assurances that the matters raised would be borne in mind during the preparation of future annual reports. The Government shared the Committee's concern, he stated, for the need for Government bodies to report promptly to Parliament, and efforts were being made to ensure that reports be submitted with a minimum of delay.

As a result of Government responses, Committees now have a positive indication of the action proposed to be taken on their recommendations. On 29th March 1979, for instance, Senator Thomas, Chairman of the Standing Committee on National Resources, speaking to a motion to take note of the Government response to his Committee's report on the Commonwealth's role in the assessment, planning, development and management of Australia's water resources, referred to the fact that the Government had accepted 30 of the 33 recommendations made by the Committee, and had put their implementation in train.

There is no question now of reports being pigeonholed; and, if a recent recommendation of the Senate Standing Orders Committee is duly approved, Senate procedure will soon ensure that Government responses to such reports may be debated at a reasonably early date. The Committee has recommended to the Senate that a motion for the

consideration of any Government statement on a report from any Standing or Select Committee of the Senate, or Joint Standing or Select Committee of the two Houses, take precedence "unless otherwise ordered" of any other General Business on the day on which it is set down on the Notice Paper – in the same way as precedence is already accorded motions for the consideration or adoption of the Reports of the Committees.

(c) *Statutory Authorities*

From the executive accountability aspect, the report of the Standing Committee on Finance and Government Operations on Statutory Authorities, dated December 1978, is one of the most important reports to have emanated from the Standing Committees.

It is a most comprehensive document, examining authorities primarily from the viewpoint of the Parliament and concentrating on measures to improve their accountability, but intended by the Committee as an introductory Report only. It followed from the reference to it by the Senate in October 1977 of the following:

> "The continuing oversight of the financial and administrative affairs or undertakings of Commonwealth statutory authorities, and other bodies which the Commonwealth owns or controls wholly or substantially, and of the appropriateness and significance of their practice in accounting to the Parliament."

– a reference which itself doubtless flowed from the earlier comments and criticisms made by the Estimates Committees.

In tabling the report on 20th February 1979, the Committee's Chairman, Senator Rae, pointed out that for years Australian parliamentarians had viewed the proliferation of authorities with growing interest and concern. "The Committee found", he said "that as Commonwealth statutory authorities have proliferated, they have acquired an extraordinarily diverse set of characteristics. They are often outside the standard departmental structure with its safeguards of ministerial responsibility and accountability. Little or no attempt has been made to achieve uniformity in the jurisdiction for their initial creation, in the degree of operating independence granted to them or in the strictness and form of their accountability requirements. This situation has created considerable problems, both for the Executive Government in effectively managing Australia's economy and administration, and for the Parliament in ensuring that the authorities' ultimate accountability to the people is maintained."

The Committee found no comprehensive list of statutory authorities available, and, by examining each piece of Commonwealth legislation and by various other and "somewhat tedious" steps, compiled its own list of 241 authorities, plus a large number of subsidiary authorities. "We consider that the absence of a list is indicative of the haphazard ways in which authorities have been created, and of the attitude towards their proliferation. The Committee intends to update its own list annually

so as to keep the Parliament and the people fully informed", Senator Rae stated; and further "The Committee considers that the direct link which exists between the Parliament and the statutory authorities it creates requires that the Parliament should institute satisfactory procedures to ensure that authorities are properly accountable for their actions. If these procedures do not operate, then the authorities may well, in effect, be accountable to no one – neither to the Minister nor to the Parliament."

The main suggestions made by the Committee were –

(1) That an annual reports Act should be enacted to introduce a standard reporting requirement for authorities whereby they could report annually to the Parliament through a Minister – with provision for interim reports to be tabled when final reports are delayed; and

(2) That consideration be given to including "sunset" provisions (now widely used in the United States) in the enabling legislation for future authorities; in other words, to impose a time limit at the end of which the authority automatically disbands unless specifically authorised to continue by new legislation. "In this way, authorities have to justify their continuation rather than having an automatic right to an indefinite existence."

No government response has at the time of writing yet been given to the report, but a reference to it was made on 22nd March 1979 by the Leader of the Government in the Senate, Senator Carrick, when making a statement on the introduction of an army and air force canteen service, involving the creation of another statutory authority. The Minister informed the Senate that it was not proposed to specify a terminating date for the new statutory body, as had recently been suggested by the Committee, expressing the belief that the Senate would agree that this would not be appropriate for a trading organisation of the type proposed.

(d) *Important recent Reports*

Three reports tabled in recent months by the Senate's Standing Committees on Constitutional and Legal Affairs, Social Welfare and Regulations and Ordinances respectively should finally be referred to. All were concerned with the Senate's scrutiny function, *viz.*:—

(a) *Scrutiny of legislation.* On 23rd November 1978, the Standing Committee on Constitutional and Legal Affairs, in reporting upon a matter referred to it on 9th June 1978, namely, the desirability and practicability of referring legislation to a Senate Committee, recommended that a parliamentary committee should be established to maintain a watching brief on all bills introduced into the Parliament, and to report upon whether they, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties and obligations unduly dependent upon insufficiently defined administrative powers or non-reviewable administrative decisions; or

(iii) inappropriately delegate legislative power or insufficiently subject its exercise to parliamentary scrutiny.

The Committee recommended the establishment of a joint committee to carry out this function, but debate on the Committee's recommendation has since shown that there is a strong body of opinion opposed to the proposal for a joint committee, and preferring the Senate, to use a colloquialism, "doing its own thing" or going alone.

It might be noted that in addition to having tabled reports on three other matters referred to it in the last year, the Standing Committee on Constitutional and Legal Affairs has also been taking evidence on a major reference referred to it on 29th September 1978, *viz.*— the Freedom of Information Bill and the Archives Bill 1978 in so far as it relates to the Freedom of Information Bill inquiry.

(b) *Government programs.* Reference was earlier made to the concern expressed by some Estimates Committees at the manner in which some government programs have been funded.

Similar concern was expressed in a report entitled "Through a Glass, Darkly", tabled by the Senate Standing Committee on Social Welfare on 3rd May 1979, in response to the reference to it for report of "the evaluation of the adequacy of Australian health and welfare services."

"We quite deliberately chose the title 'Through a Glass, Darkly', Senator Baume, the Committee's Chairman, told the Senate "to emphasize our concern that too little is known in the human services area in Australia. Too little is known of the working or effects of the Australian health and welfare system to enable proper and necessary decisions to be made for its management."

The Senate was informed that the report tabled represented the first of two companion volumes to be placed before the Senate. The second volume, not yet printed, would consist of seven papers specially commissioned and prepared by experts "to cover aspects of evaluation too often ignored by Australian policy makers and not adequately dealt with in submissions made to the Committee".

(c) *Scrutiny of Delegated Legislation.* On 28th September 1978, the Senate's Standing Committee on Regulations and Ordinances tabled in the Senate its 62nd Report entitled "Undertakings by Ministers to amend Regulations and Ordinances", and dealing, as its Chairman stated, with a "matter of greatest seriousness".

The Standing Committee on Regulations and Ordinances is not one of the Senate's eight Legislative and General Purpose Standing Committees. It is a Standing Committee which has functioned with marked success and a proud record of objectivity and independence since 1932. It examines delegated legislation, to quote its recently revised principles, "to ensure:

(a) that it is in accordance with the statute;

(b) that is does not trespass unduly on personal rights and liberties;

(c) that it does not unduly make the rights and liberties of citizens

dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal; and (d) that it does not contain matter more appropriate for Parliamentary enactment."

It will be noted that the Standing Committee on Constitutional and Legal Affairs recommended similar-type principles for its proposed Committee on the scrutiny of bills.

The Committee referred to the fact that in its 58th Report it had expressed concern at the inordinate delays in the carrying out of undertakings given by Ministers to amend regulations, and had stated that it would report to the Senate any cases where Ministers had not carried out such undertakings with reasonable promptness. It now reported to the Senate seven cases where undertakings had not been carried out – two relating to decisions made in 1975, one in 1976, two in 1977, and two from May 1978.

"All of the regulations and ordinances referred to", the Committee reported, "have provisions which are unsatisfactory in their effect on individual rights and liberties, and this has been recognised by the various Ministers in their various undertakings. A highly unsatisfactory situation arises when undertakings by Ministers are not carried out promptly and expeditiously, in that provisions recognised to be defective are allowed to stand and the public effectively lack the protection which the disallowance procedure and the Committee are designed to give. Unless there is an improvement in the situation in the future the Committee will be less ready to accept undertakings which cannot be carried out before the time for disallowance has passed."

The Committee's Chairman, Senator Missen (he is Chairman of both the Regulations and Ordinances Committee and the Committee on Constitutional and Legal Affairs) advised the Senate that it was not a matter of the Committee being difficult, because it had an obligation imposed upon it to advise the Senate and the Senate had an obligation to do something to protect the liberties of the subject in this regard.

"When I say, as we say in the report," he said "that, in future, we will not be able to accept such undertakings with such readiness, it is not just a threat. It is a fact that, if we are to carry out our obligation in this Senate, we cannot allow this drift of the situation to continue."

**Future Operations of the Standing Committees**

In tabling the report of the Standing Committee on Science and the Environment on Annual Reports on 22nd March 1979, Senator Jessop, the Chairman of the Committee, made this comment:

". . . the Committee would like to go very much further than it already has in pursuing inquiries into annual reports of Government departments and authorities. It sees in this activity a responsibility of the upper House of Parliament that has hitherto been very much neglected. But the staff resources – this is a point that ought to be noted – available to Senate committees are meagre when matched against what is expected of them. By comparison, public inquiries launched by the Executive are given considerable

resources. Many of them have staffs of 20 or more persons.

". . . I believe the time has come when serious consideration must be given to Senate Committee operations and their staffing needs. The committees are now well established. Their influence and their workloads are growing as they should."

As mentioned at the beginning of this paper, the work of the Senate Legislative and General Purpose Standing Committees has, to date, been more General Purpose than Legislative. Whether it will continue so is a matter of interest and some speculation, particularly in view of the fact that the Senate recently initiated new procedures aimed at facilitating the reference of Bills to the Committees. On 16th August 1978, it agreed that the new procedures should operate on a trial basis as a Sessional Order for 1978. In its recent report, tabled April 1979, the Senate Standing Orders Committee reported to the Senate that it was unable to gauge the effectiveness of the new procedure, as no reference of a Bill to a Standing Committee under the new procedure had been made by the Senate. It recommended that the Sessional Order be reviewed.

As also indicated earlier, the Standing Orders Committee also reported that one of the matters under consideration by the Committee was: "The operation and staffing of the Legislative and General Purpose Standing Committees and Estimates Committees."

While it may therefore be said that the operation of the Senate Committee system is currently under review, it can be said with assurance that no major surgery is contemplated.

# V. TELEVISING THE CANADIAN HOUSE OF COMMONS

BY ALISTAIR FRASER

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The recent dissolution of the Parliament of Canada provides an opportunity to note the introduction during the 30th Parliament of radio and television broadcasting, to review the background leading up to that introduction, to describe the installation of the facilities, to assess some of the problems, apprehended and real, surrounding parliamentary broadcasting in Canada and to comment on the results thus far of a project which has now passed the experimental stage.

Following debates in the House in 1967 and 1969 the general question was referred in 1970 to the Standing Committee on Procedure and Organization which, after many meetings and voluminous evidence made a comprehensive report on 30th June, 1972 in which the concept of an "Electronic Hansard" was originated. This concept has been central to radio and television coverage of the House and briefly may be stated to be an audio-visual report in the same sense as the Official Report of Debates. It is not journalistic coverage but rather a faithful record of the proceedings and debates of the House. This fundamental recommendation of the Committee on Procedure and Organization was the cornerstone of all subsequent decisions as far as broadcasting activities in the House of Commons is concerned but may provide substantial problems when the question of coverage of Committees is considered – presumably in the forthcoming Parliament.

The Report of the Standing Committee on Procedure and Organization was followed by a feasibility study of the Canadian Broadcasting Corporation in 1974 prepared for the then President of the Privy Council. These two documents eventually formed the basis for a motion introduced by the Government House Leader and President of the Privy Council on 24th January 1977. In essence, after some amendment, the terms of the motion were to approve broadcasting by radio and television of the proceedings of the House and its Committees, on the basis of principles governing the publication of *Hansard* and to establish a Special Committee under the chairmanship of the Speaker which would supervise the implementation of the decision of the House. The motion was adopted, without a recorded division, on 25th January, 1977, and the Special Committee was set in motion. In passing, it may be of interest to observe that the Special Committee is unusual in the Canadian experience in that it is one of the few Committees with executive, as opposed to legislative and investigative, responsibilities – indeed no important decision concerned with the implementation of the resolution of the House has been taken without the sanction of the Committee.

The combined results of the original report of the Committee on Procedure and Organization, the feasibility study, the debate in the House of Commons and the deliberations of the Special Committee led to the following criteria governing the eventual installation of the system:—

(1) A permanent installation in the Commons Chamber at floor level.
(2) Eight cameras to provide equal and impartial coverage of all Members and all parties with matching camera positions on each side of the House.
(3) A system integrated into the architecture of the Chamber so as not to offend the existing decor of the House.
(4) Small electronic (videotape) cameras providing the flexibility and mobility required to cover proceedings adequately for live and recorded transmissions without the disadvantages of the bulkiness of studio cameras.
(5) A lighting system providing approximately 70 foot-candles.
(6) Integration of the system with the procedures of the House; the person given the floor by the Speaker is always "on air"; the cameras provide a verbatim recording of procedures from the opening of business until the adjournment (Electronic Hansard).
(7) Transmission in full colour in French and English and of broadcast quality.
(8) Proceedings fed out to networks and other users without editing, alteration or revision of any kind by the House.

Early on, the crucial decision was taken that the entire control of the system was to be in the hands of the House and under the direct supervision of the Speaker acting on behalf of all Members. That having been said, once the broadcasting has been achieved, either live or on videotape, the use of the product is entirely within the competence of the user as in the case of *Hansard*.

The Special Committee under the chairmanship of the Speaker held its first public hearing on 28th February 1977 and by the end of the Second Session of the 30th Parliament had published 13 issues of its proceedings and had made five Reports to the House. Of these the most significant was the Fifth Report presented by the Speaker on behalf of the Committee on 17th October 1977 which summarized the work to that time.

The Report was broken down into three distinct phases and may be summarized as follows:—

Phase 1: – *Space and Accommodation*. The Committee approved the location of temporary control rooms pending their transfer to a new mezzanine floor constructed above the south gallery of the Chamber. Approval was also given for the installation of a temporary Operations Centre in another building. The Committee approved a modified lighting system and dealt with some necessary alteration to decorative screens on the floor – brought about more by the necessity of additional desks in anticipation of a forthcoming redistribution than the intro-

duction of television.

Phase 2: – *System Facilities.* The Committee authorized that a group consisting of key personnel from the Canadian Broadcasting Corporation and the staff of the House of Commons prepare job descriptions and establish competitions to engage the necessary staff.

Phase 3: – *Coverage, Production and Distribution.* The Committee arranged for a consultant to be seconded to give advice to them and authorized the installation of video monitors in the Lobbies, Speaker's Office, House Leaders' and Whips' offices and in certain technical offices such as those of the Chief Interpreter and Chief of Electronic Services. As well, monitors were located in the working quarters of the Parliamentary Press Gallery.

The Committee touched upon, but did not deal with, the special problems of rights and immunities and the particular situation of immunities of broadcasters as well as language interpreters.

The bare language of the Fifth Report in no way conveys adequately the frenzied activity of the summer of 1977. Originally it had been hoped that the House would rise by 1st July and a timetable had been drawn up with that date in mind – in fact sitting continued until the second week of August with a consequent loss of six working weeks.

The problems were formidable. Within the severely foreshortened time available it was necessary, simultaneously, to deal with the need to add new desks to accommodate space for eighteen additional Members in anticipation of a redistribution and to install the new broadcasting facilities, together with a new sound reinforcement and interpretation system. The new desk space required a relocation of the Speaker's Chair which, in itself, meant basic alteration of the stonework at the rear of the Chair. As well, the intervals between Members' desks were tightened by three-quarters of an inch and the extremely complicated system of wires leading to microphones and earpieces on the desks had to be removed, repositioned and replaced. A new carpet was installed and new desks built. On the broadcasting side there was not only the establishment of the cameras but also all the supporting equipment and lights and the need for major construction in the form of the new mezzanine floor to accommodate the control room.

The House met after its summer adjournment on 17th October 1977. So tight was the construction schedule that the work had been completed only on 16th October and all concerned were so uncertain about all the problems that a dress rehearsal was held on that day with members of the staff portraying Members going through the daily routine of business in order to give the newly arrived cameramen and directors some hint of what awaited them on the following day.

When the Members returned on 17th October (the final day of the Second Session) they found the Chamber, in appearance, much as they had left it. The two most noticeable changes were the bright lights which today remain a problem and eight cameras – two at each end of

the Chamber remotely operated, and two on each side manually operated. Plans call for the removal of the camera operators from the floor, so that in future all cameras will be trained by remote control from the new mezzanine floor.

The Special Committee was reconstituted during the Third Session but was not set up in the Fourth and final Session. In its First Report of the Third Session the Committee drew to the attention of the House one of the main and thus far unresolved problems facing the Canadian Parliament in its broadcasting endeavours. This has to do with the introduction of television and radio coverage not only of the House but also of its Committees. The Committee frankly observed that the concept of the "electronic Hansard" might not be applicable to the Standing and Special Committees and concluded it would be contrary to the Order of the House that any committee coverage be undertaken prior to consideration and authorization by the Special Committee. The pattern of committee work in the Canadian House of Commons tends to the holding of many meetings simultaneously on Tuesdays and Thursdays, very few meetings on Mondays, Wednesdays and Fridays. The problem of selection of Committees on busy days is obvious and if the "electronic Hansard" concept is to be applied to the Committee system the expenditure could be astronomical. On the other hand much important parliamentary activity occurs in Canadian parliamentary Committees and early consideration of the problem is imperative.

Another difficulty remains. The Chamber and its occupants are subjected to intensely bright illumination which, presumably, only advances in camera technology can ameliorate.

There is too the untested field of the immunity of Members now that their statements are carried instantaneously to a vast audience across the country. Should the well understood protection against actions for libel and slander be reviewed in the light of these changing circumstances?

Even the "electronic Hansard" concept has come under mild attack. It is safe to say that in 1977 Members would not have agreed to the introduction of television without this safeguard – there were fears that the training of cameras on empty seats or on M.P.s in unflattering situations would not be productive of an accurate or positive public concept of the House. Additionally it was felt that the Chair must have complete control at all times. Now, however, there is pressure, particularly from the broadcasters for freer and more relaxed coverage with more wide screen shots showing more than the Member who legitimately has the floor at any given time. There have been several incidents involving Members crossing the floor or withdrawing from the Chamber when the cameras have remained focussed on the empty seat, thereby leading to understandable frustration on the part of the broadcasters and the public anxious to see the drama of the occasion carried to a conclusion.

There is as well some speculation – and only speculation – as to the

extent of the advantage or disadvantage conferred on Members who have had considerable exposure, particularly during the Question Period, *vis-a-vis* their political opponents during a general election when those opponents have not had that exposure. The question remains unsettled.

These then are some of the problems still to be resolved. Other difficulties anticipated in the days and years leading up to the present state of affairs either have not arisen or have not been as formidable as was feared. Television has not yet taken over the procedures and proceedings of the House. The concern over the possible rush of prima donnas anxious to usurp the floor has not occurred. Speeches remain much as they were – neither brighter nor duller. Attendance in the House has not increased or decreased. In general things remain very much as they were.

The capital cost of the installation was estimated at approximately 4.8 million dollars (Canadian) and the annual operating cost is in the neighbourhood of 700,000 dollars. The general opinion of Members and the public seems to have been that it is worth the money. One of the principal features of the parliamentary day in Canada is the daily Question Period which is carried live to major Canadian cities, followed by satellite transmission of the full proceedings to fifteen major cable channels across the country – an innovation inaugurated in the closing days of the last session. Some twenty cablevision channels carry a delayed broadcast of proceedings and excerpts appear each evening on network news.

Each Sunday the Canadian Broadcasting Corporation does a weekly synopsis of parliamentary highlights. The Corporation reported approximately 900,000 viewers on the English network while a similar French language programme reached some 250,000 viewers. The weekend radio programme is heard by over 300,000 listeners.

One of the major distribution vehicles of parliamentary broadcasting is a national system of cablevision channels stretching from coast to coast and consisting of some 400 cablevision systems carrying audio-visual information to seven million viewers. Some of these channels, all of which pay their own shipping costs, make tapes available to other channels to use and return. It is expected that cable television channels in major cities will be making use of direct satellite transmission in the next Parliament. When Parliament dissolved on 26th March 1979 the Canadian Broadcasting Corporation had been reaching major cities "live" in an experimental distribution system created by the Corporation with the co-operation of the privately owned cable television companies.

What have been the results after the experience of two years? In the main, very positive indeed. The activities in the most important "room" in Canada are being seen and assessed by an audience much greater than was contemplated by the most enthusiastic proponents of parliamentary broadcasting. Public reaction has, in the main, been complimentary although it should be observed that there has been widespread

criticism from citizens who feel Members are impolite to each other – many viewers cannot understand why honourable ladies and gentlemen who have been sent to Ottawa to do important work can interrupt each other – the ambiance of any deliberative body is well understood by its participants but comes as a surprise to others not familiar with the scene.

Perhaps the final word should go to the Speaker of the House, Hon. James Jerome who, more than any other person, has borne the responsibility of bringing broadcasting to the Canadian House of Commons.

On the question of whether television has changed Parliament, Mr. Speaker Jerome said in an interview with staff of the United States House of Representative Rules Committee on 29th January, 1978:

"I don't think it has changed the House in a substantial way. In that sense, I am saying, to those who haboured any fears about what it might do, they can relax a little because the presence of the cameras does not change the House or its work in a very substantial way."

Mr. Jerome, however, was aware of certain style changes.

"I do see some changes in style, but I think that it is quite natural . . . Members attempting to adjust their style of debate asking or responding to questions in order to be more effective on television. But I think that is to be expected and in any case, it is probably a change for the better. In terms of behaviour generally and decorum, it's a little too early to see changes in that direction."

He also saw an increase in public awareness as a result of broadcasting the House.

"I sense an awareness, a consciousness amongst the Members that the wider audience that this has attracted has a positive effect on their attitude toward their own behaviour. I know Members are getting a lot of correspondence. I am getting correspondence. We all are getting a lot of feedback, whether it is verbal or written, from the people of the country; confirming that – two things – (1) that the public awareness of Parliament has been dramatically increased as a result of the presence of television, that the public involvement and interest in Parliament and understanding of Parliament is being effected in a much more extensive way than even the most optimistic estimates and the second thing is (2) as a result of that, Members are conscious that others, looking in, are reacting unfavorably to the way that they behave in the House – that they are expressing surprise at the sort of casual attitude that they have, at some of their manners and the decorum in the House in a general way."

# VI. REFORM OF THE LEGISLATIVE COUNCIL OF NEW SOUTH WALES

BY L. A. JECKELN

*Clerk of the Parliaments, New South Wales*

On 17th June, 1978, a Bill to bring about important changes in the constitution of the Legislative Council of New South Wales was overwhelmingly supported by the people of that State at a referendum. Voters in favour of the Bill numbered 2,251,336, those against 403,313 and there were 69,727 informal votes. It is estimated that 348,302 did not vote at the referendum.

The vote in support of the Bill was the culmination of two years of effort by the Australian Labor Party Government in New South Wales to bring about reform in the method of election of members of the Legislative Council. In his policy speech in April 1976 Mr. N. K. Wran, the Labor Party Leader in the Legislative Assembly, promised, if elected to Government, that the people of New South Wales would be given the opportunity at a referendum to decide the number and future method of election of Council members.

From the commencement of Responsible Government in 1856 until 1934 membership of the Legislative Council had been by nomination. After 1861 membership was for life and there was no limit on the number of members. "Swamping" of the House by Governments led eventually to the peak figure of 126 in 1932, demonstrating an obvious need for something to be done. On 23rd April, 1934, the Council was reconstituted as a House of 60 Members, made up of four groups of 15. They were elected by members of the Council and Assembly voting simultaneously in their own Houses. The first four groups were elected for terms of 3, 6, 9 and 12 years respectively but, at subsequent triennial elections to fill the retiring members' vacancies, they were succeeded by members whose terms were for 12 years. The last triennial election held under this system was for 15 members with 12 year terms commencing on 23rd April, 1976.

Under the proposal approved at the referendum in 1978 the House will ultimately consist of 45 members elected for three parliamentary terms of the Legislative Assembly. As each Assembly may exist for three years, the term of a Council member could be approximately 9 years. Fifteen Council vacancies will occur each time there is a general election for the Assembly; elections to fill the 15 vacancies are termed "periodic Council elections".

A previous proposal by the Labor Party to abolish the Legislative Council was put to the people at a referendum on 29th April, 1961, and was defeated. That proposal was the subject of articles by the late

Major-General J. R. Stevenson, then Clerk of the Parliaments, in the 1959 and 1960 issues of THE TABLE.

The new Act for reconstitution of the Council provided for 28 of the 30 members with terms of service expiring on 22nd April, 1985, and 1988, to continue as members after reconstitution. Members whose terms expire on 22nd April, 1979, and 1982 (reduced by deaths and a resignation from 30 to 27) ceased to be members when the House was reconstituted. The Act also provided for the change to take place on the day upon which the writ for the first periodic Council election was returnable. The election was held on 7th October, 1978, and the writ made returnable on 3rd November, 1978. By subsequent proclamation the date for returning the writ was extended until 6th November.

At that election 15 members were elected to the Council in place of those retiring and, coupled with 27 continuing members – one continuing member resigned before the election – formed a House of 42. At the Assembly general election following that which also was held on 7th October, those 14 members whose terms of service would normally expire on 22nd April, 1985, will retire and be replaced by 15 members elected by the people. The Council will then consist of the 14 remaining continuing members and 30 elected members. At the second general election after that held in 1978, the last 14 continuing members will retire and be replaced by 15 elected members: the House will then have reached its full complement of 45 elected members and, in the normal course, this could be expected to occur late in 1984 or early 1985.

*Proceedings in Parliament*

To bring about the change the Constitution and Parliamentary Electorates and Elections (Amendment) Bill was introduced in the Legislative Assembly by the Premier (Mr. N. K. Wran) on 1st June, 1977. The motion for leave to introduce the Bill was opposed by the Liberal/Country Party Opposition but was carried on division, 47 votes to 45, the only Independent in the Assembly (Mr. Hatton) voting with the Government.

In introducing the Bill the Premier indicated that debate on it would commence on the following day and that private members' business for that day would be postponed. He further indicated that the Assembly would sit each day of the following week, except Thursday, commencing at 11 a.m. to debate the measure and that there would be no "gag" or "guillotine" applied. Under normal circumstances the Assembly would have sat on Tuesday, Wednesday and Thursday only.

On Thursday, 2nd June, the motion for second reading was moved by Mr. Wran. In his opening remarks he recalled that he had been a member of the Legislative Council for three years when he first entered Parliament. He claimed that the Government had an unequivocal mandate to move for reform of the Council.

The principles of the Bill outlined by the Premier involved amendment

of the Constitution Act, 1902, and the Parliamentary Electorates and Elections Act, 1912. As the main purpose of the measure was to alter the constitution and manner of election of the Council it fell within the terms of section 7A of the Constitution Act and required a referendum in its favour before being presented for Royal Assent. Section 7A states in part—

> "7A (1) The Legislative Council shall not be abolished, nor, subject to the provisions of subsection six of this section, shall its constitution or powers be altered except in the manner provided in this section.
>
> (2) A Bill for any purpose within subsection one of this section shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section."

In addition to providing for the reduction in membership and shorter terms already mentioned, the Bill required that periodic Council elections be held on the same day as any future general election for the other House. The manner of election proposed was that at each periodic Council election candidates would be included in groups and that at the poll an elector could only vote for one group; there was to be no expression of a preference for a candidate within a group. The whole State of New South Wales was to be a single electorate.

The system was described as non-preferential proportional voting, involving the "list" system.

In determining the number of candidates to be elected from each group it was proposed that, firstly, a group which had not received one-sixteenth of the formal votes cast would be excluded and its votes disregarded in determining the election result; secondly, the number of candidates to be elected from each group would be related to the number of quotas obtained by that group. A quota was to be one-sixteenth (6.25%) of the formal votes cast for all groups but votes cast for an excluded group were not taken into account.

A casual vacancy in the seat of a member elected at a periodic election was to be filled by the person, if any, who was next in the order of unsuccessful candidates in the group in which that member was included; where there was no such person the vacancy was to be filled by a person elected at a joint sitting of the two Houses. It was necessary that such person be a member of the same political party as the member whose seat had become vacant.

Apart from provisions relating to reconstitution of the Council the following changes were to be effected by the Bill—

(a) removal of the requirement that a bill concerning the Legislative Council shall be laid before both Houses of the Imperial Parliament for at least thirty days before Her Majesty's assent is given;

(b) re-enactment of the requirements that a bill for the purpose of abolishing the Council or altering its powers must be approved by the electors at a referendum;

(c) providing that a bill for the purpose of dissolving the Council must also be so approved. In addition, any Bill to alter the proposed reconstituted Council and its method of election, as well as one which had the effect that persons capable of being elected or sitting and voting in one House would be different from those capable in the other House, would be subject to the referendum procedure before assent;

(d) establishing that the Council would not be competent to dispatch any business while there was no Assembly, pending an Assembly general election;

(e) re-enactment of provisions dealing with the disqualification of members from being elected to the Assembly and sitting and voting therein, the conditions upon which a member vacates his seat and the abatement of his salary, so that those provisions also applied to a member of the Council;

(f) reduction of the quorum for the conduct of business in the Council from one-quarter of the membership, excluding the President, to at least 12 members, in addition to the President or member presiding.

Debate in the Assembly took far less time than was apparently expected. From a House of 99 members only 13 spoke during the second reading debate which was dealt with on two sitting days. An Opposition amendment for the second reading "this day three months" was defeated on division by 48 votes to 46.

During the second reading debate the Leader of the Opposition, Sir Eric Willis, expressed the Opposition's disapproval of the measure. In speaking for the Liberal Party, a partner with the National Country Party in Opposition, Sir Eric stated that his party believed in reform of the Council to provide for its election by the people. He intimated that his party would take steps to implement that policy as soon as it was in a position to do so. Mr. L. A. Punch, National Country Party Leader in the Assembly, voiced his party's opposition to the Bill, pointing out, *inter alia*, that the proposed "list" system of voting was for political parties only and did not allow distribution of preferences.

No amendments were proposed in Committee and on 7th June the Bill was read a third time, on division, and forwarded to the Council for concurrence. It was received the same day and the second reading set down as an order of the day for Wednesday, 8th June.

The Representative of the Government in the Council (Hon. D. P. Landa) moved the second reading motion. Both the Minister and the Leader of the Opposition (Hon. Sir John Fuller) dealt with the history of the Council from its inception in 1824 and with the various proposals over the years – successful and unsuccessful – for alteration of its constitution. Sir John Fuller foreshadowed an amendment to the motion to refer the Bill to a Select Committee. Three other speakers supported Mr. Landa and two others supported Sir John. The last speaker for the

Opposition, Dr. D. D. Freeman, moved an amendment to refer the Bill to a Select Committee. With the Opposition's superior numbers the amendment was carried on division, 32 to 23.

*The Select Committee*

The Committee was comprised of 5 Opposition and 3 Government members; however, it was indicated that the Government members would not take part in its deliberations.

When the Council met on 4th August, 1977, Dr. Freeman, as Chairman of the Select Committee, sought the consent of the House to move a motion to give leave to the Committee to report from time to time and also to report the minutes of proceedings and evidence. Consent was denied but Dr. Freeman proceeded to ask for leave to bring up an interim report of the Committee.

The Minister submitted that Dr. Freeman was out of order and, in discussion on the question of order, it was stated that Dr. Freeman was seeking leave to introduce a motion. The Minister objected, saying that Dr. Freeman was not seeking to move a motion but was seeking to present a report. Some confusion existed and Dr. Freeman, although indicating that he was going to read a motion, again sought leave to present an interim report and to read it.

The Deputy President asked him to proceed and Dr. Freeman read out the Committee's Interim Report, at the conclusion of which he was asked by the Deputy President to state the precise form of his motion. Again, Dr. Freeman said he was seeking leave to "introduce" the interim report – which, in fact, he had already read. When the Chair enquired whether leave was granted (despite the fact that the report had now been read), objection was taken by a Government member. The Chair appeared unaware that objection had been taken and a motion for printing of the report was moved immediately and carried on the voices.

On 18th August, 1977, Dr. Freeman moved, pursuant to notice previously given, that the Select Committee be revived as from 4th August. Since that date the view had been taken that, as there had been no leave granted for the Committee to report from time to time, and yet its report had been presented, the Committee had extinguished itself. There being no Standing Orders or precedent of the Council covering the situation guidance was sought from May's "Parliamentary Practice" At page 660 of the 19th edition it is stated that "If a Committee, not having power to report from time to time, makes a report to the House, the Committee is dissolved and if further proceedings are desired, it would be necessary to revive it." The motion for revival of the Committee was agreed to on division, 29 to 19.

Before the Select Committee had completed its enquiries the Bill was again introduced in the Legislative Assembly, agreed to without amendment, and forwarded to the Council on 17th November, 1977. This action was dictated by constitutional provisions by which the

Council is taken to have failed to pass a Bill if it is not returned to the Assembly within two months of its transmission to the Council.

Section 5B of the Constitution Act, 1902, lays down a series of steps to be followed where disagreement respecting a Bill exists between the two Houses, or where the Council has failed to pass a measure or has passed it with amendments which are unacceptable to the Assembly. The section reads—

"5B (1) If the Legislative Assembly passes any Bill other than a Bill to which section 5A of this Act applies, and the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, and if after an interval of three months the Legislative Assembly in the same Session or in the next Session again passes the Bill with or without any amendment which has been made or agreed to by the Legislative Council, and the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, and if after a free conference between managers there is not agreement between the Legislative Council and the Legislative Assembly, the Governor may convene a joint sitting of the Members of the Legislative Council and the Members of the Legislative Assembly.

The Members present at the joint sitting may deliberate upon the Bill as last proposed by the Legislative Assembly and upon any amendments made by the Legislative Council with which the Legislative Assembly does not agree.

No vote shall be taken at the joint sitting.

(2) After the joint sitting and either after any further communication with the Legislative Council in order to bring about agreement, if possible, between the Legislative Council and the Legislative Assembly, or without any such communication the Legislative Assembly may by resolution direct that the Bill as last proposed by the Legislative Assembly and either with or without any amendment subsequently agreed to by the Legislative Council and the Legislative Assembly, shall, at any time during the life of the Parliament or at the next general election of Members of the Legislative Assembly, be submitted by way of referendum to the electors qualified to vote for the election of Members of the Legislative Assembly . . ."

It will thus be seen that if a Bill is not returned to the Assembly within two months, it may be re-introduced in that House after a further period of three months and forwarded to the Council.

When the "Reform" Bill was received in the Council for the second time Sir John Fuller moved an amendment to the motion for second reading to enable the Bill to be referred to the Select Committee previously appointed (and which had been revived). On this occasion it was also moved that the Select Committee have leave to report from time to time! The amendment was carried on division.

On 2nd December, 1977, the Minister moved that the House adjourn until 25th January, 1978. Sir John Fuller moved an amendment to allow the House to resume on 10th January. He indicated that the Select Committee would be able to report before the expiry of the statutory two months period laid down in section 5B, i.e., 17th January. Mr. Landa objected to the Opposition taking control of business out of the Government's hands, but the amendment was carried on division, 28 to 19.

On 10th January, 1978, the Select Committee presented its report which was ordered to be printed. In accordance with Standing Order 169,

and on the motion of Mr. Landa, the second reading of the Bill was set down as an Order of the Day for the following day.

The Committee's report revealed that it had sat on 22 occasions and had examined 38 witnesses, amongst whom were academics in the political science field, electoral and parliamentary officers, as well as persons with constitutional and political interest in the proposed reform of the Council. The Committee travelled to South Australia and there took evidence from six witnesses including Members of the Legislative Council in that State. The purpose in proceeding to South Australia was to enquire into its Council election system, which had recently been "reformed", and was similar to that contained in the Bill before the Select Committee.

As a result of its investigations the Committee recommended that the Bill be rejected and that a Constitutional Convention be established to review the election, functions and powers of the Legislative Council.

In the *Sydney Morning Herald* of 10th January, the new Leader of the Opposition in the Assembly, Mr. W. P. Coleman, answered a series of questions criticising the Government's proposals. He also expressed the view that the Premier wanted a referendum on the Bill, and a reconstituted Council, before the next Assembly general election so that, if the Labor Party then gained control of both Houses, it would be able to legislate for a redistribution of Assembly boundaries. In reply Mr. Wran stated that the proposed Council reform had only one purpose: to enable the people of New South Wales to vote for members of the Council.

On 11th January, when the second reading was moved by Mr. Landa, he was followed by Sir John Fuller who moved for the omission of all words after "That" with a view to inserting an amendment rejecting the Bill and giving nine reasons. After a long debate the Opposition's amendment was agreed to on division and a Message forwarded to the Assembly conveying the Council's rejection, together with reasons – included in which was rejection of the proposed "list" system of voting. No precedent could be found for the Council having dealt with a Bill in this manner in the 122 years since the inauguration of Responsible Government.

The scene was now set for the next step prescribed by section 5B of the Constitution Act.

*Free Conference*

On 25th January, 1978, a Message was received in the Council, conveying the Assembly's request for a Free Conference. The Assembly named as its Managers the Premier and nine other Ministers: the Managers had been appointed by ballot when the Leader of the Opposition, Mr. Coleman, objected to the Premier's proposal that the Managers all be Government members.

In the Council the Message was taken into consideration forthwith and a motion was moved by the Minister, agreeing to the Assembly's

request and setting the time and place for the first meeting. The place nominated by Mr. Landa was the "Public Works Committee Room, Parliament House", a room in the Assembly portion of the parliamentary premises. Sir John Fuller moved an amendment to substitute "Legislative Council Committee Room, No. C255" for the room proposed by the Minister. The amendment was carried. Sir John Fuller then proposed ten Managers for the Council, all of whom were Opposition members. A Message was sent to the Assembly conveying the Council's agreement, names of its Managers and the time and place of meeting. The Assembly agreed.

The first meeting of Managers was to take place on Tuesday, 31st January, 1978, at 2.15 p.m. The Council met at 2.pm. and all its Managers were present. Business of the House was then suspended and the Managers proceeded to the Council Committee Room to receive the Assembly Managers. As the last Free Conference had taken place 50 years earlier – in the 1926–27 Session – no officer from either House had experience in the arrangements essential to such a conference and only the scantiest of guidance was available from past records.

Prior to the first meeting a small but important matter required to be decided: the layout of the room for the purpose of the conference. A long narrow table was placed down the centre of the room to permit the ten Managers from one House to sit opposite the Managers from the other House. As this would have brought the representatives within an arm's length of each other the room was re-arranged in favour of the Managers being seated at each end of the room in "U" formations. The Premier sat in front of and acted as spokesman for the Assembly Managers and Sir John Fuller sat in front of and spoke for the Council Managers.

The room was not the most comfortable in the premises; and the fact that Managers quickly discarded their coats was due not to the fervour with which they might support their points of view but to the sticky conditions of a humid January and the lack of air conditioning.

During progress of the Bill the Premier had indicated in debate that the Government would accept no amendment of the measure and the Opposition parties were seen for a time to be divided: the Liberal Party favoured reform and the National Country Party sought to retain the Council in its existing form. These varying attitudes of the Government and Opposition raised doubts as to whether the Free Conference would be able to bring about any change in a 'stand-off' situation. However, in the press on 18th January it was announced that both Opposition parties now supported universal franchise for Legislative Council elections and at the commencement of the Free Conference those parties expressed their commitment to universal franchise for future elections. They came to the conference "in a spirit of free and open discussion and with a readiness to compromise as much as possible in a genuine effort to produce a system of election for the Legislative Council which would be fair,

free and popular and in the best interests of the State."

The first meeting of the Managers took place as planned. Council Managers were attended by the Usher of the Black Rod and Assembly Managers by the Serjeant-at-Arms. No official record of proceedings was kept.

The Premier opened discussion by asking whether the Council was prepared to allow the Bill to go to a referendum. Sir John Fuller countered by asking whether the Government was prepared to accept the recommendation of the Select Committee which called for a Constitutional Convention to examine reform of the Council. The Premier said that such a proposal was unacceptable to the Government; he also criticised the Select Committee. Sir John Fuller stated that the Council was not preventing the Bill from going to a referendum as this was provided for in the Constitution Act.

From these opening sallies there came the first step in what was destined to be a skilfully negotiated compromise – an outcome which followed days of careful discussion and manoeuvre and which revealed the participants as seasoned poker players.

Sir John Fuller then advanced the following proposals—

(a) the first election for 15 members of the Council to be held simultaneously with the next general election for the Assembly;

(b) the voting system for the Council to be full preferential proportional voting as used for the Australian Senate;

(c) Members of the Council whose terms of office would expire on 22nd April, 1979, and 1982, to continue in office until the next Assembly general election. Those whose terms were to expire on 22nd April, 1985, and 1988, were to remain in office until the first general election after the next and the second general election after the next, respectively;

(d) of two members who had filled casual vacancies in the Council, one to remain in office until the next general election and the other to remain until the first general election after the next.

The Premier sought an adjournment to consider the proposals and so began a series of meetings and adjournments which lasted through 31st January and the following two days. The Opposition's proposals were examined by the Government and, in further negotiations, were subjected to detailed consideration.

Proposal (a) was regarded by the Opposition as a 'must'. In that regard the Premier referred to the Opposition's concern that, if the Council were reconstituted and the Labor Party gained a majority in both Houses, it would pass legislation for a redistribution of Assembly electorates which would give electoral advantage to the Labor Party.

The first point which appeared to require resolution was the voting system. The Opposition was adamant that the "list" system was unacceptable. The Government proposed that electors be able to vote either for a group of candidates or for at least 10 candidates in order

of the voter's preference. The Opposition felt that the combination of the "list" and preferential methods would be unworkable and proposed a preferential system requiring the elector to indicate preferences for at least 15 candidates.

Prior to a determination being made on this point the Opposition agreed not to press their proposal (d), regarding the terms of two members who had filled casual vacancies.

It was then agreed that a single vote for a list of candidates would not be applied but that an elector should be required to vote for 10 candidates and might indicate preferences beyond 10 if desired.

With the principle of voting and other matters agreed upon the Managers decided to report in identical terms to both Houses. The agreement reached at the conference could be summarised thus—

1. The voting system to be optional preferential requiring a voter to vote for at least 10 candidates.
2. The appropriate instructions to the voter to be printed on the ballot paper.
3. A ballot paper with less than 10 squares numbered would be invalid.
4. A ballot paper with at least 10 squares numbered but not in strictly numerical order was to be formal until the strict numerical order was departed from.
5. The first election for the Council to be held simultaneously with the next State general election.
6. Provisions of the Bill regarding Council members due to retire in 1985 and 1988 to remain unaltered, meaning that the Government and opposition parties would retain equal numbers of continuing members.
7. The date of the referendum on the Bill to be 10th June, 1978, or another day in proximity thereto, as may be agreed to by the Managers.
8. The Government to instruct the Parliamentary Counsel to prepare amendments to give effect to the Managers' agreement and, when the amendments were approved by the Managers, parties to the conference to support passage of the amended Bill through Parliament.
9. Government and Opposition parties to agree to, and not oppose, a "yes" vote at the referendum.

Under a heading "Compromise it is!" the editorial in the *Sydney Morning Herald* of 3rd February stated that the conference result reflected credit on all concerned – "Labour because it has yielded to well-founded and sustained criticism of the proposed list system of voting and has accepted a compromise, the optional preferential system advocated by the Liberals; the Country Party because it, too, has withdrawn its opposition to some aspects of the reform that will now go to the people for endorsment; and the Liberals, above all, for the fight they have

waged to get a more democratic voting system."

On 7th February, in both the Council and the Assembly, the Managers reported the terms of their agreement and were granted leave to meet again.

During the following weeks the Parliamentary Counsel prepared amendments for insertion in the Bill. Both the Opposition and the Government considered the amendments and, where doubts existed, explanations were provided by the Parliamentary Counsel and the Crown Solicitor.

At what was the twelfth and final session of the Free Conference, held on 8th March, 1978, agreement was announced on the amendments to be inserted in the Bill and that action in this regard should be initiated in the Council. In view of the satisfactory conclusion which had been reached by the Managers it was further agreed that the House proceedings to follow, which included passage of three additional Bills, would be conducted in almost a formal manner.

The three measures considered necessary to complement the main reform legislation were to effect the following—

(a) fix a date for the referendum;
(b) clarify the application of the Parliamentary Electorates and Elections Act, 1912, to the conduct of referendums;
(c) repeal a proviso to section 7 of the Constitution Act, 1902, so that it would not be necessary for the "Reform" Bill, when approved at the referendum, to be laid on the Table of each House of the Imperial Parliament.

*Conclusion of Proceedings*

With the expectation that the prepared amendments would be acceptable to the Managers a course of action was planned for proceedings in both Houses, which would speedily conclude the passage of the Bill.

On 8th March in the Council Sir John Fuller presented the Managers' final report; its consideration was ordered for a later hour of the sitting. On the motion of Mr. Landa a message was forwarded to the Assembly seeking return of the Constitution and Parliamentary Electorates and Elections (Amendment) Bill and the Council's message, dated 11th January, 1978, rejecting that measure.

In the Assembly Mr. Wran presented a similar report on behalf of its Managers and, when the Council's message was received, it was dealt with immediately – with only 17 words of explanation. The Bill and the Council's earlier message of rejection were returned to the Council and taken into consideration in Committee of the Whole, together with the final report from the Managers. Mr. Landa proposed that the amendments (a list of 88 was circulated to members) be considered *in globo*; he then formally moved that the Bill be amended in accordance with the circulated list.

When the Bill was agreed to and the Committee's report adopted, Mr. Landa moved that a message be sent to the Assembly withdrawing

the Council's previous rejection and agreeing to the Bill, with amendments. The Assembly readily concurred in those amendments.

The New South Wales Parliament had thus shown that the Free Conference, cast aside in Great Britain since 1836 as obsolete (May, p. 602), could still be utilised as a valuable parliamentary procedure for resolving differences between two Houses, especially on a matter of deep constitutional and political importance.

The referendum took place on 17th June, 1978, as first noted. The result set in train events which led to the election of the first members to enter the Council under popular franchise and to the reconstitution of the Council from 6th November, 1978. By approximately 1984 all 45 members of the House will be similarly elected and the Council will have undergone another change in its long and chequered history.

# VII. THE DEVELOPMENT OF PUBLIC INFORMATION SERVICES AT WESTMINSTER

BY M. F. BOND, C.B., M.V.O., O.B.E.

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## From Secrecy to Openness; an historical perspective

For much of its earlier history Parliament at Westminster was a secret body. From the Middle Ages onwards after a State Opening all its debates were in private, no members of the public were admitted (except when appearing as witnesses or petitioners) and all publication of speeches was forbidden. In the reign of Elizabeth I a stranger found listening to Commons' debates was brought to the bar and imprisoned overnight,[1] and in the early 1700s publishers were still on occasion being sent to prison for daring to print texts of speeches.[2] The only publicity originally sought was for the final decisions – the answers to petitions, the enactment of new laws and an announcement of taxation to be levied. So far as other matters were concerned, Parliament was a secret council of the Sovereign.

Relaxation came in stages. Private notes of debates were taken by Members in the reigns of Elizabeth and her Stuart successors, and passed round in manuscript copies. Then, in 1680, the Commons authorised a brief daily account of business done (its 'Vote'),[3] and from 1771 there was no effective ban on newspapers and commercial printers publishing debates. Visitors had begun to come to listen to debates quite freely soon after 1700, and by 1800 it could be said that the secret assembly of Henry III's reign had become open to the public. There were – and still remain – certain limitations. Either House and any of its committees can deliberate privately; official papers of the Houses are printed by order or permission, but papers, minutes or evidence not ordered to be printed may not be available to the public.

During the 19th and 20th centuries what had previously appeared to be grudging concessions to public pressure for information became more positive in nature. Parliament saw that it had a duty to communicate with the country and to make sure that this was done in the best and most effective way. Individual Members, of course, had always represented a continuous two-way method of communication with constituencies. More recently, by the use of 'Surgeries', by Members' ever increasing availability to the public in the House, and by their readiness to meet there the groups of specialist interests Members have become still more clearly the natural and obvious link between Parliament and the people. But this is an individual system, varying with the Member, depending to some extent on the knowledge and personality of the citizen, and often relating only to specific issues. What has been needed to

supplement this individual contact has been a system of regular communication between Parliament and the public that will have a far wider coverage and carry the authority of Parliament as a whole.

### The Publication of *Hansard*

The first stage towards this goal in the present century was the adoption of full responsibility by the two Houses for the publication of *Hansard* in 1908. As the name suggests, this record of Parliamentary debates until then had been prepared by a private firm (founded by T. C. Hansard), though from 1878 helped by grants from the Treasury. It had not been, however, until 1909, a very satisfactory production. Speeches were sometimes condensed to a third of their length; their text varied between the direct first person ('I put to you, Mr. Speaker, that etc.') and the third person (Mr. Smith said that etc.). Since 1909 the two series of *Hansard*, one for the Lords and one for the Commons, have made available what is substantially a verbatim report of proceedings 'with repetitions and redundancies omitted and with obvious mistakes corrected, but which, on the other hand, leaves out nothing that adds to the meaning or the speech'.[4] The *Hansard* reporters are now officials of their respective Houses, and *Hansard* reports of proceedings up to a cut-off time of 10 p.m. for each House are on sale to the public the following day. The completeness and accuracy of the new official *Hansard* has, since 1909, made it for the general public the primary source of information about the work of Parliament. Major libraries usually hold complete sets of the reports of both Houses and the daily parts are on sale for the (subsidised) extremely low price of 45 pence an issue. These daily issues are also bound together as weekly parts and then, after final correction and editing, appear as bound and indexed volumes forming a set each session. Since 1909 the *Hansards* have, understandably, increased in bulk. The Commons *Hansard* for 1909 consisted of 12 volumes with some 10,000 pages in all. In Session 1976–7 there were 19 volumes and about 28,500 pages. In the Lords, 4 volumes in 1909 of about 2,800 pages grew to 8 volumes with 5,600 pages in 1976–7. This increase represents longer and more frequent sittings of both Houses, but also, and this particularly in the case of the Commons, the use of 'Written Answers', i.e. the printing in *Hansard* of exchanges between Members and Ministers which have not taken place on the floor of the House – on a single day, on 6th March 1979, out of 270 pages, 100 pages of the Commons *Hansard* consisted of Written Questions and Answers.

### Parliamentary Papers

Considerable as the growth in this century of *Hansard* has been, it has been outdistanced by what are usually called 'parliamentary papers'. These in the House of Commons have centred firstly on the 'Vote'. By 1909 the slim single volume of collected parts for a Session, perhaps 2 or 3 pages issued daily by the Commons in the reign of Charles II had ex-

panded into some 19 volumes which comprised not only the Vote but a 'Supplement to the Vote', consisting of 7 volumes of 1,000 pages each, and other Papers relating to Public Bills, Private Bills, Public Petitions and Divisions; the last itself a volume of 2,000 pages.[5]

The Commons daily 'Vote Bundle' and the similar but smaller series of Minute papers, etc. in the Lords have been essentially a series of lists and reference materials. In addition, Members of the two Houses, together with the public, have had documentation consisting of papers laid before Parliament. It is obviously necessary to make immediately available the full texts of bills at their varying stages, the texts of reports from Parliamentary Committees (often with extensive verbatim evidence), reports from external bodies such as Royal Commissions, together with a great quantity of returns to orders of the House, papers presented by Command of the Sovereign, and papers laid before Parliament under a wide range of Acts.

Almost all these papers, whether domestic or external, have been on sale to the public through H.M. Stationery Office. Thus, to go back to the year 1909, the Report by the Registrar General on Births, Deaths and Marriages in Scotland, Cmnd. 4808, a massive Blue Book of 700 pages, cost 2*s.* 10½*d.* The 16-page text of House of Commons Bill 252, the Conveyancing Bill, was a mere 2*d.*, and still shorter texts might only cost a half-penny.

Throughout the present century therefore, there has been extensive documentation available to both Members and the public; much of it highly technical and complex. It was inevitable that the papers relating to the daily business of Parliament should seem, to many external users so voluminous that they have almost defeated their own ends. Parliamentary publications, for long, have posed a very great problem to business firms and private interests lacking any expert assistance of Librarians or Research helpers to identify material they were seeking, or to maintain a watching brief on their own special subjects.

**A Parliamentary Record Office**

In the years between the two World Wars, however, this problem of communication with the public concerning current Parliamentary business, important as it must even then have been, was not dealt with immediately. The next step in the Information process, as it turned out, was not to provide digests or guides for the current documentation of Parliament but to get the historic records of Parliament into order. Non-current documents since 1864 had been kept in the Victoria Tower of the House of Lords, and the greater part were in the immediate custody of the Clerk of the Parliaments. The documents were of the very highest significance, not merely for their historic value, dating as they did from the 15th century onwards, but also for their legal importance. The central class was that of the master-texts of Acts of Parliament, written on vellum rolls until 1849, then from 1850 specially printed in vellum books and

authenticated by the Clerk of the Parliaments. Since all citizens are deemed to know the law and to plead ignorance is normally of no avail, it had from at least the 16th century been the clear Parliamentary custom to give any subject of the realm access to these texts, as also to the Judicial Judgments of the House of Lords. This led to an extensive public archive growing up within Parliament. By the 1930s it amounted to some 1½ million documents, and not only lawyers and their clients but also scholars such as Wallace Notestein from Yale University and John Neale from London University sought to make regular and extensive use of it. The condition of the archives, however, was far from ideal; the superintendence and listing of the documents were usually a recess responsibility of Clerks normally employed in the Public Bill Office or some other main department, and actual physical custody was that of one junior clerical officer. Sir Henry Badeley (Clerk of the Parliaments from 1934 to 1949) decided in 1938 that this was inadequate. A specialist department was needed in order to put these and associated records into better order and to make them more easily accessible to the public. The war intervened, but in 1946 a Record Office was established to care for the Victoria Tower and its contents. Since the House of Commons was also using the Tower as the final repository for certain of its records the new Office, although administratively as well as geographically within the House of Lords, has ever since served both Houses of Parliament. The practice of the new office has been not merely to hold 'historic' records, as in some local and national Record Offices (where documents perhaps are transferred after a period such as 30 years), but also documents which are almost current. Usually, the documents of the previous session but one are transferred each autumn. The relationship of the Record Office to day to day Parliamentary administration is therefore close and significant. Yet, when Badeley appointed a Clerk of the Records in December 1946 his general directive was: 'Don't bother about Parliament. Try to help the public'. To the recipient of the advice it seemed at the time slightly mystifying, but the emphasis crystallised the modern information need. The two Houses could be assumed to know in general what documentation was available; the public could not.

Today the House of Lords Record Office receives several thousand students a year; it makes photographic copies for the public in large quantities; it publishes a wide range of *Memoranda* (to date, some 60) and other printed material, including specialised Calendars of documents and scholarly editions of Parliamentary texts. It is in regular contact with about 400 Universities, Colleges, Libraries and Record Offices throughout the world, and its staff play what they hope is a useful part in the spheres of archives and historical research. Leaving on one side, however, this specialised work in historic research, the Record Office has proved of significance in the development of more general information services for Parliament. It was the first department in either House to be open freely to the public and to provide a Search Room in which reference books

as well as Parliamentary records could be consulted. And it has managed to provide this service in recesses as well as in session time, closing its doors only on the few public holidays in the year. This remains the situation some 33 years after the foundation of the Office, and the House of Lords Record Office has taken its place as an important centre of Parliamentary information. A detailed *Guide to the Records of Parliament* was published by H.M. Stationery Office in 1971 and subsequent additions to the archives are listed in the *Annual Reports* of the House of Lords Record Office, which are obtainable free on application to the Clerk of the Records.

**Enquiries from the Public**

The weight of the Record Office work is understandably historical and closely related to the original documentary and printed sources stored in the Victoria Tower. A large proportion of enquiries by the public, however, even to the Record Office, have been highly contemporary, dealing for instance with what business was being handled that afternoon; when witnesses were going to be heard in a given Committee; on what day a particular Report would be published; or what was the address or telephone number of a Peer or Member of the Commons. This sort of information was also being sought almost haphazardly from at least eight major departments in the Commons and from almost as many in the Lords. In 1946 and the subsequent years it might be said that practically any Clerk or Librarian in either House could be the recipient of enquiries from the press or the public – sometimes at the whim of the telephone operators who would struggle to decide which of several hundred telephone extensions in the Palace of Westminster might prove most responsive to someone asking, for instance, what had happened to a bill about salmon fishing, or whether a question was going to be asked about relations with Brazil.

Undoubtedly the department that bore the brunt of this type of enquiry was the House of Commons Library, yet the Select Committees on the Library of 1945–6[6] and the Estimates Committee on the Library of 1960–1[7] striving to put first things first concentrated their attention on supporting the Library as an internal service for Members only. The essential purpose of the Library, stated in 1945–6, was to supply Members (and, by inference, not the public) 'with information rapidly on any of the multifarious matters which come before the House or to which their attentions are drawn by their parliamentary duties'.[8] This definition was repeated in the Library Handbook of the 1970s by which time the important developments had taken place in the research facilities available to Members, in purchasing of books and in staffing which had very greatly enhanced the Library's potential as an information centre. And, what in retrospect now seems a vital initiative, during this time the Commons Library had already begun to provide information for the public, prepared by itself, by publishing in 1955 the first of a series of *House*

*of Commons Library Documents*, devoted to '*Acts of Parliament: some Distinctions in their Nature and Numbering*', to be followed in 1956 by Dr. J. A. Wood's *Bibliography of Parliamentary Debates of Great Britain.* More was needed, however, and attention was drawn by the Study of Parliament Group in 1977[8] to the evolving relations between the Library and the public, when on the average some 80 telephone enquiries a day were being received, together with extensive daily correspondence, much of it involving detailed research. Without quite realising it, Parliament, through its Libraries, and also through the specialised Public Bill, Private Bill and other departments, was beginning to provide in the post-war years an extensive, if piece-meal, information service to the public.

**The formation of a Lords Information group of offices**

An attempt to provide a Parliamentary information system of a more systematic and professional type came first in the Upper Chamber. It arose as one of many issues resulting from an internal review of House administration. It was clear to an investigating working party of Peers appointed by the Leader of the House in 1972 ('The Three Wise Men') that there were a number of overlapping Lords' departments broadly dealing with Information: the Journal Office, the *Hansard* Office, the Printed Paper Office, the Registry, and the Record Office. These it was decided to group together as the 'Information Services' of the House. Within the group it was felt there should also be a new and specialised Information Office which would deal with the type of public enquiry about the business of the House already pressing on the Commons, as well as internal procedural enquiries. A new Principal Clerk post was designated to supervise the new group of Information Services.

This development took place in July, 1974, and for the following five years the new organisation has sought to respond to what is generally called 'the Information explosion'. The work has mainly been channelled through the Information Office, but each of its five associated offices has made its contribution. Firstly, there is a general contribution. Parliamentary departments, unlike Civil Service Departments, are usually fairly small in numbers with little spare capacity, and a grouping system avoids two separate offices having to answer identical questions – which until 1974 had been all too frequent. In addition, staff in emergencies can be lent by one office within the group to another, and the different offices become better acquainted with each other's specific procedures. On a relatively short test of five years this arrangement has tended towards economy and efficiency.

Of the six offices grouped in the Lords Information Services in 1974, five were in varying degrees well established elements in Lords administration. The Journal Office, in producing the official record of business transacted session by session, was performing work first undertaken in the fifteenth century, and the historic sequence of Clerks of the Journals

responsible for it dates from at least 1718. In handling the daily published Minutes of the House and other source materials and by having in being a running-index and a series of precedent volumes, the Journal Office is a vital factor in pursuing current as well as historic information and the decennial Journal Indexes are of outstanding use for research. (As this article is being compiled the Journal Office has just issued its volume number 210, for the session 1976–77, a substantial work elaborately indexed of some 900 pages). Similarly, the Hansard Office with its daily issue of Debates, and the Printed Paper Office with a stock comprising the printed documents of not only the current session but for five earlier sessions, each plays a vital part in helping to assemble information for Members and for the public. The fourth office, the Registry of the House, is an adaptation by the then Clerk of the Parliaments, Sir Francis Lascelles, in the early 1950s of what had been for some time common practice in business firms and government departments. The Lords Registry receives appropriate papers from various departments within the House, but unlike most registries, it is specialised in that it only receives those papers from each department which relate to procedure, precedents and problems. There is a detailed manual index, with, for instance, sub-headings such as Starred Questions, Unstarred Questions, Petitions, Private Notice Questions, Protests, etc. Multiple cross-references lead on to allied subjects and the whole complex of upwards of two thousand files is a vital starting point for answering many of the more intricate procedural enquiries from both Members and the public. Now that computer databases have been started for the Lords all this material is gradually being transferred to a computerised index by the Registry Clerk. This, it is hoped, will ultimately replace the manual index and will make the Registry a still more valuable source of information. The computer is also being used within the Registry for the formation of a data-base of Peers' knowledge and interest in particular subjects.

The Lords Record Office has already been mentioned, but it is worth emphasising the extent to which its resources provide help for the Lords Information Services, somewhat as the wide resources of the Commons Library have subsequently supplied the essential starting point for a Commons Information Service. Not only the complete Parliamentary archive in the Record Office, but its ancillary collection of reference works, and its own filing system including some 20,000 replies to specific students' enquiries often provide a ready reply or at any rate a starting point for further research.

**The Lords Information Office**

This leaves for consideration the sixth office in the Lords Group, that newly devised in 1974: the Information Office. It is a department now staffed by a clerk, an executive officer and a personal secretary. A progress report on its work to date might usefully be focused on certain aspects: statistical materials, publications, and information for the public.

**Statistical Information**

Of these activities the statistical is basic and represents a continuation of work devised by the staff of the Journal Office and the Registry before 1974. Each week a summary of business is prepared by the Office, circulated within the House, and made available to enquirers among the public. A sample sheet, that prepared for the week ending 29th July 1978, reads as follows:

STATISTICS FOR SESSION 1977–78

Week No. 33

*Number of Sitting Days to date:* 122

*Week ending 29th July,* 1978

| | *Sitting time* | *Attend-ances* | *Starred Q's* | *Written answers* | *Un-starred Q's* | *Private Notice Q's* | *State-ments* |
|---|---|---|---|---|---|---|---|
| Monday | 5–59 | 283 | 4 | 5 | – | – | – |
| Tuesday | 3–41 | 306 | 4 | 2 | 1 | – | 1 |
| Wednesday | 3–46 | 296 | 4 | 2 | 1 | – | 1+1* |
| Thursday | 5–26 | 310 | 4 | 4 | 1 | – | – |
| Friday | 2–52 | 148 | 4 | 1 | – | – | – |
| Total for week | 21–44 | 1,343 | 20 | 14 | 3 | – | 2+1* |
| Previous total | 705–55 | 33,433 | 400 | 500 | 40 | 5 | 31+7* |
| Grand Total | 727–39 | 34,776 | 420 | 514 | 43 | 5 | 33+8* |

*Running Totals:* Sittings after 10.00 p.m.: 34

Monday sittings: 18
Friday sittings: 7

COMPOSITION OF THE HOUSE OF LORDS

| | | |
|---|---|---|
| Peers by succession ... ... ... ... ... ... ... | 763 | (17 women) |
| Hereditary peers of first creation ... ... ... ... ... | 49 | |
| Life Peers under the Life Peerages Act 1958 ... ... ... | 298 | (38 women) |
| Life Peers under the Appellate Jurisdiction Act 1876 (as amended) | 18 | |
| Archbishops and Bishops ... ... ... ... ... ... | 26 | |
| TOTAL ... ... ... ... ... ... ... | 1,154 | |
| Of whom: | | |
| Peers without Writs ... ... ... ... ... ... | 92 | (10 minors) |
| Peers with leave of absence ... ... ... ... ... | 129 | |

*Statements printed in the Official Report but not given orally.

At the end of a session a complete record is prepared, which is in two sections, the one 'A Summary of Business', the other 'Lords Attendances at Sittings of the House'. The Summary gives the final score for the items noted in the weekly lists, together with a calculation of the time of the House spent on some 13 different classes of business, ranging from Introduction of Peers (0.7 per cent in 1977–8), to Public Bills (49.5 per cent), the latter being subdivided twice into Lords Bills (8.4 per cent) and Commons Bills (41.1 per cent), and again, Government Bills (44.9 per cent) and Private Members' Bills (4.6 per cent). In each case matching figures for previous sessions are also provided.

**Publications**

The statistical sheets are available in duplicated, but not printed form. The Lords Information Office has noted that there is only a relatively limited public (outside Westminster) for such highly technical information, and that it can provide what is in general more useful material in printed publications, available free to *bona fide* enquirers. In particular, the Office has devised a series of *Fact Sheets*, which are printed booklets foolscap size, of some 8 or 12 pages. Those issued to date are:

1. Lords Reform in the 20th century (now in a 2nd edition)
2. The House of Lords and the European Communities (2nd edition)
3. Computer Applications in the House of Lords
4. The House of Lords: General information concerning its history and procedure (3rd edition).

Some of the more significant sessional statistics are incorporated into successive editions of Fact Sheet No. 4, and this pamphlet has proved a helpful general introduction to Lords work.

Perhaps the most rapidly consumed edition of Information leaflets is the *Guide to the Galleries*, an 8 page hand-out for all those admitted to listen to debates, which contains a drawing by Peter Heaton of the House as seen from the Galleries, with benches labelled 'Government', 'Bishops', etc., notes on procedural points that may help the visitor to follow debates, and a message from the Lord Chancellor. By direction of the Administration Committee (which originally authorised its publication) the *Guide* now is also available in French, German and Arabic. The Information Office staff find it a useful publication to send in answer to many general enquiries, in fact saving a great deal of correspondence.

Slightly more advanced publications, involving fairly extensive research are represented by two 'glossies', which, unlike the previous items, are commercial HMSO publications on sale to the public. No. 1 is entitled 'Black Rod' (price 60p), No. 2 'The Lord Chancellor' (£1.25). Each describes the origin, development and current activities of the officer in question, and is well-illustrated. More titles are in contemplation which will describe vital historic elements in the work of the House, whether personal (as in these instances), or procedural and ceremonial.

In addition, various *ad hoc* publishing work is undertaken – as when

the Lord Great Chamberlain requested an illustrated folded leaflet providing a simple guide to the line of route followed by visitors to the Palace of Westminster. This consists of eight folding pages and has plans of the buildings and of the Commons Chamber, with 27 particular points to look for as the visitor passes from the Royal Entrance at one end of the building to the Clock Tower at the other. The leaflet was designed for sale from vending machines placed by the main entrance to the Palace and costs 10p. It does not replace the standard published guides but supplements them by being immediately usable by large parties as they make their way along a complicated route. In addition, the Office has provided the Lord Great Chamberlain's Office with a similar leaflet on *The Chapel of St. Mary Undercroft in the Palace of Westminster, The Crypt Chapel*, which slight as it is, yet constitutes the first specialised guide to one of the most ancient and artistically important parts of the Palace.

An Information Office begins by preparing its own publications but it quickly finds that almost as much time needs to be devoted to vetting other people's books. There is a quite incredible range of publications which contain a section, perhaps a page, perhaps a chapter, dealing with one or both Houses of Parliament. Many of these had previously been looked at in draft by Clerks or Librarians, but all too many had not, and were perpetuating out-of-date information. Authors, compilers of reference books and of annual publications send their drafts or proofs to the Lords Information Office, and patiently accept suggestions for correction or amendment. One of these publications, the C.O.I.'s reference pamphlet No. 33, *The British Parliament* (10th edition, 1975, second impression, 1977) the Office finds in turn to be the single most useful publication to recommend to serious enquirers. In some 60 pages, procedure and history are summarised and a good Reading List leads on to quite advanced study. The existence of this Reference Pamphlet has saved the staff of both Houses the need to prepare a work of this sort of intermediate range and has aided them almost daily in answering public enquiries.

**Public Enquiries**

But in any information service, it is impossible to produce for each letter or telephone enquiry an appropriate hand-out. Some in any case do not even relate to Parliament and have to be passed on to an appropriate government department or to the reference division of a public library: others are almost literally current and are answered by looking at the internal annunciators of House business: for instance telling an enquirer whether the House will be dealing with the Shops (Sunday Trading) Bill in committee before 4 o'clock this afternoon. The enquiries in between these two special categories of the irrelevant and the immediate can be represented by some random samples. Firstly, of telephone enquiries: How does a member of the public lobby a peer to get a change in a particular Bill?; Who was the Peer who was successively Speaker of

the Commons, Lord Chancellor and then executed?; What Peers have died and what new creations have there been since October 1978?; Who are the Peers who will be speaking in the Committee Stage of a Bill?; Is a Lords Committee considering the European Court of Justice?; What took place in the Council of Europe debate on Marine Archaeology?; When was a question asked recently about Safari Parks? (The number of these telephone enquiries is rising considerably since, in February 1979, the Information Offices of each House have had separate entries in the London Telephone Directory).

Then, there are the formal written enquiries from the public. At the head of these in importance and in treatment are the questionnaires received in increasing numbers from the European Communities and various international bodies. The Principal Clerk of the Lords Information Service is the Lords' correspondent for the European Centre for Parliamentary Research and Documentation and arranges not only for Memoranda and factual statements to be sent to it, but also for appropriate staff to attend its working groups on Libraries, Microforms, etc., and the Centre's regular *Newsletter* usually contains material supplied by the Office.

Among less official written enquiries are a wide range of correspondent and of subject, of which the following are typical: A letter from a Polytechnic seeking to arrange a visit by a group of law students to the House of Lords; An enquiry about illustrative material for a teacher's project on the Lords; An enquiry by some French art experts relating to the Palace of Westminster and a probable visit; A letter investigating the public availability of Lords Bills 'as amended'; and another from a specialised Research Association asking for advice on lobbying.

**The Report of the House of Commons Services Committee, 1977**

While the Lords Information Office was beginning to develop its public service after 1974 not only were the Commons Librarians continuing to provide help informally to the public by letter and telephone, but Members of the Commons were themselves considering how best to establish a formal public Information Service. The Select Committee on House of Commons (Services), through its Accommodation and Administration Sub-Committee, took oral evidence in February and March, 1977, and received written evidence, on which it based the vital *Services for the Public* report which was ordered to be printed as the 8th Report of the Services Committee on 20th July 1977. This has now become very much a text book for current Parliamentary Information development. Its conclusions were summarised in the Report as follows (the paragraph references have been left in as a guide to the ampler and important discussions of each point in the main Report):[10]

"CONCLUSIONS

34. Your Committee have drawn attention to the need for the House's

services for the public to be improved in certain respects. Their main recommendations are:

(i) a small information office should be created within the Library for dealing initially with information enquiries from the public, and the telephone extension of this office should be given separately in the London telephone directory (paragraph 7);
(ii) as an experiment, it would be worthwhile setting aside a period exclusively for organised school parties, of not more than 20 in size, wishing to visit the Houses of Parliament (paragraph 16);
(iii) a member of the Library staff should be charged with special responsibility for developing educational services for the public (paragraph 17);
(iv) certain details of the work of the House and its committees should be published weekly in *Hansard* (paragraph 20);
(v) a public bookstall, to be run by the Sale Office, should be sited near St. Stephen's Porch for the sale of Parliamentary papers (paragraph 24);
(vi) copies of the Guide to the Gallery of the House in certain foreign languages should be provided free of charge (paragraph 27);
(vii) amendment papers supplied by the House for Members of standing committees should, for an experimental period, be made equally available, free of charge, to the public attending such committees whenever this is practicable (paragraph 28); and
(vii) the Metropolitan Police should continue to be employed in the reception and control of the public (paragraph 31)."

These recommendations were reported in 1977 to Mr. Speaker and most of them are now in the course of being implemented. As and when appropriate, discussions have been entered into with the Lords Administration Committee, with Black Rod, and with other officers of the Lords, so that as many as possible of the new services can be either common to both Houses, or undertaken jointly.

**The Commons Information Office**

The most important of the proposals clearly was the establishment of a specific Information service in the Commons which, in the words of the Report 'would be similar to the Information Office of the House of Lords, although their functions would not be identical'. In a subsequent Services Committee Report (the 9th of the Session) the Committee was able to record that "A new Public Information Office, based on the Norman Shaw Branch Library, was established within the Library Department in June 1978".

The main difference between the information work of the two new offices has been organisational and not functional. In the Lords in 1974 the service was firmly established in the Clerk's department, whilst in the Commons it is within the Library. The reason for this is probably historical. In the Lords the Record department on the Clerk's side has

for a generation been dealing with public enquiries and personal searches and is thus able to give support to a new information service, whereas in the Commons the Library had already, as we have seen, given considerable assistance to the public over many years. The Lords Library although it has frequently given substantial help to government departments, has by comparison been less involved with the public. When a Working Group discussed the work of the Lords Library in 1976–7 it recommended that "In future research workers should not be admitted to the House of Lords Library without the approval of the Library Committee", members of the public normally being directed by the Librarians to the Record Office Search Room. This, *inter alia*, facilitated the development within the Lords Library of more extensive research facilities and modern technical aids for the Peers in a room which had previously been used in part to accommodate external students. It should be added, however, that the Lords Library plays an invaluable part indirectly in helping the public, both by allowing its reference works to be used by the Lords Information Office and, as will be seen later, by its current initiatives in computer developments.

The Commons Public Information Office has now been at work for a year. It is combined for staffing purposes with the Commons Reference Library for Members in the Norman Shaw (North) building. The head of Public Information is a senior Library Clerk, and the combined staff assisting him numbers nine. It already receives an almost continuous flow of telephone enquiries (there are three direct telephone lines) and it is preparing a publication programme parallel to that of the Lords Office. So far the main types of enquiry dealt with by the Office are on the progress of bills, both public and private, the work and reports of Select Committees, composition of the House and Government, biographical details of Members, advice on the parliamentary Scrutiny of Statutory Instruments and E.E.C. legislation, and questions concerned with the history of the House. Such enquiries are received in more or less equal numbers from individuals, companies, etc., local authorities, and educational establishments. A good deal of work also is done for the foreign and U.K. provincial press, who are not well represented in the Lobby. It is in addition taking an active part, in co-operation with its Lords colleagues, in seeking to implement a number of the other seven main recommendations of the Services Committee listed above.

**The House Bulletins**

Outstanding among these developments was the preparation of the first entirely new type of Parliamentary paper since *Hansard* became official in 1908: a Weekly Information Bulletin. The original recommendation of the Committee was that the public should be given current information in a weekly supplement to *Hansard*. This was considered in both Houses, and the final outcome has been a slightly different treatment: separate weekly booklets for each House prepared not by the Editors of

*Hansard*, but by the Information Offices of the two Houses under the general direction, in the Commons of the Librarian, and in the Lords, of the Principal Clerk of the Information Services, respectively. The contents follow a regular pattern devised so that there is a minimum of repetition in the *Bulletins* of the two Houses. The opening sections describe the work of the House in the previous week and the programme for the coming week. Committee sittings and evidence to be heard are announced and the stage each piece of legislation has reached by the Saturday of publication is indicated. Lists of Acts passed are printed in the Lords *Bulletin*; proceedings on Northern Ireland Legislation appear in the Commons *Bulletin*. From time to time full lists of membership of Committees and of Government and Opposition spokesmen are given – in what are then bumper issues of some 44 or more pages – the normal issues vary between 20 and 36 pages.

The aims must be brevity and simplicity. An attempt is being made to cater not for Members or Officials of the two Houses who know their way through the massive Vote bundle of the Commons, for instance, but for business firms, the media, and members of the public who may not have access in fact to the daily Parliamentary publications and, even if they do, are baffled by the intricacies. The place of the *Bulletins* is in the local public reference library and on the desks of business firms and specialist organisations. Two sample issues appeared on 15th and 22nd July (which may become collectors' rarities, as they are unnumbered). The two official series for Lords and Commons then started with Session 1978–79, No. 1 on 4th November 1978, and by the close of that Session, and Parliament, reached issues No. 17. In the new Parliament, Saturday, May 19th saw the start of two new sessional series.

**Westminster Art Publications**

The *Bulletins* deal with the main business of a Parliament: legislation and debates, but perhaps surprisingly a greatly increasing number of requests for information over the last decade have concerned, not the institution but the building itself, the fabric and ornaments of the Palace of Westminster. These are of course partly of public interest because they do relate to a legislature: as for instance, subjects such as maces, Parliamentary seating arrangements and Parliamentary robes; but a wider public is interested in the Palace of Westminster itself, its remaining mediaeval buildings such as Westminster Hall and, above all, the rebuilding and fantastically elaborate and inventive ornamentation of the Palace after the fire of 1834. Then, under the leadership of Prince Albert, work in mosaics, tiles, wall-papers, wood and metal sculpture and wall-painting encouraged a great national revival in arts and crafts. Above all, the need to furnish the Britain's first 'purpose-designed' legislature led to the manufacture of a vast range of new Gothic furniture which is probably the largest integrated suite of domestic furniture in the world.

The series of Commons Library *Documents* already mentioned led the way in providing information about such matters by including booklets on *The Mace* (1953, now in a revised edition of 1957), *Official Dress worn in the House of Commons* ((1960 reprinted in 1975) and *Ceremonial in the House of Commons* (1961 (reprinted 1967))[11], all alike by the present Serjeant-at-Arms, Lt. Col. Peter Thorne. Then the House of Lords Sub-Committee on Works of Art asked the Victoria and Albert Museum to prepare a report on Furniture in the Lords; the resulting illustrated monograph was published as a House Paper[12], and revealed the incredible richness and variety of the designs by Augustus Pugin at Westminster, indicating for instance that the Lords were provided with some 325 distinct types of furniture which are nearly all still in use. The Commons encouraged the investigatory work of the Victoria and Albert Museum in their own section of the Palace and there is now in active preparation 'a detailed descriptive catalogue of the furniture and decoration in the House of Commons'[13] which will form a companion volume to the Lords report.

The latest development is the approval recently given by the Lords Sub-Committee on Works of Art to publication by H.M.S.O. of a volume on Wall Paintings and Sculpture in the House of Lords which will include illustrations, some in colour, of all their frescoes, bas-reliefs and busts. These contributed much in the nineteenth century to the growth of British historical narrative painting, and through frequent reproduction in text books have fixed in the public mind such historic moments, as the attempted arrest of the Five Members, and the death of Nelson, as well as the legendary background to the English story in the Arthurian myth. No complete edition has been previously attempted of this world famous sequence of Parliamentary Works of Art, although, almost weekly, requests come to the Lords for individual reproductions. The new work in a large edition, with an introduction by Mr. John Charlton, Curator of Objects of Art in the House of Lords, should appear by early 1980.

**Educational Services**

All the publications so far described have been directed very largely to an adult public, but as the Services Committee noted 'A number of witnesses argued a special need for the House to make more positive efforts in respect of education'.[14] The Committee emphasised in particular that inadequate attention was given at Westminster to school parties – many failing 'to derive much benefit from their visit to the Houses of Parliament. Conditions, particularly in the summer, are hopelessly over-crowded. It is impossible for guides, however well-informed, to impart much information about the significance of parliamentary activity'.[15]

Here was a matter particularly concerning both Houses, and in 1977–78 a working party of officers from the two Houses, chaired by

Black Rod, investigated possibilities. Appropriate committees in the two Houses recommended a programme of educational visits for schools. The necessary administration will be undertaken by the House of Commons Library, to whose staff an Education Officer is to be appointed. Overall supervision will be by the Librarian of the Commons who will consult with the Principal Clerk, Information Services, of the Lords. An audio visual display is being prepared for the two Houses by the Central Office of Information, and it is proposed that school parties on arrival be invited to assemble in the Grand Committee room next to Westminster Hall to see this display, which will take about 20 minutes and provide an introduction to the history and work of Parliament, before being taken on a conducted tour of the building. The two Information Offices will help the Education Officer to assemble packs of literature – including samples, for instance, of *Hansard*, the text of Bills, as well as Factsheets – and these will be sent previously to the schools. It is anticipated that in the first season of visits about 100 parties can be received. The visits will undoubtedly lead to continuing contacts with many of these schools and it is to be hoped that regular supplies of appropriate information can be sent to those schools who express interest. The age-group envisaged for the first year's experiment is the 14–16 year old.

**Parliamentary Broadcasting**

Other recommendations of the Services Committee are either in course of being implemented – for instance, the provision of copies of the Guide to the Commons Gallery in the same foreign languages as the Lords have requested; others, such as the proposal for a Parliamentary Bookshop, are still under discussion. No outline of the Information situation at Westminster, however, would be complete without some reference to the impact of two recent developments that were not within the ambit of the Services Committee's report, since they were already under active development under other auspices: Broadcasting, and the Computer.

An article in THE TABLE for 1977[16] has described 'the saga of public broadcasting of parliamentary proceedings' which then had stretched back over twelve years. The article ended with the prophecy that full broadcasting would begin in February, 1978. This was only slightly optimistic. Broadcasting in fact started on 3rd April, 1978. Since then live broadcasts have been made, for instance by the B.B.C. of Prime Minister's Question time, and by both B.B.C. and the I.B.A. of debates of outstanding importance. Whether live broadcasting occurs or not, a complete recording is made of the whole of each day's proceedings in both Lords and Commons, together with occasional recordings of certain Commons Committees. This has enabled the broadcasting authorities to insert excerpts in their news programmes and, most notably, in the regular series of 'Today in Parliament' and 'Yesterday in Parliament'.

Such programmes are based on the 'clean feed', i.e. the complete

tape of proceedings. A daily duplicate of this for both Houses now passes the following morning to the House of Lords Record Office which has set up a Sound Archive Unit in Norman Shaw (South) building. There the full tape record is kept permanently. There is a staff of four consisting of an Assistant Clerk of the Records, an Assistant Archivist, a Clerical Officer and a Secretary. They are responsible for making the tapes available to Members and staff of both Houses, and their Unit is equipped to make copies. But this is at the moment an internal archive only. The expressed intention of the Joint Select Committee on Sound Broadcasting was that, when funds permitted, the public should be given access to the complete archive exactly in the same way as access is permitted to the main Parliamentary records kept in the Victoria Tower.[17] That time has not yet come; but meanwhile a rich supplementary source of information is being prepared for the future, and what is in effect a fall-back archive is being held for the broadcasting authorities (who themselves are only preserving a small percentage of their actual programmes and none of the 'clean feed').

**Computerisation**

A public search room, weekly news bulletins and regular sound broadcasts amount to a rapid advance in communications at Westminster, where it had previously seemed there had been little creative initiative in this field since the inauguration of the official *Hansard* in 1909. Perhaps still more rapid development is in store over the coming decade from the latest innovation of all; the use of the computer. Searching card indexes, thumbing through Journal or *Hansard* indexes and even playing over tapes in the Sound Archives are all time consuming activities. For instance, a recent search for references in Parliament to the development of a specific Commonwealth area occupied several hours of staff time. Ideally, the computer can make such searches almost instantaneous — given the creation of the appropriate databases. A single storage disc in a computer could hold something like a million words and these can be searched in a second; the required reference or text can then be shown on a Visual Display Unit almost immediately and a printed version of the text can be made at the same time or soon after. This is when a computerised system has been carefully established and is working well, but first there are needed prolonged analysis and feasibility studies. The present writer has outlined in an earlier issue of THE TABLE[18] how this preliminary work was pursued at Westminster as the result of the initiative of Mr. D. C. L. Holland, Librarian of the Commons in the 1960s. The work began to bear fruit in the 1970s. Within the House of Lords computer terminals have been in continuous operation since 1976 and several databases are in course of formation. The most important of these contains details of the subject matter and progress of draft legislation in the European Communities and discussion of it at Westminster. A database in the Lords Library is being formed to index their holdings

of miscellaneous publications, and the Lords Library now has access to the important external database of the British Library, known as MARC, which covers monograph literature. Meanwhile, in the Commons, the Services Committee reported a recommendation "that the Librarian be authorised to proceed with the introduction of computer-based indexing in the Library as soon as possible".[19] This indexing should start in the course of 1980 and will be of very wide interest since it will not relate to catalogue entries (at least initially) but to Parliamentary Questions and other business in Parliament. The work of the two Houses in the computer field is now being co-ordinated by a specialist appointed in December 1978 to serve both Houses as Computer Development Officer – here, as in other information developments, the two Houses are progressing with notable unity.

The immediate purpose of the Parliamentary computer activity is to serve members and officials of the two Houses. In so doing, however, it will immediately provide additional help to the two Information Offices and through them will enable the public to gain much more rapid access to Parliamentary information. Moreover, there are two possible further external developments that could benefit the public still more directly. The first of these depends on H.M. Stationery Office's intention to transfer its official parliamentary printing to computer type-setting. It is possible that databases might then be created as a by-product of this process which could contain, for instance, the full text of *Hansard* and thus enable the almost instantaneous recovery of references, within a stated period, to any particular topic, however incidental the reference may be and however incidental or even irrelevant to the printed subject index in the *Hansard* volume. Secondly, those databases formed within Parliament relating to its public business could, in due course, become usable by the public, not on site at Westminster, but by direct telephone lines or by copies of discs provided for other computers. Such developments are inevitably in the future, but taken with the progress being made in the current year, it seems likely that computerisation now forms the single largest information potential in the Parliamentary field within sight.

**View data**

Finally, there is a specialised off-shoot of computer technique in a development currently being undertaken in this and other countries of what is known as 'View data'. This enables viewers at home or in their office to call up on a television screen a wide range of information, often updated to within a minute of calling. Both Houses have approved the installation of view data terminals in their Libraries to receive the Post Office's system of view data known as PRESTEL, and from March 1978 the Lords and Commons Information Offices have also been official contributors of information. Their material is entered under the main heading of Parliament and takes its place amongst such diverse

subjects as the weather, sport, jokes and quizzes, retail food prices, the law of property and information about careers. So far, the Parliamentary entries are on 45 frames and relate to certain main subjects: general information (e.g. times of sittings, how to attend debates, etc.), the membership of the two Houses, the process of legislation, the working of committees and, most important of all, Next Week's Business. The Lords and Commons Information staff update the entries weekly and it is hoped as the next stage to increase considerably the number of frames entered and also to undertake much more immediate updating. The final goal for the Parliamentary Information Offices is clearly to have available through new data processes within an office, factory or home, up to the minute news of the progress of parliamentary proceedings, together with general information as to how the public can make contact with members and officials.

**Conclusion**

It will be certainly some years before the full potential of the two Information Offices can be assessed, although that of the Record Office, after more than a generation, is well established. But pressing as the need is to improve public information the Commons Services Committee pointed out, the first concern must still be 'to provide Members of the House with the services which they require to carry out their parliamentary duties',[20] and the IPU Encyclopaedia, *Parliaments of the World* published in 1979, indicated that there were certain legislative assemblies within which even Committees or Officers were not yet provided with any type of internal information service. An information service for the public is still relatively a rarity. Out of 61 legislative Chambers in the world only 20 had, in 1978, any structure of organised facilities to supply information to the public, and this was restricted in ten instances to government departments, parliamentary delegations or specialised institutions. The Assemblies with a full Information Service for the Public were those of the United States of America, Denmark, France (the National Assembly), the Federal Republic of Germany (the Bundesrat), Ireland, Japan, Malta and Zaire, and of these, two – those of Japan and Zaire – were already using computer databases. The two new Offices at Westminster therefore join a relatively small fraternity of international offices, but one already established in four continents and likely to form an increasingly important type of Parliamentary service aiming at what must be an ultimate purpose of any legislature, effective communication in both directions between people and parliament.[21]

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1. cf. J. E. Neale, *The Elizabethan House of Commons* (1949), pp. 416–8 for a discussion of the secrecy of Elizabethan debate.
2. See, for instance, the petitions of John Baker and Abel Boyer for release from the custody of Black Rod in 1711 (*Manuscripts of the House of Lords*, vol. ix, n.s. (1965), p. 107).
3. cf. B. Kemp, *Notes and Standing Orders of the House of Commons* (House of Commons Library Document No. 8) (1971), pp. 18 ff.

4. Some detail as to the evolution of the modern *Hansard* is provided in M. F. Bond, *Guide to the Records of Parliament* (1971), pp. 36–9.
5. *op. cit.*, pp. 213–7.
6. *First and Second Reports from the Select Committee on the Library (House of Commons)*, H.C. 1945–6, 35, 99.
7. *Second Report from the Estimates Committee*, H.C., 1960—61, 168.
8. *op. cit.*, p. iii.
9. A group consisting of some members of University staffs, some Clerks of the Lords and Commons, and some Commons Librarians, which has been meeting regularly for fourteen years 'to discuss matters concerned with the working and reform of Parliament' (see App. 1 to the *Eighth Report from the Select Committee on House of Commons Services*, H.C., 1976–77, 509).
10. *Eighth Report from the Select Committee on House of Commons (Services)*, 'Services for the public', H.C., 1976–77, 509.
11. The last two mentioned publications are being re-issued together in late 1979 as *Document No.* 11.
12. H.L., 1973–4, 133.
13. *Ninth Report from the Select Committee on House of Commons (Services)*, H.C., 1977–78, pp. xxv–vi. This report also includes sections on 'Access for the Public', 'Library Services', and 'Computer Services'.
14. H.C., 1976–7, p. ix.
15. *ibid.*, p. x.
16. pp. 61–7.
17. *Second Report from the Select Committee on Sound Broadcasting*, 1976–7, H.L. 123, H.C. 284, section on 'Archives', pp.xiii–xv.
18. *ante*. vol. xliv (1976), pp. 51–8.
19. *Fifth Report*, 'Computer-based Indexing for The Library', H.C. 1976–7, 377, p. xii.
20. H.C., 1976–7, 509, p. vii.
21. I am most grateful to all those who have very kindly helped in the preparation of this article, and particularly to Mr. Roger Morgan, Librarian of the House of Lords; Mr. Dermot Englefield, Deputy Librarian of the House of Commons; Mr. Henry Cobb, Deputy Clerk of the Records; Mr. Jeremy Maule, Clerk of the Information Office, House of Lords; and Mr. Richard Morgan, Computer Development Officer for both Houses.

# VIII. THE SITTING HOURS OF THE NEW ZEALAND HOUSE OF REPRESENTATIVES AND THE BROADCASTING OF DEBATES

BY DAVID MCGEE

*Clerk Assistant of the House of Representatives*

In New Zealand, on those (not so rare) occasions when the House of Representatives continues sitting beyond the hour of midnight, the calendars displayed on the walls of the Chamber are not altered to the new (calendar) date, but are left showing the date as it was when the sitting commenced, and they remain in that state until the sitting concludes. This practice has often been referred to by members in the course of debate as an example of one of the endearing eccentricities of the institution of Parliament. However, on two occasions last session this 'eccentricity' was called into question in the course of points of order concerning the radio broadcasting of parliamentary proceedings.

Debate in the New Zealand Parliament has been broadcast in full during normal sitting hours since 1936. The emphasis here is on the word 'normal'. The Standing Order regarding broadcasting, which was adopted in 1962, provides:

> "Proceedings of Parliament shall be broadcast during all hours of sitting prescribed by S.O. 39 and during such other periods as may be determined by the Leader of the House."

If we turn to S.O. 39 to discover what are the prescribed hours of sitting, we find that:

> 'Unless otherwise ordered, and subject to the provisions hereinafter contained, the House shall meet at 2.30 p.m. on Tuesday, Wednesday, and Thursday . . . until 5.30 p.m. . . . (and) 7.30 p.m. . . . until 10.30 p.m. and no longer.
> On Friday, unless otherwise ordered, the House shall meet at 9 a.m. . . . until 1 p.m."

These then are the sitting hours during which Parliament is 'on the air'. If the House sits outside these hours, the question of the continued broadcasting of proceedings is left entirely in the hands of the Leader of the House, who (until the appointment last December of a senior Minister to that position) has in recent times always been the Prime Minister.

The controversy over the broadcasting of parliamentary proceedings arose during the course of consideration of the Government's supplementary estimates. The procedure for the presentation and passing of the annual estimates of expenditure was revised in 1972 and since then has worked reasonably well. Sixteen days are allocated each session for discussion of the Government's main estimates, the Opposition by convention deciding how long it wishes to spend discussing each department's

estimates, while supplementary estimates are presented towards the end of the session in September or October.

The estimates and the supplementary estimates are contained in, and are considered and passed by the House in, Appropriation Bills. The debates on the estimates take place when the House resolves itself into a Committee of the Whole to consider these Bills. As mentioned above, a specific number of days is available to consider the main estimates in the first Appropriation Bill, but no particular time is prescribed for committee consideration of the second Appropriation Bill containing the supplementary estimates. Since 1972 the committee stage of this Bill has always occupied part of one sitting and has varied between 3 and 8 hours in length.

However, last session the Opposition determined upon launching a particularly vehement attack upon the level of public expenditure and the overseas borrowing this entailed. To this end the consideration of the supplementary estimates was the subject of two marathon sittings extending over 30 hours in total length. The Committee of the Whole first began considering the Appropriation Bill (No. 2) at 10.59 p.m. on Thursday, 14th September, reporting progress and asking for leave to sit again at 11 a.m. the following day. Consideration of the Bill in Committee resumed on the following Tuesday, 19th September, at 9.51 p.m. and continued until its completion at 4.20 p.m. on Wednesday, 20th September. The procedural device by which the sittings of the House on the 14th and 19th September were extended is contained in S.O. 47. This Standing Order enables a Minister to move, without notice, a motion that 'Urgency' be accorded any Bill, matter, or other proceeding. Such a motion is not debatable, and its effect if passed is that, in the words of S.O. 47(2):

> "such Bill, matter, or other proceeding may be proceeded with, and proceedings thereon completed at the same sitting of the House, notwithstanding any Standing Order or rule of the House to the contrary; and any time fixed by the Standing Orders or by any other order of the House for the conclusion of the sitting then in progress shall (where necessary) be deemed to have been extended accordingly." (There then follows a proviso dealing with sittings which last until midnight Saturday which will be referred to later.)

Accordingly the sitting of the House begun at 2.30 p.m. on Thursday, 14th September, was, pursuant to a motion for 'urgency' for the second reading and committee stage of the Appropriation Bill (No. 2), continued after the normal time of adjournment, 10.30 p.m., because at that time the second reading was still in progress and the committee stage had not in fact been reached. Similarly with the sitting of the House begun on the following Tuesday, at 2.30 p.m. In both cases the proceedings went "off the air" at 10.30 p.m. that night, there being no direction from the Prime Minister (which is usually communicated to the broadcasting authorities through the Clerk of the House) to the contrary.

The Prime Minister had not been expected to accede to requests to

continue the broadcasting of proceedings after 10.30 p.m., and the consideration of the supplementary estimates continued without serious incident throughout the night and early morning of Friday, 15th September. It was at 6 a.m. that the question of the resumption of broadcasting first arose. At that time a member made reference to the Opposition's intention to take special care in considering some of the more extensive estimates when the Committee went back on the air. The Prime Minister immediately rose to point out that Parliament would not go on the air at 9 a.m., as it would do on a normal Friday since, until "urgency" expired and the House adjourned, it was still Thursday parliamentary time. The Acting Chairman sustained the Prime Minister's view, and on an Opposition motion the Speaker was recalled to rule on the matter.

The Opposition's argument was that, under S.O. 49, proceedings were to be broadcast during all the hours of a sitting prescribed by S.O. 39. From 9 a.m. to 1 p.m. were the hours of sitting prescribed by S.O.39 for a Friday, therefore the broadcasting of proceedings should resume for those four hours. The Government's argument was that as S.O. 47(2) had the effect of extending Thursday's sitting the broadcasting hours for which concluded at 10.30 p.m., it was not until that sitting ended that the House would move into Friday and the sitting hours prescribed for a Friday apply.

The Speaker (after observing that it was a very intriguing point of order to decide at 20 minutes past 6 in the morning) ruled that for the purposes of S.O. 39 (prescribing the normal sitting hours on a Friday) the House had, by agreeing to an "urgency" motion, 'otherwise ordered'. The House would, if necessary, continue the sitting of Thursday, 14th September, until midnight on Saturday or until such time as the business accorded "urgency" was concluded, if this were accomplished before then. In these circumstances members were still in the Chamber on Thursday, 14th September. Broadcasting could not begin at 9 a.m. on Friday, as Parliament was sitting on a Thursday and the broadcasting hours of Thursday applied. It being after 10.30 p.m. on Thursday, broadcasting could not resume again until the House had disposed of Thursday's sitting.

As was perhaps to be expected, this ruling did not commend itself to all members of the House, and the Deputy Leader of the Opposition raised a hypothetical question – if the House could not be aware of the fact that it was Friday outside, how could it be aware that midnight on Saturday had been reached so as to apply S.O. 46, which provided that "there shall be no sittings of the House on Sunday" and which goes on to provide procedures for the termination of business where a "Saturday sitting" continues until midnight? The Speaker refused to pursue this hare at any length, observing –

". . . I have a feeling that Speakers and Chairmen of Committees are endowed with a sixth sense, which would inform them that for civilised people outside we are approaching the witching hour of midnight, Saturday. I would certainly have no difficulty in recog-

nising it was Sunday morning or Saturday night, but the point is that it is Thursday's sitting."

Fortunately the Committee of the Whole decided to report progress later that morning so this point was never tested. However, the Standing Orders, as might be expected, do suggest a solution. In referring to S.O. 46 above, it was emphasised that the Standing Order provides procedures for terminating a "Saturday sitting" (those rare occasions when the House decides to meet on a Saturday and thus make Saturday a sitting day in its own right). As the House was engaged on a Thursday sitting (and this was the basis of the Speaker's ruling on the broadcasting point of order) S.O. 46 could not be applied – directly. However it is now necessary to refer again to the proviso to S.O. 47(2), mentioned above. This provides that no extension of a sitting as a result of an "urgency" motion "shall entitle the House or the Committee to extend its sitting beyond the hour of 12 midnight on a Saturday, and in the event of the House or Committee continuing to sit until that hour the provisions of S.O. 46 shall apply". S.O. 46 therefore applied, by virtue of the proviso, to the Thursday sitting upon which the House was engaged, and it would be applied, as it could only be applied, by reference to the calendar day. The difference between a 'sitting day' and a 'calendar day', and the House recognising and applying both conceptions at the same time was of some novelty and, being raised after an all-night sitting, its exposition was not likely to be immediately enlightening. As the Hon. A. J. Faulkner observed at one point:

"In a slightly humorous vein, I think that many people outside . . . will feel confirmed in their view that we hardly ever do know the time of day."

The consideration of the supplementary estimates was not concluded at that sitting. The Committee abandoned its task after sitting for 12 hours. The House next resolved itself into Committee for this same purpose the following Tuesday, 19th September. Broadcasting of proceedings of course ceased at 10.30 p.m. that night, and the Committee continued to scrutinise the spending plans of Government departments into the afternoon of Wednesday (calendar time). At 2.41 p.m. a point of order regarding the broadcasting of proceedings, in a similar vein to that disposed of the previous week, was raised, but this time with an ingenious difference. The Opposition accepted that the sitting day was Tuesday, 19th September, the calendars on the wall of the Chamber showed that to be so. As it was still Tuesday, and as S.O.s 49 and 39 provided between them that Parliament should be broadcast from the hour of 2.30 p.m. on a Tuesday, the House should be on the air at that time. The ruling given the previous week did not cover the point as it had been given in respect of an argument addressed to the Speaker concerning the commencement of broadcasting at 9 a.m. on a Friday, and, as it had been held to be Thursday's sitting and the House did not

meet at 9 a.m. on a Thursday, the broadcasting Standing Order did not apply. But here it was after 2.30 p.m., the time at which broadcasting did apply on a Tuesday, and, for parliamentary purposes, it was a Tuesday. In fact, whether it was held to be Tuesday or Wednesday did not matter – in either event it was within the time provided by S.O. 39.

During the course of the point of order a number of members offered their suggestions as to what the present time was. One member suggested 11.59 p.m. on the evening of Tuesday, 19th September; two others that it was after 3 p.m. on either Tuesday or Wednesday. The Minister of Justice suggested that if the House had a clock divided into an unlimited number of hours it could be said to be 39.13 hours on Tuesday, to allow Opposition members to take all the time they wanted to examine the supplementary estimates.

Both the Acting Chairman and the Acting Speaker (who was recalled to rule) ruled on the basis of the dichotomy between a sitting day and a calendar day. The Acting Speaker declared:

"At this moment the official parliamentary time is 3.19 p.m. on Wednesday, 20th September, being part of the sitting day of Tuesday, 19th September."

The previous ruling of the Speaker applied, as S.O.s 49 and 39 provided only for automatic broadcasting transmissions during the *normal* sitting hours of a sitting day and, as it was after the time of the normal sitting hours of a Tuesday sitting day, the House had to remain off the air unless the Leader of the House decided otherwise.

And so the points of order were resolved. However, at least one 'loose-end' remains. During the course of argument a number of members had made reference to what had happened in regard to broadcasting on previous occasions when the House had sat beyond the time appointed for the meeting of the House on the next day, and, while such sittings fortunately could not be described as common, nor are they so rare as to render examples difficult to find. Opposition members asserted that in similar situations in the past, broadcasting of the debates had been resumed automatically; Ministers maintained that, while on these occasions broadcasting may have resumed, this was as a result of a decision of the Leader of the House of the day. The Speaker, in ruling on the matter, left the question of what had happened in particular instances in the past out of account. He said:

"The honourable member . . . has drawn to my attention the fact that there have been times when the broadcasting box has been opened at 9 o'clock. Whether that has happened because the gentleman in the box has decided in his view that it is 9 o'clock and Friday, and he has just turned the switches on, or whether the broadcast has been activated by the Leader of the House in accordance with S.O. 49, I do not know. Certainly no evidence has been presented to me along those lines, except that I think the Prime Minister did say that he remembered occasions when the Leader of the House had made that sort of arrangement. However, this is not a matter on which I can adjudicate on past practice, because there seems to be a certain amount of doubt about it".

On that note it would perhaps be as well to draw this article to a close.

# IX. PRIVATE LEGISLATION IN THE LIGHT OF THE LOCAL GOVERNMENT ACT 1972: HOUSE OF LORDS PROCEDURES

BY E. D. GRAHAM

*Clerk of Private Bills, House of Lords*

*Introductory*

Public legislation is of general application throughout the country, private legislation is concerned with particular localities or persons. Public Bills are introduced into Parliament by members who may be Ministers (Government Bills) or backbenchers (Private Members' Bills); Private Bills are founded upon petitions presented to Parliament by the parties who promote them.

Until the nineteenth century, most private Bills were concerned with the affairs of individuals; there being no ordinary procedure for divorce or naturalisation, many of them were Bills for these purposes, and most of the others were concerned with the alteration of settlements and entails. From about 1700, however, a growing number of Private Bills were concerned with the construction of toll roads, canals, railways, reservoirs, and other works, and with the local government of boroughs and other areas. In modern times, the greater number of, and more important Private Bills which come to Parliament are those promoted by local authorities and statutory undertakers for the better fulfilment of their functions by the conferring of powers which the ordinary law does not give them.

In certain fields, alternative procedures which are less time-consuming and expensive have been substituted for Private Bills; in particular, the system of provisional orders was extended to Scotland in 1899 and it has, for almost all purposes, replaced procedure by Private Bills in Scotland.

The effect has been to reduce the scope of Private Bill legislation. This has been due partly to the substitution of the procedures just described, to the removal from Parliament of many decisions in the planning and related fields and to the passage of Public General Acts which embody powers which would formerly have found their way into Private Acts. The provisions of Private Bills still deal with a wide variety of subjects but the majority are now concerned with "general powers"; that is, a change in the law locally so far as it relates to topics with which the local authority promoting the Bill is concerned, for example, public health, planning, highways, and road traffic, or the construction of works and connected purposes. These General Powers Bills are promoted by local authorities to cover their areas of responsibility.

Private Bills, like Public Bills, receive three Readings in each House. There are opportunities for debate on Second and Third

Reading, but in general, the scrutiny of their provisions takes place in Committees off the Floor of the House.

The basic principle applied by Parliament to the Promoter of a Private Bill is that he has no right to the powers for which he petitions Parliament; consequently, there is an onus of proof on him to convince Parliament that the law should be changed to his advantage.

Any unopposed Bill and, subject to some technical differences, the unopposed parts of an opposed Bill are referred to the Unopposed Bills Committee whose function it is to insist in appropriate cases that the Promoter discharges the onus of proof by requiring him to prove his need for what he asks for and that what he asks for is reasonable; this includes satisfying the Committee that the powers he asks for are not already available under existing General Law. The Committee also endeavour with the limited resources at their disposal to correct defects of drafting so as to ensure so far as possible that the provisions in the Bill are effective.

Opposed Bills are committed to a Select Committee, consisting of five Lords, which considers the Bill and the petitions which have been deposited against it. The proceedings are *quasi-judicial* and parties may produce witnesses, who are open to cross-examination, in support of their case.

*Local Government Act* 1972

The Local Government Act 1972 inaugurated a revised system of local government for England and Wales outside Greater London and created new local government areas. A consequence of this re-organisation was that the new local government authorities created by the Act inherited a considerable volume of local legislation promoted by their predecessor authorities. Some of this was spent, obsolete or adequately replaced by subsequent public legislation; nevertheless, existing local legislation contained valuable powers, some of which were essential and others which were pertinent to, and useful to, the new local authorities and which related to the circumstances in their areas. Also anomalies were created in cases where powers previously conferred on a local authority now affected part of the area of a new authority on whom *ex-hypothesi* these powers had not been conferred. To remedy this unsatisfactory state of affairs, section 262 of the Local Government Act provided that all local legislation (except for certain clauses defined in section 262(9), e.g. provisions relating to statutory undertakings) should cease to have effect in 1979 in metropolitan counties, and in 1984 in the non-metropolitan counties. Section 262 therefore obliged all the new authorities to review local Act provisions in force in their areas and where any of them required and justified re-enactment, to promote, or secure the promotion of, Private Bills to re-enact what would otherwise be repealed in 1979 or 1984.

The general state of local legislation is confused and there is a great deal on the local statute book which should have been repealed. The

re-organisation of local government occasioned by the 1972 Act offered a unique opportunity for a thorough review and rationalisation of the accumulated mass of local legislation which the new authorities inherited.

*Private Bills promoted pursuant to the Local Government Act* 1972

It was clear that a considerable number of metropolitan and non-metropolitan local authorities would promote major general powers Bills prior to the deadlines established by the Act to rationalise local law in accordance with the policies implicit in section 262.

The first of these Bills was the County of South Glamorgan Bill in 1975. This Bill occupies an important place in the development of local legislation since, as the first of its kind, it was regarded as a test case. As deposited, the Bill contained 287 clauses and the decisions Parliament might take to reject or allow these clauses would encourage, or discourage, the promotion by other local authorities of similar legislation.

In moving the Second Reading of the Bill, the Chairman of Committees emphasised that Bills such as the County of South Glamorgan Bill must be scrutinised with special care to ensure that the general law should not be changed unless there was compelling local need for variation; also, that whatever was enacted should, so far as possible, be of the standard of draughtsmanship required for a Public Bill. To enable this scrutiny to be carried out, he recommended that the Bill, with the exception of Part VIII, which was opposed, should be committed to a small Select Committee. This procedure would ensure that the promotors would be heard in argument on each clause and have the opportunity to call witnesses; also, that a transcript of the proceedings would be taken.

The appropriate procedural Motion was agreed to by the House at the beginning of May 1975 and the Bill, with the exception of Part VIII, which had already been considered and allowed by a select committee was re-committed to a Select Committee consisting of the Chairman of Committees (Lord Listowel), Viscount Hood and Baroness Tweedsmuir of Belhelvie for consideration as if the Committee were a Committee on an Unopposed Bill.

The Committee sat from 10.30 to 1.00 p.m. on twenty-six days and heard argument and forty witnesses on behalf of the three Parliamentary Agents representing the promoting authorities, i.e. the Councils of the County of South Glamorgan and of the two districts that the County comprises, namely the City of Cardiff and the borough of the Vale of Glamorgan. The Committee also had before them reports from the following Government Departments: The Department of the Environment, the Welsh Office, the Home Office, the Departments of Education and Science, Health and Social Security, Trade and Industry and Prices and Consumer Protection, the Lord Chancellor's Office and the Attorney-General and heard representatives of those Departments.

The Select Committee set up to consider the Bill represented a de-

parture from usual practice as explained above but the criteria it applied in disallowing provisions of the Bill were analogous to those employed by Committees on Unopposed Bills, namely:

(a) the clause embodies a policy which does not commend itself to the Committee;

(b) the clause is not needed to such an extent as to counterbalance the undesirability of enacting it. This is based on the conception that local Acts for general powers are inherently an undesirable accretion to the general law; and

(c) the clause is wholly or partly covered by Public General Act. If wholly covered it should obviously be struck out. If partly covered, there is usually considerable difficulty in separating what is covered from what is not.

The Committee stated in their Special Report to the House that they were conscious that they had an additional responsibility regarding the County of South Glamorgan Bill, namely to carry out a degree of local statute law revision since one of the Bill's purposes was to rationalise local law in the area of the new authority; this could only be achieved by scrutiny of the provisions in the Bill and the application of principles which went further than those hitherto followed by the Unopposed Bills Committee. The Committee were concerned to establish those principles not only in the consideration of this Bill but also as a precedent for similar Bills to follow.

The additional principles that the Committee espoused in considering the Bill were that clauses should be disallowed if:

(i) the proposed clause were to meet a need that is common to all or a great number of authorities; and therefore the powers asked for should be conferred by Public General Act rather than by a Private Act; and

(ii) the powers asked for were likely to be granted by the General Powers Bill proposed by the Department of the Environment in their Report to the Committee.

Normally it is sufficient for a promoter to come to Parliament and prove that he has a need for a power without having to show that the need is peculiar to his own area. The principle enshrined in (i) above was therefore inimical to the promoters of large General Powers Bills. The Committee justified this principle on the grounds that to change the law, area by area, in a multiplicity of parallel, and not necessarily similar, Private Act clauses is manifestly inefficient as compared with a universal change contained in one General Act provision. With this in mind the Committee went so far as to assert in their Report that a clause in a private Bill to remedy a mischief which also affects all or a great number of local authorities is unsuitable for private legislation.

So far as the second principle was concerned, the Department of the Environment had indicated in their Report to the Committee that they had carried out a review of about 140 clauses which had commonly

appeared in recent local Acts and selected about 40 as worthy of general application, which it would be wasteful of time and effort to include in each local Bill. These 40 clauses would be included in a Local Government (Miscellaneous Provisions) Bill, a Public Bill which they hoped to introduce at a convenient time. The remaining clauses had been omitted from the proposed Bill either because they were already covered by the general law, or because they were unsuitable for general law or were otherwise open to objection.

Here again, the principle applied by the Committee went further than usual practice, which is that when considering the provisions of a Private Bill a Committee will only take cognizance of a Public Bill which has passed its Committee stage in the Second House. In other words, the Committee on the County of South Glamorgan Bill should not have, when deciding whether or not to allow a provision in the Bill, paid any attention to its possible inclusion in the prospective General Powers Bill.

Of the 287 clauses in the Bill, the Committee disallowed 109, others were withdrawn by the promoters and 73 were allowed, 19 with amendments. The recommendations of the Committee in their Special Report to the House made on 6th November, 1975 were sufficiently important, representing as they did the findings of the only Parliamentary Body to consider the consequences on local legislation of the 1972 Act, to be reproduced *in extenso*.

"The Committee appreciate the predicament in which the newly constituted local authorities find themselves because of the prospective repeal at the latest by 1984 of almost all the local Act "general powers" in force in their areas. The three local authorities that promoted the South Glamorgan Bill and other authorities that are minded to promote such Bills in the future might well complain that Parliament had ceased to grant local Act powers where need for them was shown but the need was not peculiar to the promoting authority. Consequently, if clauses are disallowed on the principle applied by the Committee it is in their opinion essential that general legislation should be introduced to replace them and thus remedy mischiefs common to all or a great number of local authorities. This will also ensure that the statute law will, so far as possible, be of universal and not local application. Public General Bills of this kind need not be controversial or take up much time in either House. Furthermore, the periodic introduction of such Public General Legislation would, to a great extent, supersede the promotion by local authorities of Private Bills for general powers.

The Committee, therefore, recommend that the Government:

(*a*) introduce as soon as may be the General Powers Bill that has been proposed and

(*b*) explore means whereby thereafter public general legislation may be prepared and passed as occasion requires to meet the general needs of local authorities.

Meanwhile, the Committee express the hope that local authorities who intend promoting general powers Bills will confine them to provisions which are capable of satisfying the criterion of 'special and urgent local need' which the Committee have applied to this Bill.

Should, however, local authorities continue to promote Private Bills similar in scope and size to the County of South Glamorgan Bill, the Committee fear that existing parliamentary procedure will be found incapable of coping with the load of legislation. In consequence the opportunity for the rationalisation of local legislation provided by the Local Government Act 1972 would be lost. The Committee, therefore, recommend that should Private Bills be promoted similar to the County of South Glamorgan Bill the procedure for dealing with them should be reviewed." (H.L. 1975–76) 132)

The recommendations were followed by a list of those clauses which the

Committee disallowed with a recommendation that the powers asked for should be included either in the Public General Powers Act referred to in the Report of the Department of the Environment or in future general public legislation.

The Chairman of Committees thought that an opportunity should be given to the House to consider the Special Report and in particular the Committee's decision to apply the somewhat exigent and novel criteria described above. An important precedent was being set and it was important that the House should be aware of what was taking place.

Accordingly the Chairman of Committees put down a motion on 9th December, 1975 to take note of the Special Report. To this motion Lord Champion, a Labour peer, put down the following amendment:

"at end to insert "but considers—
(*a*) that the principle adopted by the Committee, to disallow any proposal in the Bill on the ground that it was to meet a need common to all or a great number of local authorities, should only apply in cases where the Government give a firm undertaking to introduce general legislation to meet that need; and
(*b*) that those provisions of the Bill disallowed or withdrawn on that ground should be re-committed.")"

This amendment, as the Chairman of Committees said in his speech, served to focus the attention of the House on the main issue arising from the report and enabled the House to take a decision having heard all the arguments on both sides. It will be noted that the amendment called specifically for the Bill to be re-committed in respect not only of those provisions which the Committee had disallowed in applying the new principles but also those which the promoters had withdrawn in anticipation of their being disallowed. The central argument in support of the amendment was that Parliament should not discourage local authorities from assessing local needs and framing clauses in Private Bills to meet those needs. Furthermore, the purpose of local Government reorganisation was to strengthen the position of local authorities, whereas the application of the new principles by Select Committees could only have the opposite effect. The sense of a number of speeches was that the initiative that local authorities had enjoyed for a very long period of time should be left with them, and not assumed by central Government.

On a division, the amendment was carried by 51 votes to 17. The Chairman of Committees undertook to move the necessary procedural motion to recommit the appropriate clauses of the Bill to another Select Committee. The Chairman of Committees accordingly moved a motion which was agreed to on 20th January, 1976 in the following terms:

"That the Bill be recommitted to a Select Committee to consider those clauses in the Bill, as deposited last Session, which were disallowed by the Select Committee (on Recommitment) or withdrawn, because they were to meet a need common to all or a great number of local authorities."

The Bill was re-committed to another Select Committee consisting of the Chairman of Committees, Earl Cathcart and Lord Airedale. The

Committee sat for 14 days and heard argument from the three Parliamentary Agents concerned with the promotion of the Bill; representatives of the Government Departments which had reported on the Bill also assisted the Committee. Of the 68 clauses re-committed as coming within the terms of the amendment agreed on 9th December, the Committee disallowed 28.

It is not usual practice for Committees on Private Bills to give reasons for their decisions to disallow clauses but again the Committee felt it right to give some indication to the House in each case of the principle underlying their decision to disallow a clause. A summary of the list of clauses disallowed appended to the Committee's Special Report shows 8 disallowed as being defective; 12 as being unnecessary; 5 as being undesirable and 1 as being unsuitable for local legislation. The remainder were consequential.

Towards the end of the Committee's consideration of the Bill, the Local Government (Miscellaneous Provisions) Bill, referred to already, was introduced in the House of Commons. It became apparent that a number of clauses in the County of South Glamorgan Bill corresponded to clauses in the Government Bill. The Committee, however, were not minded at such a late stage to disallow such clauses, in particular those which it had already decided to allow. It was agreed, however, that the clauses in the Government Bill should be regarded as a model for the clauses in the Private Bill dealing with the same topic, and that, so far as possible, the latter should be redrafted.

The promoters also gave an undertaking to withdraw clauses allowed by the Lords' Committee, which corresponded to those in the Government Bill, at the Committee stage in the House of Commons if the Government Bill had by then passed its Committee stage in that House.

The Bill was subsequently read a Third time in the usual way and sent to the Commons. It received Royal Assent on 15th November, 1976.

*The Common Clauses Procedure*

Consideration of the procedure in Committee on the County of South Glamorgan Bill and particularly its duration gave rise to misgivings as to the ability of the Parliamentary machine to deal with future Bills of the same sort which were expected to be deposited in Session 1976/77 and subsequent Sessions.

Where several such Bills were concerned, it was obviously desirable that, so far as possible, clauses dealing with the same topic should be in the same form. To achieve this goal, consideration was given to the possibility of evolving a set of "model clauses" to cover the general powers which were likely to be required by local authorities and included in the Bills they intended to promote. To meet this requirement the Chairman of Committees in the House of Lords and the Chairman of Ways and Means in the House of Commons suggested that local authorities intending to promote future general powers Bills in Session 1976/77 should defer these

promotions and collaborate in the production of a set of clauses dealing with topics common to two or more of the four Bills which it was understood were next likely to be promoted.

The proposal, which was the subject of a joint letter to the Society of Parliamentary Agents and local authority associations, was put to the particular local authorities concerned who instructed their Parliamentary Agents to proceed accordingly.

The procedure involved detailed consideration by the Parliamentary Agents involved of a large number of clauses with the promoting authorities instructing them and, at a later stage, discussion of these draft clauses with Counsel to the Chairman of Committees. The procedure was also intended to reduce the time spent in Committee in amending clauses to remedy defects in drafting since those would already have been considered by Counsel. It had become apparent in the Committees on the County of South Glamorgan Bill that even with the expenditure of much time, and the circulation of a great deal of paper, a Committee is not an efficient drafting agent.

The result was a group of 85 clauses, common to two or more of the proposed General Powers Bills; these were printed at the order of the House and made generally available under the title "General Powers Bills: Common Clauses".

The preparation of this fascicle of Common Clauses and the necessary consultations were carried out at the expense of the promoting authorities and the hope was expressed that the time spent in Committee would be significantly reduced, especially that for drafting; but it was also recognised that the formulation of common clauses was not intended to relieve promoters of the burden of proving need for the powers they sought in the Bills eventually promoted.

*General Powers Bills deposited in Session* 1977/78

Four large General Powers Bills were deposited in November 1977—the Cheshire County Council Bill (115 clauses); the County of Merseyside Bill (165 clauses); the West Midlands County Council Bill (182 clauses); and the West Yorkshire Bill (119 clauses). As outlined above, the Common Clauses procedure led to the formulation of a group of 85 clauses which were common to two or more of these Bills and it was clear that it would be a logical extension of this procedure if, so far as common provisions were concerned, the Bills were considered by the same Committee.

It was recognised that it was a necessary feature of a system that allows any local authority to petition Parliament for the enactment of laws for its own area that there would be differences in the law as between one area and another. However, in the new circumstances provided by the Local Government Act 1972, the desirability of achieving as much uniformity as possible took on a new dimension. The local authorities promoting the four Bills represented between them a significant part of

the whole country, both in terms of area and of population, and it was obviously desirable that provisions in the four Bills conferring the same sort of powers should emerge from Committee in a form that did not vary appreciably from one Bill to another, except so far as variations were attributable to genuine differences in local need. This was the main argument in support of committing more than one Bill to the same Committee. It was apparent also that the procedure adopted in respect of these four Bills would have an important bearing on the form of comparable Bills promoted in future sessions and, apart from the inherent undesirability of having unnecessary divergencies between clauses, the burden imposed on Parliament would be materially reduced if clauses covering the same ground were in the same form.

In the case of the unopposed common provisions, it was proposed that they should be committed to a small Select Committee similar to that set up to consider the County of South Glamorgan Bill, consisting of the Chairman of Committees (now Lord Aberdare) and two other Peers, advised by Counsel to the Chairman of Committees. Those common provisions against which petitions were deposited would be referred to an opposed Private Bill Select Committee. It is, of course, normal for opposed clauses to be referred to Select Committees but usually a Committee deals with one Bill only whereas under the new procedure the Select Committee would be dealing with Petitions against provisions common to two or more Bills; in other words, it would be considering *subjects* rather than individual Bills. Clauses which were peculiar to each Bill, and unopposed, would have to be considered by the Lord Chairman's Select Committee; furthermore, opposed peculiar clauses would, in the case of each Bill, have to be committed to another opposed Private Bill Select Committee. The essence of the procedure was to commit to each Committee only the appropriate clauses so that no Bill or part of a Bill was in two (or more!) places at once and, at the same time, to ensure that every clause was properly considered in Committee. To achieve this, certain procedural motions were moved and agreed to by the House.

The first Committee to sit was that appointed pursuant to motions agreed to by the House on 14th and 15th March to consider common opposed clauses. The Committee also had to consider Instructions moved by Lord Sandys and agreed to by the House on 28th February, relating to each Bill in the following terms:

"That it be an Instruction to the Committee to whom the Bill is committed that they should give special consideration to clauses x and y, in so far as they relate to boats, to satisfy themselves—

1. that they do not constitute an unnecessary and discriminatory interference by local authority with the rights of the individual nor impose unjustifiable hardship on any individual now, or in the future, resident in the area; and
2. that the powers sought are suitable for inclusion in a Private Bill."

The Committee sat under the Chairmanship of Lord Hinton of Bankside for 11 days and made a Special Report to the House. The proceedings of this Committee were complex and certain of their de-

cisions merit close examination since they were the subject of review and debate at a later stage in the House. A number of petitions were withdrawn before the Committee met and therefore the clauses at which they were directed were not the subject of consideration by the Committee. The surviving petitions fell to be considered by the Committee grouped under topics as follows:

Licensing of Public Entertainments
Petitioners: The British Hotels Restaurants and Caterers Association
The Justices' Clerks' Society
National Union of Licensed Victuallers
Night Cafes and Entertainment Clubs
Petitioners: The British Hotels Restaurants and Caterers Association
Parking in Private Gardens
Petitioners: Camping Club of Great Britain and Ireland Limited
Caravan Club Limited
National Caravan Council Limited
Ship & Boat Builders National Federation
Royal Yachting Association

When considering the last topic, the Committee had also to take into account the Instructions agreed on 28th February mentioned above.

In the Special Report made to the House, the Committee drew attention to the decision they took regarding Part VIII, Night Cafes and Entertainment Clubs, and Part IX, Licensing of Public Entertainments, in the West Midlands County Council Bill, based on the importance the Committee attached to achieving uniformity of local legislation in each county council area and, so far as possible, throughout the areas with which all four Bills were concerned. Counsel for the Promoters suggested that one of the reasons for the promotion of these Bills by the new county councils was to abolish the patchwork of legislation inherited from the previous authorities, and to secure a degree of uniformity within districts comprising the new areas. It was emphasised that the promoters were conscious of the need to secure uniformity where conditions were similar and there was no local need or local policy which would stand in the way of uniformity.

The problem of uniformity was presented in a particularly acute form in the West Midlands County Council Bill because in the case of none of the provisions in the Bill with which the Committee were concerned did the promoters wish for any of them to be applied to all district councils on behalf of whom the Bill was promoted. To have enacted such legislation in the form proposed by the promoters, would have meant that the opportunity for rationalisation of local legislation afforded by the Local Government Act 1972 would have been lost.

The problem was presented to the Committee because Birmingham City Council which was included in the Bill as originally deposited subsequently decided that they did not want conferred on them certain powers relating to the licensing of premises used for public dancing, singing or music previously exercised by Licensing Justices. The Licensing Justices concerned had deposited a Petition objecting to the transfer of

function proposed in the Bill.

It is common practice for a promoter of a Bill to propose amendments, the effect of which is to narrow its scope, in some cases by withdrawing provisions for which it has been decided for one reason or another it is no longer expedient to ask. Such amendments are proposed in Committee and cannot be made without the agreement of the Committee.

Accordingly Counsel for the promoters asked the Committee to agree an amendment, the effect of which would be to remove Birmingham City Council from the provisions of the Bill, and informed the Committee that the Justices had withdrawn their Petition on the understanding that this would be done.

The Committee were advised that to refuse the amendment proposed would have the effect of obliging Birmingham City Council to have powers conferred on them for which they had not proved need and which they now indicated they did not want. The established practice in the promotion of Private Bills is for a promoter to come to Parliament and to prove need for the powers he asks for. He may be allowed exactly what he asks for; or what he asks for with some amendment; or not allowed what he asks for at all. Therefore, it would be unforseen by a promoter that Parliament would impose powers on him though he had appeared before a Committee and said he did not want them, solely because these powers were included in the Bill as originally deposited. This would apply equally to a City or District Council on whose behalf a county council was promoting the Bill, as in the case of West Midlands Bill.

However, the Committee felt obliged to consider the question against the background of the promotion of the four Bills with which they were concerned. One of the purposes of the Common Clauses exercise had been to achieve, so far as possible, uniformity in the form of Clauses dealing with the same topic, and variation between such clauses defeated this objective to a certain extent.

The Committee, after careful deliberation, decided to apply the principle of uniformity so far as possible, not only to the form and content of clauses dealing with the same topic, but also to their application to all city and district councils in the same county council area. The proposition on which their decision was based was that it would be justifiable for a Committee to indicate to a county council promoting a Bill, that unless obviously only relevant to a particular area, a provision would only be allowed if it were applied throughout the whole geographical area concerned and that to achieve this uniformity, district or city councils might be required, in some cases, to accept powers asked for on their behalf in the original Bill as deposited.

The Committee applied the same principle to powers relating to the licensing of boxing and wrestling entertainments in the West Midlands local authority areas though they were prepared to amend the Cheshire County Council Bill—a non-metropolitan County—in a similar sense as asked for by the promoters. The Committee's decision was expressed in the Special Report thus:

"The Committee announced their decision that, so far as Part IX of the [West Midlands] Bill was concerned, they were not prepared to accept amendments which would create material differences between district councils in the same county council area. They therefore refused to make the amendment necessary to exclude Birmingham from Part IX of the Bill.' (H. L. (1977-78) 137)

It will be noted that this was a further example of a Committee applying new principles in considering a large General Powers Bill promoted pursuant to the Local Government Act 1972.

The other substantial matter to be considered by the Committee were the provisions relating to the prohibition of parking in private gardens. These provisions so far as they related to boats were the subject of a number of petitions and also the Instructions agreed to by the House on 28th February, 1978, referred to above. The Committee heard evidence from the promoters of three of the Bills and in the case of the West Midlands Bill from certain district councils alleging nuisance and damage to amenity occasioned by the parking of large caravans, boats and heavy commercial vehicles in private gardens.

The Committee concluded that the evidence of nuisance was slight and was far from establishing a need for taking local powers which would clearly be an intrusion into the long established rights of individuals to park in their gardens vehicles etc., incidental to the enjoyment of their dwelling. The Committee, therefore, disallowed the provisions to prohibit parking in private gardens in all four Bills.

To enable the House to consider the Special Report, the Chairman of Committees, on 17th July, 1978, moved a motion to take note of it, to which Baroness Young proposed an amendment as follows:

"at the end to insert ("but considers that the Committee should not have refused to make certain of the amendments asked for by the Promoters of the West Midlands County Council Bill as described in paragraphs 24, 25 and 26 of the Special Report and that accordingly these amendments should be made to the Bill on Third Reading.")"

The sense of the majority of those who spoke in the debate was that the Committee had sought to impose a degree of uniformity on the provisions of the Private Bills before them more appropriate to public legislation than private. Private Acts can never, by their very nature, achieve uniformity in the geographical application, as well as in the content, of their provisions.

Furthermore, the Committee by seeking to impose certain powers on a City Council were contravening the principle applying to all Private Bills that powers should only be given by Parliament to promoters who had shown sufficient proof of their need for them. At the conclusion of his speech in the debate, the Chairman of Committees undertook, in the event of the House agreeing to Baroness Young's amendment, to move amendments on Third Reading to reverse the Committee's decision, the effect of which would be to exclude Birmingham City Council from Part IX of the Bill.

Baroness Young's amendment was agreed to without a division and the appropriate amendments were in due course moved by the Chairman of

Committees on Third Reading.

The remaining Committees, referred to above (page 117), were occupied with the Bills as follows:

1. A Select Committee under the Chairmanship of the Chairman of Committees, was appointed on 20th April, 1978, and considered first the unopposed Common Clauses in the four Bills. In respect of these Clauses the Promoters instructed one Counsel to appear before the Committee on behalf of all of them. The Committee sat for 11 days and then considered the unopposed clauses peculiar to each Bill—this part of the Committee's work occupied it for 19 days. In the case of these clauses, the Parliamentary Agent for each Promoter appeared before the Committee. A transcript of all the proceedings of this Committee was taken.
2. A Select Committee under the Chairmanship of Lord Alport was appointed on 3rd July, 1978 and considered petitions against the County of Merseyside Bill. This Committee sat for 2 days and followed the procedure usual for a Select Committee on a Private Bill.
3. Finally the Bills were re-committed to the Unopposed Bills Committee, consisting in this case of the Chairman of Committees sitting alone, to deal with outstanding points in the Schedules, mainly concerned with repeals, and to formally prove the allegations in the preambles of each Bill.

The four Bills were read a Third time on the 7th December, 1978 and sent to the Commons through which House at the time of writing they are progressing.

There is no doubt that the Common Clauses procedure described above has led to a considerable reduction in the "Committee Days" spent on the Bills, as well as achieving a high degree of uniformity in provisions dealing with the same topic. Four similar General Powers Bills were deposited in the Session 1978/79 and it remains to be seen to what extent the procedure can be applied to these and the potentially large number of General Powers Bills that may be deposited by non-metropolitan local authorities before the expiry of the deadline in 1984.

# X. PRESENTATION OF A NEW MACE TO THE PARLIAMENT OF LESOTHO

BY J. M. KHAEBANA

*Clerk Assistant of the National Assembly*

The Third Meeting of the Third Session of the National Assembly of Lesotho began on Friday, 3rd March, 1978. After the Chaplain had led the House in Prayers, and two New Members had taken and subscribed the Oath, Mr. Speaker Kolane made some brief opening remarks.

After his opening remarks, Mr. Speaker called upon the Prime Minister, Chief Leabua Jonathan, to present a new mace to the House on behalf of His Majesty's Government. Whereupon the Prime Minister made the following presentation speech:

"I rejoice at this golden opportunity, this ceremonial occasion of great moment in the history of our National Assembly's procedures and practices, in Independent Lesotho.

You will please realise that while on the one hand we may feel inclined to transplant procedures and practices of other parliaments and dovetail them into our own procedures and practices, we are obliged to adapt and modify them to conform with the procedures and practices formulated in our traditional courts.

One such procedure and practice is the use of the Mace, which I am presenting today. As its Sesotho name "Ts'ukulu" implies, the traditional Mace was made of the horn of a beast called Ts'ukulu (Rhinoceros) which you all know. All Hon. Members remember the rod (Ts'ukulu) that King Moshoeshoe I always carried against his ear and which was regarded as a symbol of the Sovereignty of our Head of State; in the same manner the spear and the shield in Makoanyane's Statue is a symbol of heroism.

In ancient times the King was the Head of State as well as the legislator for the good governance of his people. In modern systems of government the power to legislate is the prerogative of the people exercised through parliament. It must be noted, however, that His Majesty, who is the Head of State, and from whom this House derives its authority, is permanently in this House through his Mace; so the Mace, which is a symbol of his Sovereignty, represents the King. The Mace must therefore be kept on the Table of the House at all times during sessions, and Parliament can never deliberate and pass any legislation which can become of force without the Mace. Without the Mace there is no authority; without authority, no legislative power; and without legislative power, no laws. At this juncture I want Hon. Members to note that the top of the Mace depicts the Royal Crown.

The Mace not only symbolises the Sovereignty of the Head of State but it also enshrines parliamentary freedom of speech as our two idiomatic expressions "Mo-oa-Khotla ha a tsekisoe" (everyone is free to express his views in open court) and "Moro khotla ha o okoloe mafuru" (in court a spade is called a spade) indicate."

The Prime Minister said how very grateful he was for the honour conferred on him in presenting the New Mace, specially designed to depict the Royal Crown as a traditional symbol of Lesotho's Sovereignty. He said the presentation of the New Mace by no means belittled the Old Mace which had been kindly presented in 1962 by the European Community of Basutoland (The name Lesotho was called until independence on 4th October, 1966), to whom he extended the greatest thanks on behalf of the House. He concluded by saying that the Government had directed that the Old Mace should be sent to the National Museum.

The Prime Minister then presented the New Mace (which was handed

to him by the Serjeant-at-Arms) to Mr. Speaker, who in turn handed it back to the Serjeant-at-Arms who replaced the Old Mace with the new one, while the Gentleman Usher removed the old one to the Speaker's Chambers.

After the Prime Minister had resumed his Seat, Mr. Speaker replied on behalf of the House. He said he was doing so with mixed feelings as his thoughts turned to the Old Mace that was being seen for the last time in the House that day. He recollected that the Old Mace had served the House very well ever since its presentation in 1962, that it had witnessed events of great moment and had listened quietly to some of the most acrimonious debates in the House, such as the independence debate in 1966. He went on to say:

"Like a good and faithful old horse it will not be destroyed but it will be presented to our National Museum properly annotated for the benefit of present as well as future generations. We do not, of course, send good and faithful old horses to the Zoo or Museum in Lesotho: we eat them!"

Getting back to the new Mace he mentioned that it was "the Right Honourable the Prime Minister's baby. It was his brainchild. He not only conceived the whole idea of a new Mace but also designed it and arranged for its manufacture out of pure gold in London. This is Lesotho's own Mace and, but for its gold, I would venture to say that it is 100% Lesotho's very own Mace."

Mr. Speaker disclosed that the new Mace was made in London, an illustration of the significance of the British connection. He mentioned that no two Maces look exactly alike but that the Maces of other Commonwealth Parliaments follow a design which is fundamentally similar to the Mace at Westminster although they vary in size and decorative detail, the ornamentation usually having a local significance. Referring to Lesotho's new Mace, he said it had been enriched with costly insignia and ornamentation, displaying the Coat-of-Arms, the Basotho Hat and the Royal Crown that His Majesty wears when opening sessions of Parliament.

In conclusion, Mr. Speaker saluted the Prime Minister for his originality and far-sightedness in nursing this glittering golden idea to fruition. He said the House would wish to thank him, and through him the Motlotlehi's Government for the generosity and high esteem they paid Parliament. He also regarded it as a singular honour to himself as Speaker to be preceded into and out of the House everyday by pure gold, and ended up by praying that he might have the strength and courage to discharge his onerous duties as faithfully and as rustlessly as the gold that the Prime Minister had just presented to the House, in which he had served for many years with great distinction.

Whereupon Hon. M. G. Mokoroane, Chief Whip of the Basutoland Congress Party, Hon. E. Leanya, Leader of the Maremalou Freedom Party, Hon. C. D. Mofeli, Leader of the United Democratic Party and Hon. Chief M. D. Seeiso on behalf of Principal and Ward Chiefs, addressed the House on the Presentation of the new Mace.

# XI. OVERSEAS TRAVEL BY SELECT COMMITTEES OF THE UNITED KINGDOM PARLIAMENT

BY MICHAEL RYLE

*Clerk of the Overseas Office, House of Commons*

International air lines have made it possible for those who thirst for greater knowledge of other peoples and countries—their customs, way of life, political systems, food, drink or simply their beaches—to satisfy their inquiring purpose far more easily than at any time in the past. And parliamentarians of many countries are no exception. Travelling individually or in groups, the itinerant politician has become a familiar figure in many places. Some of these journeys are privately arranged, and others are organised by international bodies, especially by the Commonwealth Parliamentary Association and the Inter-Parliamentary Union. In recent years, however, there has been a growing number of visits made by delegations appointed formally by parliaments or Governments to make inquiries in other countries. In the UK this has largely taken the form of visits overseas by select committees.

Select committees are appointed by the House* to examine specified matters or problems and to report thereon to the House, and the House gives them the necessary powers, including the power to call for written and oral evidence. Committees normally sit at Westminster but it is recognised that for some enquiries it is desirable to seek evidence in other places and to visit various bodies or establishments so that members of the committee can see things for themselves on the spot. For this purpose many of our select committees are given the power to "adjourn from place to place", i.e. to sit away from Westminster. And if—but only if—they have this power, they may travel overseas in the course of their enquiries. Furthermore, several committees have power to appoint sub-committees and these may also be given the power to travel. In this way a committee may appoint a sub-committee to visit another country on their behalf and to report back their findings to the main committee.

Overseas travel by select committees (or sub-committees) is a fairly recent development. In the aftermath of the last world war, however, sub-committees of the Estimates Committee were given leave to travel to occupied Germany and Austria in connection with enquiries into British Forces serving overseas; another such sub-committee visited Nigeria; a little later another sub-committee was given leave to visit Malta as part of an enquiry into store-holding by the armed services.

In these earlier years, committees wishing to travel overseas had to obtain the specific leave of the House for each visit; this was done on a motion giving the Members concerned "leave of absence" for the purpose.

*This note discusses travel by committees of the House of Commons. Select Committees are also appointed by the House of Lords and these have occasionally travelled overseas.

However, in the 1950s, the constitutional propriety of committees sitting overseas was challenged by the Government of the day, partly because, it was argued, the authority of the House did not extend outside the UK and the privileges of the House could not be enforced beyond our shores. To put it symbolicly: committees sitting overseas would be deprived of the protection of the Serjeant at Arms' mace. On further consideration, however, these arguments were quietly dropped, and, following a Report of the Services Committee, it was also decided in 1968 that it was no longer necessary for each visit to be specifically sanctioned by the House. So committees with the necessary powers may now travel overseas whenever they wish—and to whichever country they wish—subject to certain financial controls. And increasingly they are doing so.

Expenditure on select committees travel—both in the UK and overseas—is borne on the House of Commons Vote. Until very recently this Vote was subject to ultimate Treasury control (under the House of Commons (Administration) Act 1978 it is now under the sole control of the new House of Commons Commission) and hence the Government could control expenditure by committees. However it was generally felt undesirable for Ministers to appear to be restricting the methods by which committees were scrutinising the Government's policies or administration and so they were unwilling to impose any direct controls by the Treasury on specific visits by select committees. It was therefore agreed in 1968 that, subject to normal approval of the Vote, expenditure on committee travel overseas should not be subject to any external control provided that suitable machinery could be established to enable the House itself to exercise some internal control.

The solution to this problem was the creation of an unofficial but important Chairmen's Liaison Committee, consisting of the Chairmen of the principal select committees sitting under the chairmanship of the Chairman of the long-established and prestigious Public Accounts Committee (whose job it is to examine carefully any possibilities of waste or extravagances in public expenditure). All proposals for travel overseas are submitted to the Liaison Committee by the Chairman of the select committees concerned, showing the purpose of the visit, the places to be visited, the duration of the journey, the numbers travelling and the estimated costs of travel and subsistence. And only when the necessary expenditure has been approved by the Chairmen's Liaison Committee can the actual payments out of the House of Commons Vote be authorised by the Clerk of the House as Accounting Officer. Thus although committees can decide for themselves which overseas visits are desirable for the purposes of their enquiries, their chairmen, collectively, control the expenditure on such visits, and all committees have to exercise considerable self-discipline in seeking approval for these visits.

What are the purposes for which committees travel overseas? These fall broadly into two categories. The first, and older, purpose (as exemplified by the earlier post-war cases) is to go, in the course of an inquiry into

some aspect of British Government policy or administration, to inspect some installation or operation for which the Government is responsible or on which public funds are being spent or to meet people and see things directly involved with the subject of the enquiry. For example an enquiry into expenditure on British Embassies and High Commissions would hardly be complete unless some such establishments were visited and meetings held with, or evidence given by, staff at those places. In recent years visits by the Defence and External Affairs Sub-Committee of the Expenditure Committee to British forces in Germany and Belize; visits by the Overseas Development Committee to Nigeria, the Ivory Coast and Niger in the course of an enquiry into the re-negotiation of the Lomé convention, and to India in the course of their enquiry into the use of British aid to India; and visits by the Race Relations and Immigration Committee to several West Indian states and to India and Pakistan to examine matters relating to control of immigration into the UK from those countries, all fall into this category. One sub-committee even went to sea on an oil tanker, when enquiring into measures to prevent collisions etc. leading to oil pollution. Fortunately they returned clean, dry and unharmed.

The second purpose is to get information and experience about policies or practices in other countries which are relevant to judgement of similar matters in the UK.

Visits of this type have included: visits by sub-committees of the Nationalised Industries Committee to the USA to study the Bell telephone system in the course of an enquiry into the British Post Office, and to study local broadcasting when preparing a report on the UK Independent Broadcasting Authority; a visit by a sub-committee of the Procedure Committee to Canada to study procedures in the House of Commons in Ottawa (this returned a similar visit made by a Canadian committee a few years previously!); visits by a sub-committee of the Expenditure Committee to the USA and to Sweden to study penal-systems and to visit penal establishments in the course of an inquiry into certain aspects of our prison system; visits by another sub-committee of the Expenditure Committee to Sweden and to the European Commission in Brussels to learn about measures taken in other countries to alleviate unemployment; visits made by the Committee on the Parliamentary Commissioner (Ombudsman) to examine the operations of Ombudsmen in Sweden, Denmark and Israel; and visits made by the Science and Technology Committee, or its sub-committees to study such varied topics as high energy physics (at CERN in Geneva), a pressurised water nuclear reacter (in Germany), new engine technology (in France and Germany) and genetic engineering (in the USA). The range of interests of our select committees is almost boundless.

The methods of operation of select committees when overseas vary considerably. Sometimes they just go and look at establishments, projects or places and have informal discussions with the people involved, and

sometimes they hold more formal discussions which provide the basis for a note which can be published or an agreed minute. Formal verbatim oral evidence may be taken from British nationals serving overseas, e.g. staff at Embassies or High Commissions, and occasionally, and voluntarily, from nationals of the host country. In a happy, interesting, and valuable visit to India and Pakistan in 1970, in which I was fortunate to participate, a sub-committee of the Race Relations Committee spent three weeks travelling those countries by car, visiting more remote rural areas as well as big cities, and employed every method of making themselves better informed, including discussion with individual villagers who wished to come to the UK, meetings with village councils, district officials, and central government officials, observing interviews with potential immigrants, and formal meetings and evidence sessions with Ministers and with British High Commissioners. We certainly returned to Britain with a better understanding of the problems.

Whatever the subject of enquiry and whatever the methods employed when overseas, it is always the aim of committees to pass on, either in their reports or in their published evidence, something of what they have learned on visits overseas. In this way the House and many people outside can share some of the benefits of the fuller knowledge and better understanding gained by the committees in the course of their travels.

Overseas travel by select committees of the UK Parliament has grown considerably in recent years. In Sessions 1977–78 and 1978–79, for example, select committees made no fewer than 24 visits abroad to 18 different countries. Apart from the information they learned and published and the benefit to their specific enquiries, such visits can help to establish fruitful contacts and to build and cement good relations between countries. In the Commonwealth, in particular, visiting committees from Britain have frequently found occasion, outside their working programme, to meet fellow parliamentarians of the host country. Any committee from the Parliament of a Commonwealth country, which should visit Britain, would, I am sure, be made equally welcome at Westminster.

Overseas visits by select committees have proved valuable in recent sessions. They involve hard work if full benefit is to be obtained from them. But they can widen a committee's understanding and deepen their knowledge. It is seldom a waste of time or effort to study how others have tackled a common problem. Furthermore friendships can be made or strengthened within the committee and across the normal political divide, and thus aid the effective working of the committee. In general, therefore, it is not surprising that visits overseas are increasingly seen at Westminster as a normal part of the work of select committees. The practice will undoubtedly continue to enrich the critical scrutiny that Parliament exercises over the executive.

# XII. A VISIT TO THE AMERICAN SOCIETY OF LEGISLATIVE CLERKS AND SECRETARIES

BY D. J. BLAIN

*Clerk Assistant of the Legislative Assembly of Alberta*

In May, 1978, I received a telephone call from the Hon. Patrick Flahaven, Secretary of the Senate of the State of Minnesota. In the ensuing conversation Mr. Flahaven explained that he was the current President of the American Society of Legislative Clerks and Secretaries. He informed me that the American body had expressed serious interest in developing a continuing relationship with the Association of Clerks-at-the-Table in Canada based on mutual interest and exchange of information on matters that might be of both interest and benefit to members of both societies.

I informed Mr. Flahaven that I welcomed this exploratory telephone call and gave him details of the composition and activities of the Canadian body. I also advised Mr. Flahaven that although I was at the time President of the Association of Clerks-at-the-Table in Canada I could take no decision on this matter without first consulting my colleagues and suggested that he support his telephone call by a proposal in writing which would provide a firm basis for my approach to my colleagues.

As a result of this conversation, I received on 5th June, 1978, a letter over the signature of Mr. Flahaven as President of the American Society confirming his earlier telephone call. As this letter outlines the substance of the American thinking on a relationship between the two bodies, I outline an excerpt below:

"It was a pleasure to talk with you by phone on the possibility of opening relations between our Society and your Association of Clerks-at-the-Table in Canada. Since both organizations share many similarities, both from historical precedent and geography, I believe it would be most appropriate to develop a working relationship.

In order that we may open communications, I am extending an invitation to you to speak at a meeting of our Society on Friday, 7th July, 1978, at Denver, Colorado, at the annual meeting of the National Conference of State Legislatures. Perhaps you could discuss the role of the Clerk in the Provincial Legislature and the operation of your Association. The annual meeting opens on the evening of 4th July. I am sure that you would find many topics of interest that will be covered during that week. I am enclosing a descriptive folder of the conference. If you can attend, please let me know and I will handle any necessary registration."

I immediately forwarded a copy of this letter to the members of the Canadian Association requesting a consensus on the subject and was gratified to receive a number of letters and telephone calls in favour of the proposal. On this basis, therefore, I decided to travel to Denver, Colorado, on 5th July, 1978, and to address the American Society on 7th July.

At six o'clock in the evening on 5th July I arrived in the beautiful "mile high" city of Denver in the heart of the American west and was

immediately engulfed in the smooth organization and overwhelming hospitality so typical of functions of all kinds in the U.S.A.

Having been installed in my hotel I was shortly thereafter whisked away to a fine restaurant rejoicing in the name "Top of the Rockies", and situated on the thirty-second floor of one of the city's highest towers. Westward from the restaurant windows the jagged peaks of the American Rockies were black against a fiery sky, providing a magnificent contrast to the subdued lighting and elegant comfort of the dining rooms.

In this setting I faced our American colleagues for the first time, as the dinner was the occasion of an executive meeting prior to the general meeting to be held on Friday, 7th July. Listening to the discussions among the executive officers it was immediately obvious that the American Society was formally structured, professionally organized and adequately funded for operation. Although this dinner meeting was to some extent a social gathering, I noticed with interest that various committee reports were received, succinctly discussed and decisions taken and recorded by the secretary of the executive who dined with notebook ready to hand.

Although the conference opened on 4th July, the first day was given over to registration. This constituted a major task as there were in attendance two thousand seven hundred legislators from every State and Territory of the Union as well as several hundred members of various support staff branches. The second day, 5th July, was devoted to a number of concurrent informal discussions of various bodies with a number of social activities in the evening.

It was not until Thursday, 6th July therefore, that the opening plenary session was held in the great ballroom of the Denver Hilton Hotel, which hosted the entire conference. This session, which commenced with welcome addresses from the Governor of the State of Colorado, the President of the National Conference of State Legislatures and other dignitaries and progressed into a panel discussion on "The Legislature as an Institution", which was tremendously interesting and enlightening to one only slightly familiar with the American parliamentary system.

From that point on, the conference developed into a series of concurrent seminars and discussions which brilliantly illustrated the whole spectrum of legislative thought and processes prevailing throughout the State and Territorial Legislatures of the United States. It was a little distressing that being indivisible I was able to attend only a limited number of these gatherings. The great majority were held in the air-conditioned comfort of the Denver Hilton. This was in marked contrast to outside temperatures, which reached 104° Fahrenheit each afternoon.

At a breakfast meeting on Friday, 7th July, in the handsome and historic Brown Palace Hotel, I addressed the members of the American Society of Legislative Clerks and Secretaries. I spoke for forty minutes on the subject of the history, structure and function of a provincial Legislative Assembly in Canada, basing my remarks principally, of course, on the Legislative Assembly of Alberta. In closing, I commented briefly on the

some aspects of the Council of the Northwest Territories as a Territorial Legislature. It was most gratifying to me that my remarks were rewarded with close attention and that at their conclusion I was for twenty minutes the recipient of a series of perceptive and penetrating questions which I was pleased to answer to the best of my ability.

In expressing their appreciation of my comments, the members of the American Society were graciously pleased to confer on me election to that body as an honorary member. This great honour was further compounded when I was informed that this was only the second such election in the history of the Society and the first of a person from outside the United States. The first occasion marked the election of our distinguished colleague, the Secretary of the United States Senate. Officers of the Congress of the United States are not ordinary members of the Society, which is composed of officers from State and Territorial Legislatures, and is closely allied to the National Conference of State Legislatures.

Although by its nature the Denver meeting was not readily conducive to an extensive learning process, I was able to acquire an interesting if small body of knowledge on the American Society and its relationship to the National Conference of State Legislatures.

The American Society, I learned, was formed originally as rather a loose-knit organization devoted to the exchange of information and views of mutual interest to its various members. Any records maintained appear to have been informal and meetings were on a sporadic rather than periodic basis. In 1965, however, the Society was reconstructed in its present highly organized form. The Clerks of the lower houses and their assistants are members of the Society, as are the Secretaries of State Senates and their assistants.

The Society is funded from annual subscriptions levied on each of its members. In the case of principal officers this is fifty dollars and for assistants twenty-five dollars. Two meetings are held annually, one in association with the annual session of the National Conference of State Legislatures and the other an independent annual meeting of the Society, at which time the annual election of officers is held. This latter meeting lasts for a week and in 1978 was in the main a formally structured programme of seminars, lectures and discussions. The meetings are held in different parts of the country each year in order that the burden of travel is equitably distributed amongst members. As members attend from such distant points as Hawaii, Alaska, and Puerto Rico this is no small consideration.

The Society publishes a comprehensive register of its members, which is revised annually. It also publishes a periodic news letter known as *The Legislative Administrator*, which reports in detail the activities of members of the Society as well as legislative and other occurrences of material interest.

To some extent I found the American Society of Legislative Clerks and Secretaries analogous to the Society of Clerks-at-the-Table in Common-

wealth Parliaments and the National Conference of State Legislatures to the Commonwealth Parliamentary Association, although in a national rather than a Commonwealth setting. The relationship between the two bodies, however, is much closer, as Clerks and Secretaries are elected to office on the executive of the senior body. This perhaps stems from the fact that the offices of Clerk and Secretary are themselves elective, since candidates, having strong party affiliation, are proposed by the party in power and elected by a majority of the House. It is impressive, however, that their standards of impartiality in the service of their Houses is very high and there are many instances of Clerks and Secretaries being re-elected to office when the party other than their own comes to power.

My most happy visit to Denver terminated on Saturday, 8th July, 1978, at a great closing luncheon at which former President Gerald Ford spoke on the subject of State control of Federally granted funds. That evening I returned home much enlightened in regard to American parliamentary life and the distinguished part played in it by our colleagues.

I am pleased to report that in a happy sequel to my American experience, Mr. Flahaven joined the Association of Clerks-at-the-Table in Canada at their annual meeting in Quebec in August, 1978, and provided all present with a valued insight into the American system. It was very gratifying to us all that at a dinner during the annual meeting, the Speaker of the National Assembly of Quebec presented Mr. Flahaven with the silver medal of the National Assembly in commemoration of his visit.

# XIII. THE REFURBISHMENT OF THE SASKATCHEWAN LEGISLATIVE CHAMBER

BY GORDON BARNHART

*Clerk of the Legislative Assembly*

"The wonderful growth of Canada is hardly realizable to those stay-at-home residents of the East, until, awakening from their lethargy, and undertaking a journey from coast to coast, it is brought home to them that in this wonderfully resourceful country of ours we are in the making of a nation, which tomorrow will be one of the great and powerful people of this earth, a people who occasionally are doing things on a big scale, and of a quality that will not only command the attention of the best art critics today—but for generations to come.

It is greatly to the credit of those in prominent places, who control these matters, that results are obtainable that will be appreciated for all time, and while such is not the case in all Canadian undertakings, it makes it all the more creditable that such can be done if only proceeded with in an intelligent and broadminded way. In such a spirit was conceived and executed the newly finished legislative and executive buildings for the Province of Saskatchewan at Regina . . .

By careful study of the massing, fenestration, outline and detail, a building such as is herewith presented has proved to be all that could be desired to house the Legislature and Administration of what is destined to be one of the most important Provinces of the Dominion."

These were the words of the Maxwell brothers of Montreal, Architects of the Saskatchewan Legislative Building. (An article entitled "Legislative and Executive Buildings, Regina," by E. & W. S. Maxwell appeared in *Construction Magazine*, Vol. 8, No. 1, January, 1915.) The building is located on the flat prairie on the bank of the Wascana, its dome visible for miles around. It was one of the first buildings on the south shore of the Wascana and constituted a noble and proud monument to the parliamentary system on the prairies.

The building is located on 162 acres of land and is of a size and style that portrayed the optimism and confidence of the newly formed province. This same buoyant spirit was exhibited in the Speech from the Throne in 1913, the first Session after the completion of the Chamber. His Honour, the Lieutenant Governor, read to the Members assembled:

"It is with great pleasure that I welcome you to this, the First Session of the Third Legislative Assembly of Saskatchewan. You are meeting during a time of great and general prosperity; the earth has given of its increase abundantly during the past season, and in every walk of life the beneficial results are evident."

Within a decade and a half after the completion of the Legislative Building, the Province of Saskatchewan became the poorest province in Confederation due to the Great Depression and the worst drought ever recorded on the Prairies. Yet the Legislative Building with its high black dome and its Tyndall stone stood out over the parched dusty fields as a reminder of the faith of the pioneers in an elected responsible government and in the unlimited future of Saskatchewan.

It took many years for Saskatchewan to recover from the drought and

depression and to regain its confidence and sense of optimism. On 29th May, 1978, the refurbishment of the Legislative Chamber was begun with a similar spirit as was exhibited in 1913. Other wings of the Legislative Building had been refurbished over the last decade, but it was now time to refurbish the Chamber itself. On the first working day following the prorogation of the Fifth Session of the Eighteenth Legislature, the Department of Government Services' work crews began the refurbishment that was expected would take five months.

The entire programme was guided by two principles: a determined effort to preserve the historic value of the Chamber and to do the work with local consultants and craftsmen. All of the consulting work was done by Regina firms and the refinishing of the oak walls and carvings was done by craftsmen in the Department of Government Services. The new sound reinforcement equipment was built and installed by Canadian firms and 88 per cent of the components were Canadian made. The only major item that was not Canadian was the carpet which was woven in Scotland.

The refurbishment programme involved the remodelling of the air conditioning system; a new sound reinforcement and recording system; repair and painting of the plaster on the ceiling and walls; new acoustical treatment in the Chamber; some upgrading of the lighting system and a cleaning and refinishing of the oak wall panels, carvings and Members' desks. All of the furniture in the Chamber was the original furniture which had been designed for the Chamber by the Maxwell brothers. Although there was a major redesign of the inside of the Members' desks in order to double the storage space, the exterior of the desks was unchanged in design. The oak was scraped, cleaned and oiled. The oak under the old varnish after sixty-five years was as firm and beautiful as when it had been installed originally.

There are two special historic features of the refurbishment. For over sixty years, the Speaker of the Legislature sat in a low-backed arm chair like the other Members. The tradition of having a special throne-like Chair had been abandoned in the early years of the Province. Before the formation of the Province, a special Chair was built for each Speaker and presented to him upon his retirement. The Chair of the Hon. Thomas MacNutt, Speaker from 1905–1908, was returned to the Legislative Assembly by the MacNutt family and now has been restored. This Chair will be placed once again in the Assembly for use by the Speaker.

The second feature involved the restoration of the dais. Originally the Speaker's dais had a solid oak frontispiece which extended across the dais in front of the Speaker and enclosed a double pedestal desk. In approximately 1918, this centre portion of the dais and the desk were removed and a "temporary" staircase was installed. The reason for the change in the dais has long been forgotten and the temporary staircase remained for sixty years. Fortunately the desk and frontispiece had not been destroyed and were stored in the dome of the Legislative Building. The pigeons and the rain had taken their toll on this furniture but this summer, it was

found, restored and returned to the Legislative Chamber. The temporary staircase was removed and the Speaker's dais restored to its original state including the Speaker's desk.

Sixty-six years after the completion of the Legislative Building, its focal point, the Legislative Chamber, has been refurbished and restored. All of the modern conveniences such as air conditioning and sound reinforcement have been incorporated into the original design without destroying the historic value and appearance of the Chamber. The Legislative Chamber was a monument to the optimism of the times in which it was constructed; its restoration in 1978 is perhaps symbolic of a reawakening of that spirit in the people of Saskatchewan.

## XIV. RECORDING OF PROCEDURAL PRECEDENTS

The Questionnaire for Volume XLVII of The Table asked the following questions:

(i) Is there a system in your House for recording procedural precedents, and how effective is it?
(ii) What part do the normal public records of the House, such as the Journals, Minutes or Hansard, play in the system?
(iii) If precedents are separately, or additionally, recorded please give details; for instance to whom are the precedents made available, are they published? How often are they up-dated? Is there an index or cross referencing to other handbooks? How are contradictory rulings shown?
(iv) Are there any plans to computerise your system?

The returns show, as might have been expected, that many clerks keep their own private records of procedural precedents. Others rely on the public records of the House and the indexes to them. Judging from the returns, however, (which are by no means fully representative of the Society) it is only a comparatively small number of Houses where formal records are kept of procedural precedents. These Houses are generally the larger assemblies, where staff is available to keep detailed records.

Nevertheless, despite the differences in practice in various assemblies, some of the answers to the Questionnaire may provide guidance to clerks who wish to develop a system for recording precedents. The subject was placed on the Questionnaire at the suggestion of a member of the Society and the Editors hope that the answers will be of value and interest.

*House of Lords*

The Registry, which operates under the direction of the Clerk of the Journals, has a general responsibility for recording procedural precedents. In addition the various departments of the office record precedents of particular interest to themselves. These arrangements appear to work satisfactorily.

Neither the Minutes of Proceedings nor Hansard plays any part in this process. Each sessional volume of the Journals is supplied with an index and general indexes to the Journals are published every ten years. These indexes contain categorised lists which are designed to make it possible to see at a glance to what extent a particular procedure has been used.

The Registry maintains on a continuing basis a large number of running lists of various types of proceedings which supplement the information contained in the Journal indexes. New lists are started when such a course is thought to be helpful. These lists are prepared primarily for the use of offices of the House but are also available to members and indeed to enquirers generally. They are not published but the information which they provide is used when the standard text books are being revised.

Some of the registry material has been computerised and the further use of computers in this field is being considered.

*House of Commons*

The main published sources of reference are provided by the indexes to the annual Journals and the consolidated index to the Journals, which is published, without other text, every ten years. In addition, the Journal Office maintains a manuscript index to the current Votes and Proceedings and gathers extracts from Hansard which may be used later to update references in Erskine May. Hansards containing decisions given by the Chair are also kept. The collections of extracts are not published.

*Quebec*

At the end of each session the Journals are published. Since 1972 these have been called the Votes and Proceedings of the National Assembly. All the Votes and Proceedings of a session are bound in a single book. At the end of the book is published a summary of the decisions rendered by the President on questions of order or of procedure.

*Saskatchewan*

All previously prepared rulings of the Chair are printed verbatim in the Votes and Proceedings. These rulings are entitled "Statement by Mr. Speaker" and are noted in the index to the Journals of the Session which is produced after prorogation of each Session.

Oral rulings by the Chair are recorded in summary in the Votes and Proceedings if the rulings are of an important nature. Deferred rulings are also noted. All rulings and comments by the Speaker are recorded in Hansard.

There is no published collection of Speaker's rulings in Saskatchewan but the Clerks at the Table have a set of rulings made by Speakers over the years. The collection has a simple index but it is not cross-referenced to other handbooks. The Saskatchewan Table officers hope soon (within a year or two) to collect and publish the rulings from the Chair, with the contradictory rulings shown as such. No computerization of the collection of rulings is planned.

*Australia: Senate*

Procedural precedents in the Senate are regularly recorded and distributed to senior officers of the Department. All rulings of a Senate President are extracted from *Hansard* and consolidated at the end of his term. They are published as a single volume and distributed to the presiding officer, the Chairman of Committees and chamber officers of the Senate. The rulings are indexed and the following statement is included in the preface to each volume:

> "The rulings reflect practice at the time only and must be considered in relation to subsequent amendments to the Standing Orders and interpretations from the Chair. They do not necessarily reflect later practice."

Earlier volumes of *Rulings of the President* have been consolidated and produced as a single volume for the period 1903–1960.

The need for a computerized information system for Parliament House is currently being considered. Obviously, the establishment of any such system would have significant effects on the Senate's recording and storage of procedural precedents. Finally, mention must be made of *Australian Senate Practice*, written by the Clerk of the Senate, Mr. J. R. Odgers, and published as a parliamentary paper. The work was first published in 1953 and reached its fifth edition in 1976. It refers to many important procedural precedents and is freely distributed to members and officers of the Senate. The book may be purchased by the general public through the Australian Government Publishing Service.

*Australia: House of Representatives*

The standing orders are individually listed on cards in a system which is regularly maintained by officers of the House. Amendments to a particular standing order are listed on the individual cards together with any precedents and rulings affecting the interpretation of the standing order. The system has provided an adequate means of recording and retrieving procedural information.

The normal public records of the House, *Votes and Proceedings* and *Hansard*, are used as the source of the information entered on the cards.

In addition to the system above, an alphabetical system is maintained to record rulings from the Chair. The information is not published but made available when requested by an interested party. The record is continually updated with cross references to the *Votes and Proceedings* or *Hansard*. The record, only recently compiled, has yet to be assessed in detail and contradictory and "bad" rulings identified.

Good progress is being made on the major work on the practice and procedure of the House of Representatives (The Table, Vol. XLVI, p. 118) which will make a major contribution to the recording of procedural precedents. Preliminary investigations are in train on the feasibility of introducing a computer system for parliamentary use which would no doubt have considerable application to recording procedural precedents.

*New South Wales: Legislative Council*

The daily Minutes of Proceedings of the Legislative Council are combined each session, together with certain papers and an index, and become the Journal for the session. In the Index are recorded all procedural precedents.

From the Sessional Journals, a Consolidated Index is compiled, covering approximately twenty-year periods. The Legislative Council Consolidated Index is at present published in five volumes covering the period 22nd May, 1856, to 6th June, 1954. The sixth volume, for the period 1954 to 12th September, 1978 (the Council was reconstituted from 6th November, 1978, and met in a new session on 7th

November) is in the course of preparation. The effectiveness of the Consolidated Index is that it provides a rapid access to precedents upon the same subjects over twenty-year periods.

As stated above, the Index to the Journal is the basic source of information as far as precedents are concerned but use is also made of Hansard references. With regard to other matters contained in the Index, file numbers from the correspondence records are used, as well as Government Gazette references. Copies of the Legislative Council Journals, containing the sessional indexes, are distributed to libraries and other Parliaments by the Government Printing Office. Volumes of the Consolidated Index are available to any person or body desiring to purchase them and are also supplied without charge to certain departments, libraries and interested persons.

A volume of Rulings of the Presidents is published from time to time. When reprinted it includes rulings made since the previous edition. The text of such rulings is taken from the printed Minutes of Proceedings, if the ruling has been shown therein, but is usually taken from Hansard. There is no regularity in the publication of this volume. In the past contradictory rulings have been included but may only be ascertained by consulting all rulings on the particular subject or under a particular Standing Order reference.

The President's rulings are available to all Members, staff and libraries and favourable consideration would be given to their supply to other interested persons. There are no plans in hand at present to computerise the contents of the Consolidated Index Volumes or current Journal Indexes although it is felt that a great deal of the necessary work has been done to permit computerisation should such a decision be made.

The following are examples showing the detail involved in the indexing of Journal and Hansard entries. In this instance the figures given refer to the page in the Journal for the 1976–77–78 Session or, where preceded by P.D.v., relate to Hansard.

**ACTS**
Short Title amended by Act—
By Land Vendors (Amendment) Act (No. 2 of 1978) Schedule 1—
Land Vendors Act, 1964 to be Land Sales Act (No. 12 of 1964).
By Scaffolding and Lifts (Amendment) Act (No. 69 of 1978), Schedule 1—
Scaffolding and Lifts Act, 1912.

**ACTS REPRINTING (AMENDMENT) BILL—**
Recd from Assembly, 1°R—66; 2°R, com., rep. ad—90; 3°R, retd Assembly—98; assent—120 (No. 47 of 1976).

**ADDRESSES—**
OF CONGRATULATION—
Joint Address—To H. M. Queen Elizabeth II on 25th anniversary of accession to Throne and appreciation of visit to N.S.W. in commemoration—378, 379; ack.—388.
TO THE GOVERNOR—
For revocation of dedication of certain State Forests—See "FORESTRY ACT, 1916".

**STANDING ORDER NO. 122—**

*Point of Order:* Proposed amdt to cl. should be dealt with before proposal to omit whole Cl.—Chrmn ruled: If it were proposed to amend two parts of cl., prior amdt would have precedence. However, amdt to cl. should be dealt with before considering omission of cl.—*P.D. v.* 129 *p.* 5386.

**STANDING ORDER NO. 174—**

*Point of Order:* Member referring to land acquisition by Commonwealth Govt when cl. under discussion deals with acquisition by State Govt. Chrmn ruled: Comparison of actions of govts is relevant to cl.—*P.D. v.* 125 *p.* 1997.

*Point of Order:* Member referring to matter foreshadowed in later proposed amdt. Upheld by Chrmn—*P.D. v.* 126 *p.* 2856.

*New South Wales: Legislative Assembly*

There has until now been no system for the recording of "procedural" precedents in the Legislative Assembly Office. The Table Officers each keep annotated records of rulings and other procedural matters. This has worked well in practice, although it is dependent to a considerable degree on a personal knowledge of, and familiarity with, the individual system used. A filing system, jocularly known as "Pandora's Box", relating to the running of the Legislative Assembly Office—as opposed to the administration of the Legislative Assembly—has been kept for many years. This system, while useful, is not strictly of a procedural nature.

The Indices to the Votes and Proceedings give access to summaries of the rulings of the various Speakers, while the Indices to Hansard give access to the rulings themselves. Various publications have been produced containing rulings, notably:

*Manual of Procedure* (on issue to Members) containing Rulings of Speakers 1900–1964

*The Decisions of the Honourable Sir Kevin Ellis* Speaker of the Legislative Assembly 1965–1973 (on issue to Members)

*Decisions from the Chair*—selected decisions, originally to 2nd April, 1976. This has not yet been made available generally, as the recent heavy sessions have necessitated its revision.

The first of the above publications has not been up-dated. There is no indexing or cross-referencing to these or other publications. There are no plans to computerize the present system. However, work is now proceeding on a virtual case book of Speakers' Rulings, initially from 1965 to the present, with the object of recording all but the most minor rulings.

*Victoria: Legislative Assembly*

The Reader and Clerk of the Record in the Legislative Assembly records procedural precedents in a subject matter index. The effectiveness of the system is really measured by an officer's knowledge and use of the system. The Votes and Proceedings of the House are used by date and reference. Hansard reference is used only for Speakers' rulings which are normally not recorded in the Votes and Proceedings.

Normally precedents are recorded by the Reader and Clerk of the Record who then prepares a more detailed record of the individual

precedent which is then distributed into spring-back binders provided for the Clerks at the Table and the Leader of the Opposition. The precedents are updated as additional material is inserted in the binders and occasionally there is cross-referencing as between different subject headings for the precedents. There are no current proposals to computerise our system.

*Queensland*

Table Officers record procedural precedents in their own interleaved copies of Standing Orders. A very comprehensive index is compiled for inclusion in each volume of the Journals.

Precedents are not published but the references are made available on request. There is no plan to computerise the system.

*Tasmania: House of Assembly*

Journal entries are indexed, and advice on precedents is given on request.

*South Australia: Legislative Council*

There is no clearly defined system for the House. Each Officer maintains his own system of recording precedents and generally this is by a loose-leaf system. By co-operation between Officers the system works reasonably well, but is not satisfactory as an official record. The system is based almost exclusively on the normal public records of the House. Precedents are recorded separately and are made available by each Officer as he sees fit. However, as they are not recorded officially they are not published. Indexing, cross-referencing and recording of contradictory rulings varies with each officer.

*South Australia: House of Assembly*

Precedents are indexed in book form by reference to Votes and Proceedings or Hansard session and page number. It is a reasonably effective system for recall. The Votes and Proceedings and Hansard contain the detail of the precedents. Contradictory rulings are listed in the same manner. There are no plans to computerise the system.

*Western Australia: Legislative Council*

For many years a precedents' register has been maintained in this department. The record has proved to be a necessary item and will be continued. The references recorded in the register are a combination of Minutes and Hansard. The register is in loose-leaf form and is purely for use within the Clerk's department. Additions are made from time to time and all references are cross-indexed for easy clarification.

There are no plans to computerise the system.

*Western Australia: Legislative Assembly*

In the Western Australian Legislative Assembly an innovation has been attempted in conjunction with a reprint of the Standing Orders. Several

copies of these Standing Orders have been interleaved with typed sheets which show, as far as is possible, the effect of the rulings and precedents relating to the Standing Orders opposite. Successive Clerks have accumulated these rulings and precedents, summarising their effect and grouping them under a variety of headings, such as—"Adjournment of Debate", "Closure Motion", "Division", "Petitions", etc. The innovation recently carried out was to so present these precedents that they could be inexpensively "published", at least to a limited degree. This was done by having the summaries retyped in uniform style and photo reduced. Copies of the reduced sheets were made and were collated with unbound copies of the Standing Orders. These volumes were then bound with plastic spine strips. Practically all references in this system give the respective page number in the Parliamentary Debates. The only exceptions are in the cases where there is no Hansard reference—for example, drawing attention to the arrangement of business on a particular Notice Paper.

At this stage copies have been issued to the Speaker, Clerks, Chairman and Deputy Chairmen of Committees and members of the Standing Orders Committee. It has been emphasised that the matter contained, although not restricted, is for information only, and is not regarded as official. It is possible that, following a suitable testing period, the House may desire the precedents to be printed in all copies of the Standing Orders so that Members may be better informed on the House's procedures. Because of the nature of the binding it is possible to open up the volumes and replace individual pages. Using this facility, it is intended that the volumes will be updated at the end of each Session. As the rulings lie as close as possible to the relevant Standing Orders no separate index is necessary. Rulings which apparently contradict other rulings are simply shown as such with no comment. In most of these cases it is possible to show that "current practice is . . .". There is no plan to involve the use of computers in the system and it is very doubtful whether the relatively small number of recorded precedents would warrant such a move.

*New Zealand*

Rulings of Speakers are recorded and published from time to time in a volume entitled "Speakers' Rulings". A volume containing rulings of Speakers from 1867 (when the official system of reporting parliamentary debates commenced) was prepared by the Chief Hansard Reporter and published in 1905. This was revised and extended to 1911 by the Clerk of the House. Further revisions and extensions were made in 1936, 1953, 1963 and 1969. A revision of the current volume is at present being undertaken.

Reference is frequently made both in the House and outside it, to the "Speakers' Rulings". It has been found to be a useful means of making accessible to members and officers the body of precedent upon which the House relies. Of course there are dangers in relying on such a system

and these must be recognised. There is a tendency to look upon a Speaker's ruling as recorded in the current volume as an authority in itself, rather than to look to the actual source of the ruling as recorded in the particular volume of Hansard. This can be important if the ruling has been summarised or abbreviated in "Speakers' Rulings" and is found on examination to be incorrect or misleading. An incident of this sort occurred last session during a point of order as to whether Hansard reporters were required to be present while the House was in Committee (Hans. Vol 421, pp. 4415–4423). Much of the argument on that point of order was directed to the question of whether a ruling recorded in "Speakers' Rulings" accurately reflected the ruling it purported to record. In that case the matter could have been disposed of much easier by members confining their attention to the Hansard report from which the ruling was extracted without the complication of a ruling which, as recorded, obscured or misrepresented the true position. With this qualification, however, it can be said that the system works well.

As intimated above, the rulings recorded in the volume are either direct quotations or summaries of rulings recorded in Hansard. Hence there are no pre-1867 rulings recorded for there was no system of Hansard reporting before that time. Precedents are not separately or additionally recorded; an entirely new volume is produced at intervals of some years, revising and extending the previous volume. Apart from the Table officers and Parliamentary Counsel, each member of Parliament is issued with a copy of "Speaker's Rulings'. While the publication is not generally distributed outside this circle, it is made available on request to libraries, as far as stocks permit. The rulings are indexed, but there is little cross-referencing to other publications. Contradictory rulings are not noted in any particular way. There are no plans to computerise the system.

*India: Rajya Sabha*

Decisions from the Chair are compiled for each session separately, with reference to the cyclostyled debates and are made available to the Officers of the Secretariat in typed copies. There is no system of cross reference etc. Later, for a block of two years, a typed volume of Rulings is compiled with an index and these also are made available to the Officers of the Secretariat. These rulings are not published. There is no plan to computerise the system.

*Andhra Pradesh*

The decisions of the Chair are extracted from the proceedings of the legislature and are published in book form. They are then distributed to Members. Such publications have been made up to the year 1972. There is no index or cross referencing to other handbooks. So far no contradictory rulings have been found.

*Maharashtra*

There is a well developed system of recording procedural precedents in the Maharashtra State Legislature in India. The day to day debates (Hansard) of the two Houses, the sessional synopses which are subjectwise classified, brief records of the proceedings of the Houses compiled for each session and the Digest of Acts which gives descriptive details about Bills passed in each session are the normal public records of the two Houses. Besides these records, separate subject classified compilations of procedural precedents are also maintained, as they prove to be useful in an agitated or tumultuous House. They are maintained in two ways. Firstly, there are the "Rulings from the Chair" which are classified compilations of rulings given in the House, compiled from day to day proceedings (Hansard) of the Houses. They are properly indexed and cross-referencing is done as far as possible. They are periodically brought out as and when necessary, there being no specified interval of time for their publication. At appropriate intervals they are consolidated and brought out as consolidated volumes. They are printed and made available to members of the Legislature. Secondly, there are the "Departmental Decisions of the Chair" which are culled from the decisions recorded in the various Departmental files, notings etc. of the Legislature Secretariat. They are also printed, indexed, cross-referenced and periodically consolidated on the same lines. However, they are not made available to the members of the Legislature. They are mainly available to the Legislature officials. In both cases contradictory rulings, *if any*, are given, and efforts are made while compiling them to distinguish the circumstances of each case. There are no plans to computerise these records.

*Tamil Nadu: Legislative Council*

An Index to "Rulings and Observations of the Chair" is printed and published separately for each volume of the Proceedings of the House, say, for five sittings of the House. The index itself is based on the proceedings of the House as recorded and published. As already stated, an Index to the rulings and observations of the Chair is published separately for each volume of the proceedings. Periodically, say every five years, these separate indices are consolidated and published. There is no system of index or cross referencing to other handbooks. No separate indication is given to contradictory rulings. There is no plan at present to computerise the system.

*Uttar Pradesh*

There is a system in the Secretariat for compiling rulings from the Chair. The compilations are useful in finding rulings on a given question or matter. Important rulings from the Chair are culled from the verbatim record of proceedings of the House. Such rulings or precedents are compiled separately. All important rulings are recorded in the

compilation and it is brought up-to-date periodically. The compilations are published by the Legislative Assembly Secretariat and are made available to Members of the House, as well as to the secretariats of both Houses of the Parliament and State Legislatures of India. The compilation contains an index but there is no cross-referencing to other handbooks; contradictory rulings are not shown as such. There are no plans at present to computerise our system.

*West Bengal*

Precedents are not separately or additionally recorded. But there are some publications of the Assembly Secretariat namely (a) "Journals" incorporating short notes on the items of business daily transacted in the House; (b) "Resume of transactions of business" in each session with special features of a session shown under a separate head; and (c) "Decisions from the Chair" which is a systematic record of the rulings of the Chair on various issues raised in the House. Although there is no separate system in the House for recording procedural precedents, it is not difficult to trace any such precedent from the above publications. Copies of the Resume and Decisions from the Chair are distributed among the members of the Assembly and also sent to other Legislature Secretariats of India, as well as some important libraries and Institutes.

*Mauritius*

Procedural precedents are recorded by the Clerk in a file; they are also recorded in the Minutes, and Hansard if referred to on the floor of the House. There are no plans to computerise these records.

*Hong Kong*

There is a system for recording procedural precedents, which is considered satisfactory for the Legislative Council's needs. The Minutes and Hansard provide complete, official records of the sittings.

*Bermuda*

The Clerk records procedural precedents and they are filed for easy reference. This system has proved to be effective. The Journal and Minutes of the Legislative Council and the House of Assembly provide a ready means of reference for Members of Parliament. A Select Committee of the House of Assembly has recently been appointed to consider the recording and broadcasting of important Parliamentary Debates. The Legislative Council will tape-record all its Debates at its first meeting after the Christmas Recess. Precedents are available to all members of Parliament. They are not published but indexed and placed in the Parliamentary Library. The Precedents are updated at the end of each Session of Parliament. The Index refers to rulings given in Erskine May and other Parliamentary reference books. Contradictory rulings are stated in the index. There are no plans at present to computerise the system.

## XV. APPLICATIONS OF PRIVILEGE

### WESTMINSTER: HOUSE OF COMMONS

**Memorandum by Director of Public Prosecutions and related matters.**—"1. During proceedings at Tottenham Magistrates' Court in November 1977 in connection with charges under the Official Secrets Acts, a witness who was an officer of the security services was allowed, under a ruling of the Court, to give evidence anonymously, as Colonel "B". The Colonel's name was subsequently published in December by the Leveller magazine and by others, who were then charged in March 1978 with contempt of court. The hearing of the case was set down for 24 April, but judgement was not given until 19 May. Meanwhile, on 20 April the officer's name was disclosed in the House, during questions following the Business statement by four Members. The name was thereafter published in the Official Report, in certain newspaper reports on the following day and in that day's broadcast of the House's proceedings.

"2. During the evening of 20 April, the Director of Public Prosecutions issued the following statement as a result of enquiries by the Press:

"The legality of revealing the identity of Colonel B, a witness in the prosecution of Aubrey, Berry and Campbell, is the subject matter of pending proceedings for contempt of court before the Divisional Court of the High Court of Justice. It is not accepted, despite the naming of the colonel on the floor of the House of Commons, that the publication of his name would not be a contempt of court, even if it was part of a report of proceedings in the House."

"3. The Director of Public Prosecutions' action was raised at 10 p.m. in the House, and on a submission by the Rt Hon Member for Crosby, Mr Speaker ruled, on the morning of 21 April, that the issuing of the statement was not a matter which he considered should have precedence over the Orders of the day. Mr Speaker further informed the House on 24 April that he considered that, in view of the fact that proceedings for contempt of Court were pending on 20 April, the identification of Colonel "B" by the four Members had been an infringement of the House's sub judice rule. A number of early day motions were simultaneously tabled on various aspects of the situation, namely, the action of the Director of Public Prosecutions, the conduct of the Members who identified Colonel "B", and Mr. Speaker's ruling of 21 April."*

On 2nd May, the House agreed to a Government motion referring "the matter of publication of the Proceedings of the House, other than by order of the House, in so far as the privileges of this House are concerned and the matter of the application of the sub judice rule during Business Questions on Thursday 20th April" to the Committee of Privileges. A preliminary report published on 31st July 1978 stated that the Committee were

*Second Report from the Committee of Privileges, Session 1977–78, HC 667.

"satisfied that the Director's statement was not a contempt of the House."* A further report on the publication of the proceedings of the House and on the application of the sub judice rule on 20th April 1978 was published on 23rd March 1979.** The Committee recommended that the necessary amending legislation be introduced to extend to all fair and accurate reports of parliamentary proceedings the protection already afforded by section 3 of the Parliamentary Papers Act to extracts from papers printed by order of the House. The Report has not yet been considered by the House.

**Reference to Official Report of Debates in Court Proceedings.**—On 10th November 1978, "the matter of the production of and reference to the Official Report of Debates in this House, without the leave of the House having been obtained, at the Central Criminal Court in the case of Regina v. Aubrey, Berry and Campbell"† was referred to the Committee of Privileges. The Committee reported that it was satisfied that neither the Judge nor Counsel for the Crown made use of the Official Report in a manner which could affect the privileges of the House." Further, the Committee recommended "that the practice of presenting petitions for leave to make reference to the Official Report in Court proceedings be not followed in the future and that such reference be not regarded as a breach of the privileges of the House." The Report has not yet been considered by the House.

## Australia: House of Representatives

**Newspaper editorial.**—On 28th February 1978, Mr. W. Yates, M.P. raised a matter of privilege based on an editorial published in the *Sunday Observer* of 26th February 1978 under the heading "Political bludgers". Later that day Mr. Speaker stated that, in his opinion, a *prima facie* case of breach of privilege had been made out, and, on the motion of Mr. Yates, the matter was referred to the Committee of Privileges which presented its report to the House on 7th April 1978. The editorial was as follows:

*The over-taxed, government-burdened people of Australia were treated to a disgusting exhibition by many Federal politicians this week.*

Many of our so-called leaders proved themselves lazy, two-faced bludgers at the opening of the 31st Parliament in Canberra.

It happened last Tuesday and, until now, not one newspaper has bothered to point out the outrageous antics of these power-puffed thespians of the parliamentary stage.

While our new Governor General, Sir Zelman Cowen, delivered his speech to the combined Houses, politicians from all sides appeared in their newly-cleaned suits.

Colors were carefully chosen for ties and handkerchiefs, and members' wives preened themselves for the ceremonial hoo-ha.

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*Second Report from the Committee of Privileges, Session 1977–78, HC 667.

**Second Report from the Committee of Privileges, Session 1978–79, HC 222.

†First Report from the Committee of Privileges, Session 1978–79, HC 102.

Of course. The television cameras were rolling. Here was a chance to be shown off to the public.

Politicians were actually seen in the House, apparently taking some notice of official business.

But after the official ceremonies were over they skulked out like thieves in the night.

While new Opposition Boss Bill Hayden made his first speech in the House as leader, Members lounged about in the bar.

And when Federal Treasurer John Howard built up to an important parliamentary appearance the House was half empty. Once again the bar was adequately occupied.

Surely we can expect our Federal Parliamentarians to have enough interest in the affairs of government to remain in the House during the first session of government business.

Surely they should be interested in the performance of two major political figures.

*Or would they? Probably not—the money's still pretty good, and they only have to con the voters once every three years.*

The findings of the Committee were:

(a) That publication of the editorial in the *Sunday Observer* of 26th February 1978, in having reflected upon Members of the House of Representatives in their capacity as such, constituted a contempt of the House of Representatives, and

(b) That Mr. Peter Stuart Isaacson, Managing Director and Editor-in-Chief, Peter Isaacson Publications Pty Ltd, and Mr. Alan Leonard Armsden, Editor of the *Sunday Observer* at the time of publication of the editorial, are both guilty of contempt of the House of Representatives.

The Committee recommended in the case of Mr. Isaacson that, in view of his expressions of regret made before the Committee and his publication of an adequate and acceptable apology, no further action be taken.

The Committee further recommended in the case of Mr. Armsden that in this particular instance his demeanour and his actions were not worthy of occupying the further time of the House.

*Privilege in general*

In considering the above matter, members of the Committee were concerned at the limited range of options available to the Committee should it wish to recommend the imposition of a penalty.

The Committee therefore strongly recommended to the House that the whole question of parliamentary privilege should be referred to it for investigation and report. The Committee suggested that the reference should be couched in the broadest possible terms covering such matters as the means by which complaints of breach of privilege are referred to the Committee, the method of investigation of the complaint by the Committee, and the penalties which should be available to the House in respect of privilege offenders.

Following debate on the Committee's report the House resolved on 13th April 1978 that:

(1) the House agrees with the Committee in its findings, and with its recommendations in relation to the matter of an editorial published in the *Sunday Observer*, 26th February 1978, and

(2) the House agrees in principle with the Committee's recommendation in relation to privilege in general, but is of the opinion that the investigation proposed should be undertaken by a Joint Select Committee, the resolution of appointment of which should be submitted to the House at the earliest opportunity.

At the conclusion of the parliamentary sittings on 24th November 1978 no formal action had been taken with respect to the establishment of the proposed Joint Select Committee.

### Tasmania: House of Assembly

**Newspaper article about deliberations of a Select Committee.**—On 7th September 1978, The "Examiner" Newspaper published on its front page an article entitled "Legal Pot Splits Tasmanian Inquiry". The article offered detailed information on the deliberations of a Select Committee of the House of Assembly on Victimless Crime, specifically in the area of legalisation of Marijuana.

Because of the essential accuracy of the article allegations were made in the House that some Member of the Committee had furnished the author with the material. These were serious allegations in view of Standing Order No. 364:

> Evidence taken by any Select Committee, and the Report of the Committee, and documents presented to it which have not been reported to this House, shall be strictly confidential, and shall not be referred to in the House by any Member or published or divulged by any Member or Officer of the House or by any witness or any other person.

Each Member of the Committee made a Statutory Declaration denying his involvement in the matter.

After considerable discussion, the House referred the article and the Statutory Declarations to the Select Committee for examination and Report. In a special report the Select Committee said:

> The Committee had in its possession five Statutory Declarations, one from each of the Committee members, each of which states that the Member was not directly or indirectly responsible for the passing on of information concerning the deliberations of the Committee to the journalist from that newspaper. The Committee accepts the situation that information about the deliberations of the Committee is sought by representatives of the media. However, all members of the Committee now believe that no member was deliberately responsible for discussing matters pertaining to the Committee which would have enabled the said journalist to have written the said article. The Committee further believes that no useful purpose can be gained by pursuing the matter of Breach of Privilege.

The House considered the Report and referred the matter to the Committee of Privileges, which had not reported at the time this contribution was written.

### India: Lok Sabha

**Intimidation of officials collecting information to answer a parliamentary question.**—The Committee of Privileges presented on 21st November 1978 their Report to Lok Sabha on the question of privilege against former Prime Minister, Shrimati Indira Gandhi and two ex-officials for causing obstruction, intimidation and harassment to certain officials who were collecting information for answer to a certain

question on Maruti Ltd. in the Fifth Lok Sabha. The matter was first raised by two Members, Shri Madhu Limaye and Shri Kanwar Lal Gupta, and was referred to the Committee of Privileges on 18th November 1977.

The Committee considered the matter in 45 sittings and in its two-volume report came to the conclusion that Shrimati Indira Gandhi and the two ex-officials, Shri R. K. Dahwan and Shri D. Sen had "committed a breach of privilege and contempt of the House by causing obstruction, intimidation, harassment and institution of false cases against the concerned Officers "who were collecting information for preparing an answer to, and a Note for supplementaries for, a Starred Question answered in Lok Sabha on the 16th April, 1975." The Committee were also of the view that Shrimati Gandhi had further "committed a breach of privilege and contempt of the House by her refusal to take oath/affirmation and depose before the Committee" and also "by casting aspersions on the Committee in her statement dated the 16th June, 1978, submitted to the Committee."

The Committee recommended that Shrimati Indira Gandhi and the two ex-officials deserved "punishment for the serious breach of privilege and contempt of the House committed by them". However, "in view of the unprecedented nature of the case and the importance of the issues involved in maintaining the authority, dignity and sovereignty of Lok Sabha and upholding the principles underlying the system of parliamentary democracy", the Committee considered it desirable "to leave it to the collective wisdom of the House to award such punishment as it may deem fit" to them.

The Report of the Committee was considered by the House in several stages for several days. The motion for consideration of the Report was moved by the Prime Minister Shri Morarji R. Desai on 7th December 1978 and was discussed for two days. It was adopted on 8th December. On the same day, the Prime Minister moved a substitute motion agreeing with the findings of the Committee and authorising the Speaker "to take such steps to ensure the presence in this House of Smt. Indira Gandhi in her place and Shri R. K. Dhawan and Shri D. Sen before the Bar of the House on such date as may be decided by the Honourable Speaker, to hear them on the question of punishment and to receive such punishment as may be determined by the House". Two alternate motions were also moved by another Member. The discussion on the motions continued on 12th December when a number of substitute motions and amendments were moved. Discussion on these motions and amendments continued for several days.

On 13th December Smt. Gandhi made a statement explaining her position.

On 19th December the House adopted the motion of the Prime Minister, as amended by him. In terms of this amended motion, the House, agreeing with the findings and recommendations of the Committee of Privileges, resolved "that Shrimati Indira Nehru Gandhi be committed to jail till the

prorogation of the House and also be expelled from the membership of the House" and that "Shri D. Sen and Shri R. K. Dhawan be committed to jail till the prorogation of the House".

Soon after the above motion was adopted by the House, the Speaker issued warrants of commitment against Shrimati Indira Nehru Gandhi, Shri R. K. Dhawan and Shri D. Sen. Shrimati Indira Gandhi, who was present in the House, was taken to the Central Jail, Delhi from the Parliament House. In the case of Sarvashri R. K. Dhawan and D. Sen, the Speaker also issued warrants of arrest addressed to the Commissioner of Police, Delhi, requiring him to take them into custody and deliver them to the custody of the Superintendent of the Jail. Sarvashri R. K. Dhawan and D. Sen were accordingly arrested by the Police and delivered to the custody of the Superintendent of the Jail, Delhi.

When the Lok Sabha was prorogued on 26th December the Superintendent of the Jail, Delhi, was informed by the Lok Sabha Secretariat about the prorogation, and Shrimati Indira Gandhi, Shri R. K. Dhawan and Shri D. Sen were released from Jail the same day.

A notification was published in the Gazette of India dated 19th December, 1978 that consequent on the adoption of a Motion by the Lok Sabha, expelling from the membership of the House Smt. Gandhi, she had ceased to be a member of the Lok Sabha with effect from the afternoon of 19th December, 1978. The aforesaid notification was also published in the Lok Sabha Bulletin of the same date.

### KARNATAKA

**Absence of a Minister on a day when he was due to answer Questions in the House.**—On 17th June 1978 Sriyuths S. R. Bommai and A. Lakshmisagar, members of the Karnataka Legislative Assembly, gave notice of a question of privilege against the Chief Minister. They advanced arguments in the House stating that the Chief Minister had committed a breach of privilege of the House by being absent from the House, when his questions were to be answered on the floor of the House on that particular day. The contention of the Members was that the Chief Minister had exhibited a contemptuous attitude towards the House by being absent while he had attended certain other functions in the city on the same day. The Minister for Revenue who was present in the House explained that the Chief Minister had written a letter to the Speaker explaining the reasons for his absence and therefore the matter should not be made much of. The Speaker promised the House that he would examine the position and give his ruling on the privilege motion.

The Speaker: "On 15th June 1978, I received a letter from the Chief Minister stating that he would be away from Headquarters from 16th June to 19th June 1978 and that the Minister for Revenue would attend to the business pertaining to him in the Assembly during his absence. On 16th June 1978, I received another letter from the Chief Minister stating that the Minister for Revenue to whom he had entrusted his work would

also not be in station on the 16th and therefore the questions posted for his answers on that day may be held over. I accordingly held over the questions. The matter of privilege was raised on the 17th June.

I find that there is no rule which provides that all Ministers must be present in the House at all times. The Speaker has no power to enforce the attendance of any particular Minister in the House, just as members cannot be compelled to be present. But certain conventions regarding the presence of Ministers in the House have developed over the years. It is now an established convention that Ministers whose business is before the House should be present. In case they are unable to be present they must inform the Speaker in advance and also entrust their business to their colleagues. This is the position in Lok Sabha as well as in our Legislature. On several occasions the Speakers in Parliament and in this House have impressed upon the Ministers that they should be present when their business is before the House. I also find that on one or two occasions when particular Ministers were absent the business then before the House was either postponed or the House adjourned for some time to procure the presence of the Minister. There are occasions when the Speakers have deprecated the absence of Ministers without intimation. On no occasion the absence of a Minister has been regarded or treated as a breach of privilege or contempt of the House. By this I do not mean to suggest that the Ministers could be absent with impunity. When the House is in Session the business of the House should receive the highest priority from the hands of the Ministers. Dignity of the House and courtesy demand that while the House is in Session the Ministers should be present in the House as far as possible. Whenever there are important discussions in the House, it is desirable that as many Ministers as is possible are present in the House. At any rate the Ministers whose business is before the House should be present in the House unless they are required to be absent for unavoidable reasons and in such case they should inform me in advance and make alternate arrangements to look after the business before the House on the particular occasion. I would like to quote the following two rulings given in Parliament and in this House on this point:

On 6th December, 1950, when the motion re: the International situation was being discussed, Shri K. Hanumanthaiya, finding the Prime Minister, who was in charge of the motion, not present, on a point of order asked whether the Minister concerned with the motion should be present or it would be enough if the Minister of Parliamentary Affairs was present. The Speaker, thereupon, observed as follows:

"There is no point of order in that, but I think that it has been the established convention here that the Minister concerned is expected to present in the House and on important occasions as many Ministers as possible. Incidentally, it also involves a corresponding duty on the part of Members. They should, after delivering their own speeches, remain in the House and hear what the other Members have to say and also hear the reply which the Hon. Minister gives. In spite of this convention, some latitude has to be given in respect of Ministers, for the simple reason that they have to attend to many duties and it is not possible for the Chair to come to a conclusion on the importance of the business which detains them. Some arrangement seems to have been made to take notes of the debate that is being carried on in the unavoidable absence of the Minister. And in any case, the hon. Prime Minister has just now come. The matter is settled".

On 28th November 1958, after question hour, Sri C. M. Arumugham represented to the Hon. Speaker that when the session was going on, Ministers were attending opening ceremonies and such other functions and requested that in the same way as the Speaker had ordered members not to attend such functions during the session, he should give such order to Ministers also. Thereupon the Speaker made the following observations:

"This is not the first time that this question has been raised. It was raised a few days ago and I then stated that normally a Minister should be present when his subject is being discussed. But there are occasions when the Ministers go out to lay the foundation stone of some dam or to open some institute. That way we have no control over them. We have laid down a general rule which I have mentioned. I cannot prevent the Ministers from going out and attending to other duties outside the House".

In view of the rulings in Parliament and in this House I am inclined to feel that there is no question of breach of privilege in the issue raised by the members. I do not think there is any intention on the part of the Chief Minister to deliberately mislead the House in what he has written to me. The Chief Minister has informed me in advance the reasons for his absence and it is not for the Chair to go behind and beyond the letter and infer otherwise. I, however, appeal to all the Ministers to see that they are present in the House whenever their business comes before the House and as often as possible on other occasions. In this connection I impress upon the Government Whip to see that no room is given for complaints regarding absence of Ministers in the House in future."

### MAHARASHTRA

**Alleged wrong intimation to the Speaker.**—On 5th November 1978, Shri J. B. Dhote, a Member of the Legislative Assembly, raised a question of breach of privilege against the Police Authorities of Nagpur alleging that the intimation sent to the Speaker by them, viz. that four Members of the Assembly who were arrested on 27th November 1978 at Nagpur escaped from lawful custody on 28th November, was incorrect. Shri Dhote stated that in fact the said four Members were released by the Police and were taken to their premises in a police van.

An explanation was asked from the Assistant Commissioner of Police, Nagpur, who had sent the intimation of the escape of the Members. The Assistant Commissioner of Police in his explanation stated that the intimation sent to the Speaker about the escape of the Members from lawful custody was correct.

The Speaker after satisfying himself that there was a *prima facie* case of breach of privilege gave his consent to Shri Dhote who raised the issue in the House on 14th November 1978. The House granted the necessary leave and the Speaker referred the matter to the Committee of Privileges for examination, investigation and report.

The Committee will present its report in the session which commenced on 5th March, 1979.

## Uttar Pradesh: Vidhan Sabha

**Alleged molestation of a Member by a traffic policeman.**—On 6th December 1978, Shri Ram Govind Chaudhary, a Member, made a complaint that while on his way from Ballia on 4th December 1978 to attend the meeting of the House, he went to meet a friend at Gorakhpur. During his stay there, traffic policeman No. 273, Gorakhpur, molested him and used insulting language against all the Members of the House. He also complained that when the matter was referred to the Senior Superindendent of Police, Gorakhpur, in the presence of Hon. Revati Raman Singh, Minister of State, the Senior Superintendent did not take immediate action against the traffic police constable. Sri Chaudhary therefore raised a question of breach of privilege against both the traffic police constable and the Senior Superintendent of Police. After hearing several members regarding the admissibility of the question of breach of privilege, the Speaker referred only the matter of the traffic police constable to the Committee of Privileges, but asked the Chief Minister to take immediate action against the Senior Superintendent of Police and Deputy Inspector General of Police for negligence. Sri Revindra Singh made complaints about corrupt actions by the Senior Superintendent of Police, Gorakhpur. The Speaker observed that when there were complaints of corruption against the Senior Superintendent of Police, it became the duty of the Chief Minister to take action against him. At this stage, there was pandemonium in the House and it had to be adjourned for an hour. When the House resumed its sitting, the Chief Minister said that the behaviour of the Senior Superintendent of Police was undesirable. and that he would transfer him that very day and also take suitable action against him.

**Alleged threat to prevent road repairs in a Member's constituency.**—On 29th December 1978, Sri Sukhpal Pandey, a member of the Janata Party, raised a question of privilege against the Executive Engineer, D.C.U. (P.W.D.), Basti. The Member said that he had given a Notice under Rule 51 (calling attention) about the deaths of four people in a truck accident due to the bad condition of the roads in his constituency. A copy of the said notice was sent to the Public Works Department by the Legislative Assembly Secretariat, and when the Executive Engineer learned of this, he threatened that he would not let any work be done in that constituency. He further said that roads could not be constructed by raising questions in the Vidhan Sabha. The Member offered a letter from Sri Babu Ram Verma, M.L.A., in confirmation of his allegations. The Speaker referred the matter to the Privileges Committee.

## Malta

**Parliamentary Expressions.**—There were various instances when the House seemed to be tolerating certain words and expressions despite

the Chair's efforts. In fact on 19th February 1979, Mr. Speaker ruled as follows on a breach of privilege complaint raised by the Leader of the Opposition (The Hon. E. Fenech Adami, M.P.) against a Government Member (The Hon. Joe Grima, M.P.):

"With reference to the case raised by the Leader of the Opposition during the sitting of 14th February, namely that the remarks of the Hon. Joe Grima directed at the Hon. Joseph Fenech at the time the complaint was made, constituted a breach of privilege;

The Chair saw the transcript (of the debate) and found that the Hon. Joe Grima said: ". . . people like the Hon. Joe Fenech, well known in this Parliament for the spitefulness and meanness he exercises in the Government's regard . . ."

The Chair states clearly that it absolutely disapproves of Hon. Members of this House, the highest institution in the land, insulting each other and using certain adjectives; the Chair regrets having to repeat what it had stated during the sitting of 7th June 1978, that "certain remarks being made on either side . . . have almost become acceptable".

The Chair appreciates the fact that every Hon. Member of the House has the right to criticise, but before doing so, he also had the duty to verify the facts, and to do this prudently and without being personal, and not in the heat of debate; otherwise the Chair would find it very difficult to protect the Hon. Member concerned.

But to come to the case in question, the Chair states that, much to its regret, the word "spitefulness"—and other worse terms too—has been used several times by both sides, but limiting itself to this one word, the Chair mentions two instances among the many with which the debates are replete, and refers to Sitting No. 80 of 31st May 1972, page 2904, where there are very similar words used by a Member of the Opposition, and to Sitting No. 82 of 6th June 1972, page 200, where similar words are used by a Government Member; and the Chair chose these two sittings of 1972 to show how long this word has, to its regret, been used in the House.

With these precedents before it, and when Standing Orders provide for similar cases, particularly Standing Order Nos. 60 and 61, the Chair feels that at least a point of order should have been raised first, as the same Hon. Joseph Fenech appeared to be about to do before the Leader of the Opposition spoke; and that the House first insist on this point of order, and that if this step fails, use the other means mentioned in Standing Orders, and only after all this should an Hon. Member decide to raise a breach of privilege complaint, which as the House is aware, is a very serious thing and should not be resorted to at every whim, but only as a last resort.

The Chair in this case, would limit itself to ordering that the speech of the Hon. Joe Grima, as it appears in the second paragraph of this ruling, and similar words in the same speech of the Hon. Joe Grima, and every reference thereto, be deleted from the debates of this House".

**Alleged misreporting by newspapers.**—A case of misreporting by the newspapers "Il-Hajja" and "In-Nazzjon Taghna" was raised as a breach of privilege on 13th June 1978, by the Minister of Justice, Lands, Housing and Parliamentary Affairs. The Minister alleged that both newspapers gave the impression that Mr. Speaker had allowed a Government Member inside the Chamber, although the doors leading to it were closed, during a division, and that this Member took part in the division on the Education (Amendment) Bill which passed by 27 votes in favour and 26 against. The Editor and printer of both newspapers were brought before the bar on 3rd and 4th July 1978, and the case still stands adjourned to a future sitting when the House will discuss the penalty motion.

## XVI. MISCELLANEOUS NOTES

### 1. Constitutional

**New South Wales (Constitution (Amendment) Act).**—The Constitution (Amendment) Act, 1978 repealed the proviso to section 7 of the Constitution Act, 1902, thus no longer requiring any bill to alter the laws in force for the time being under the Constitution Act or otherwise concerning the Legislative Council to be reserved for the signification of Her Majesty's pleasure and removes the requirement that any such Bill be laid before the Imperial Parliament. The Bill was reserved for Her Majesty's pleasure on 3rd April 1978, and the assent proclaimed on 2nd August 1978.

(*Contributed by the Clerk of the Legislative Council*)

**Western Australia (Existing constitutional provisions confirmed).**—Amendments made by the Acts Amendment (Constitution) Act, 1978, were designed to achieve three purposes. One is to emphasise the role of Her Majesty the Queen in the Parliament of Western Australia. The second is to protect and preserve the existence of both Houses of the State Parliament, and to ensure their continued role as part of the law making process. The third purpose is to confirm by Statute the Office of Governor, and that appointments to the Office of Governor and the instructions with which the Governor must comply in performing his duties, are both made and issued by the Queen personally.

(*Contributed by the Clerk of the Legislative Council*)

**Malaysia (Membership of the Senate).**—The Federal Constitution of Malaysia was amended by Act of Parliament No. A442 in December, 1978 to enable two members to be appointed by the Yang diPertuan Agong to sit in the Senate to represent the interests of the Federal Territory. It also seeks to increase the number of appointed members of the Senate to forty but the term of those members of the Senate appointed after the coming into force of this Bill shall be three years. The term of the serving members of the Senate shall remain six years. There is no change in the number of members of the House of Representatives which is 154.

**St. Lucia (New Constitution).**—A new Constitution was made on 20th December, 1978, in preparation for Saint Lucia becoming an independent State. This Constitution came into force on 22nd February 1979, and although not providing for nominated element in the House, provides for the first time in the Saint Lucia legislature a bicameral legislature.

## 2. Electoral

**Ontario (Blind people able to vote without assistance).**—A variation in all the ballot forms used in Ontario provincial elections to enable blind people to vote without special assistance was announced on 24th June 1978. It is claimed that this will make Ontario the first jurisdiction in Canada where a blind voter can mark his or her ballot form, confidentially and confidently, without the aid of a sighted person. The basic format of the ballot form has not been changed and no amendment to election legislation has been required.

Ballot forms used in Ontario provincial elections are printed in black with each candidate's name shown in white. A white circle to the right of the candidate's name is used by the voter to mark his or her choice. The change consists of a small notch cut into the top edge at the upper right-hand corner and a notch cut beside each white circle down the right side of all ballot forms. The upper right hand notch will enable a blind person to align the ballot form face up with the circles on the right.

On the Ontario ballot form candidates' names are printed in alphabetical order and are numbered. A blind voter may have a friend or poll official read the names in order, may obtain the number and order of candidates from political party workers or otherwise identify the numerical position of the candidate of his or her choice without disclosing a preference. The voter will count down the desired number of notches and mark an "X" in the white circle opposite the notch.

There is a provision in the election legislation allowing people handicapped by blindness and unable to vote without assistance to be aided by a friend or the deputy returning officer at the poll. Such a voter is required to swear that he or she is unable to vote without assistance, and the friend, who is allowed to accompany the voter through the voting process, must swear to carry out the wishes of the blind elector and not to reveal his or her choice of candidate. This provision will not be changed. Any blind voter choosing to be aided by a friend when voting may continue to be so aided.

The idea which lead to development of the notched ballot form was originated by Mrs. Jean Young of Mississauga, Ontario, who is blind. She was assisted by her husband, also blind, and their sighted son who is interested in politics and the political process. Various types of templates with slots or raised lines are used by blind people to assist in signing cheques or other documents. Mrs. Young's original idea was to design a template which could fit over a ballot form. The voter would then be guided to the appropriate white circle on the ballot form by holes punched in the template.

Mr. Robert Carter, Director of Operations of the Ontario Election Office said that "We experimented with the template design and found some technical and administrative problems. For example, in the last Ontario general election there was one riding with seven candidates. In

our tests of the template, some blind people found it difficult to position a three-candidate ballot form in a template with seven holes. To avoid this difficulty, we would have to provide various templates with different numbers of holes and distribute the correct ones to each constituency. The most important consideration from the viewpoint of blind voters was the complete elimination of special procedures or assistance. Therefore we created a refinement of Mrs. Young's idea—notching the ballot form to correspond with each candidate's name. This means a blind voter can use the same ballot form as sighted voters without the need for special devices, like the template."

The additional cost is estimated at less than a quarter of a cent per ballot form.

**Australia (1977 Electoral redistribution in Queensland—Royal Commission of Inquiry).**—In January 1978 following the general election for the House of Representatives on 10th December 1977, allegations had been made by a government Member (Mr. D. M. Cameron) elected for the new electorate of Fadden in Queensland that there may have been irregularities in the procedures concerned with the redistribution conducted in 1977 (THE TABLE, Vol. XLVI, p. 103) and the naming of the electorates of Fadden and McPherson situated in the vicinity of Brisbane. The allegations were directed principally at the Member for McPherson, the Hon. E. L. Robinson (a government Minister), in that he had influenced the redistribution including the change of name of one division from Gold Coast to McPherson.

The Member's allegations were examined by the Attorney-General and the Solicitor-General at the request of the Prime Minister. Their advice was that the matters raised neither required nor warranted Government action. On 7th April 1978, by way of personal explanation in the House, the Member for Fadden re-iterated his concern that redistribution proceedings had not been carried out in accordance with the provision of the Commonwealth Electoral Act.

On 10th April 1978 in debate upon the Minister's statement in reply to the allegations and upon certain papers that had been tabled on 7th April, the Opposition demanded an open judicial inquiry into the allegations against the Minister.

On 24th April 1978, following further consideration by the Government, the Governor-General appointed a Royal Commission of Inquiry to inquire into and report upon whether any breach of a law of the Commonwealth or any impropriety occurred in the course of the redistribution of 1977 of the State of Queensland into electoral divisions for the election of Members of the House of Representatives, including the change of the name of the proposed division from "Gold Coast" to "McPherson", by reason of—

(*a*) anything said or action taken by or on behalf of the Honourable Eric Robinson;

(*b*) any action taken by the Distribution Commissioners or any of them as a result of anything said or action taken by or on behalf of the Honourable Eric Robinson;

(*c*) any communication by the Distribution Commissioners to the Honourable Eric Robinson.

On 30th May 1978 by further Letters Patent the Governor-General extended the terms of reference to include whether any breach of a law of the Commonwealth or any impropriety occurred by reason of—

(*a*) anything said or action taken by or on behalf of any person;

(*b*) any action taken by the Distribution Commissioners or any of them as a result of anything said or action taken by or on behalf of any person; or

(*c*) any communication by the Distribution Commissioners to any person.

On 8th August 1978 the Prime Minister announced the findings of the Royal Commission which exonerated the Honourable E. L. Robinson (Minister for Finance) of allegations concerning the Queensland re-distribution. In his Report, the Royal Commissioner also considered the actions of another Minister, Senator the Right Honourable R. G. Withers in respect of the naming of the electorate of McPherson. He found that the Minister, who was the Minister responsible for electoral matters, had done nothing illegal, but he did find, in the words of the Report:

"The action of Senator the Right Honourable R. G. Withers constitutes impropriety within the meaning of the Letters Patent dated 30th May 1978. Senator Withers used his position to further a political purpose by an approach (not open to members of the public) to the Distribution Commissioners . . .

Whilst Senator Withers did not seek to influence, or influence, the Commissioners in any way about how they should perform their duties of distribution of the Electoral Divisions in Queensland, he did seek to influence them, and he did in fact influence them, through an intermediary, as to something which they proposed to say in their Report, that is to say, the names which they tentatively attached to two Electoral Divisions. What he did, having regard to the purpose with which he did it, in my judgement constitutes impropriety."

In his statement on this matter the Prime Minister said that the Government was of the view that Mr. Justice McGregor's Report had to be accepted and accepting it had inevitable consequences in respect of the finding of impropriety:

"The community rightly demand a high standard from the Ministers of the Government. The judgements on Ministers are more exacting and sometimes more harsh than the judgements which might be passed on those outside the sphere of public life. If these high standards were not upheld, the people's confidence in Government—a confidence which is fundamental to Australian democracy—would be undermined.

The Government has an obligation to uphold them even though the cost can be and is in this instance, a high one.

Senator Withers has been an energetic and able Minister and his services have been of immense value to the Government. It is with great regret that I have recommended to His Excellency, the Governor-General, that he should determine Senator Withers' appointment as Minister for Administrative Services."

(*Contributed by the Clerk of the House of Representatives*).

## 3. Procedure

**Westminster (House of Lords rejects a House of Commons proposal for a Joint Committee).**—In May 1977, following allegations in the Press and elsewhere that certain oil companies had been breaching economic sanctions imposed by the Southern Rhodesia Act 1965 against Rhodesia, the Government asked Mr. Thomas Bingham, Q.C. to conduct an inquiry into the allegations.

Mr. Bingham presented his Report in August 1978. In it he found that certain British oil companies had been engaged in "swap" arrangements with other oil companies with the result that Rhodesia had been supplied with oil. The Report was debated in both Houses of Parliament during November. In the House of Commons in particular, demands were made for a further inquiry to establish how much Ministers of three different administrations (2 Labour and 1 Conservative), and their Civil Service advisers, knew of these "swap" arrangements and whether they had connived at the consequential breach of sanctions.

The Government eventually agreed that the most appropriate form of further inquiry could best be undertaken by a Joint Committee of both Houses, with a Lord of Appeal in Ordinary as Chairman. They proposed that the Joint Committee should be known as the Special Commission on Oil Sanctions and that the Chairman should see all papers submitted to the Commission first and decide whether they should be shown to the other Members. The Commission would meet in secret; not even other Members of either House would be admitted. These unique powers were proposed to ensure that Cabinet papers, and advice given to Ministers by Civil Servants, should, so far as possible, remain confidential, since normally they would not be made public for 30 years.

On 1st February 1979, the House of Commons was invited to set up the Special Commission when the Attorney-General, Mr. S. C. Silkin, Q.C. moved the following motion (H.C. Official Report, Vol. 961, No. 47):

"That it is desirable that a Joint Committee of both Houses to be known as 'the Special Commission on Oil Sanctions' should be appointed to consider, following the Report of the Bingham Inquiry, the part played by those concerned in the development and application of the policy of oil sanctions against Rhodesia with a view to determining whether Parliament or Ministers were misled, intentionally or otherwise, and to report;

That a Select Committee of Five Members be appointed to join with such Committee as the Lords may appoint to consider the said matters and to report accordingly:

That the Committee have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House and to report from time to time:

That Two be the Quorum of the Committee:

That the Committee have leave to hear Counsel to such extent as they shall see fit:

That Mr. Attorney General shall give such assistance to the Special Commission as may be appropriate:

That the Committee have power to appoint persons to carry out such work relating to the Special Commission's inquiry as the Special Commission may determine:

That no person not being a member of the Special Commission shall be present during any of the proceedings of the Special Commission unless required by the Special Commission to be present for the purposes of their inquiry:

That it be an Instruction that all papers submitted to the Special Commission shall

first be examined by their Chairman who shall determine, if necessary after consultation with other members of the Special Commission, which of the papers should be seen by the members of the Special Commission for the purposes of the inquiry and which of the said papers and records should be shown to parties interested or their Counsel or agents, or to witnesses, and which of such papers and records may be retained by members of the Special Commission or such parties, Counsel, agents or witnesses, and which of such papers and records shall be included in or referred to in any report."

Most parts of the motion were opposed, and amendments moved to them. But eventually the House of Commons agreed to the setting up of the Special Commission on the terms proposed and a Message was sent to the Lords asking them to concur and appoint four Members of the House (including a Lord of Appeal in Ordinary) as members of the Special Commission.

On 8th February 1979, the Lord Chancellor, Lord Elwyn-Jones, moved "That the House do concur with the Resolution communicated by the Commons". He explained the reasons why the Government had proposed the setting up of the Special Commission with its unique powers. Lord Hailsham of St. Marylebone, a former (and now again) Lord Chancellor, spoke next from the Opposition Front Bench. During the course of his speech he roundly attacked the idea of a Special Commission and argued that there was no need for a further inquiry. He said *inter alia*:

"I am bound to say that I consider this Motion to embody a constitutional enormity. I think that both in the short run and in the long run it will redound to the great disadvantage of our country. I think that it will not only fail in its object, but that it is so constructed that it must fail in its object. I think that it not only breaches, but probably breaches irreparably—because I do not accept for a moment that it cannot be treated as a precedent (everything that happens in public is a precedent under our Constitution)—important constitutional principles. Apart from anything else—and I shall come to this later in my speech—it involves the misuse of a valuable member of the Judiciary, for all of whom we have a deep regard, and it is something with which this House should have nothing whatever to do, whatever may be done in another place. . . .

But supposing I am wrong in every word that I have uttered to the House up to this moment, must it not be plain that the only terms on which an inquiry of this kind could ever carry conviction would be that there should be full disclosure of all the advice conveyed by civil servants to Ministers and of all the Minutes and all the discussions between Ministers themselves? In other words, all Cabinet papers and all witnesses to be available. If that is not done is it not obvious that everybody who has the desire to accuse Governments of this country of dishonesty, whether inside or outside the country, will say, and say in a form in which it cannot be disproved, however false it be, that there has been a cover-up?

If, on the other hand, it is done—that is to say, if there is full disclosure—it could only be achieved, to my mind, by breaking two absolutely vital constitutional principles: first, the confidentiality of advice given to Ministers by civil servants, and secondly, the confidentiality of Cabinet documents and discussions. Without them the inquiry must be valueless, especially from the point of view of the foreign relations upon which the noble and learned Lord the Lord Chancellor rightly set great stress, because those who are anxious to allege a cover-up will only have their worst suspicions confirmed. If these principles are once breached, however, and full disclosure is made of these matters, a precedent will have been set, despite what the noble and learned Lord has said, because everything that happens in public, every decision of every Government is a precedent; and a precedent will have been set which will be repeated, or for which a demand will be repeated, every time a controversial issue arises giving rise to controversial decisions by the Government of the day. . . .

The Government appear to think they have avoided the dilemma by an ingenious

compromise, the selection of a Law Lord from this House as chairman to act as a sieve to sift the confidential matters before they reach the other members of the committee, and to act as a sieve quite separately to sift the confidential matters and witnesses before the information reaches the other witnesses or solicitors and counsel. The committee's sessions will be held in secret, and that in itself is bound to give rise to criticism—although obviously the Government to that extent are right—and the evidence before them will be at the discretion of the chairman.

How the Government can really believe that such a body can carry any conviction at all against a potential and malicious charge of a cover-up—unless they were already convinced that the whole thing was a mare's nest anyway, which I am quite certain it is—I simply do not understand. They appear to have achieved what I should have thought was the impossible. Instead of solving the dilemma, they have sat firmly on each of the horns of it at once and successfully impaled themselves on a third, the existence of which one would have thought, although it was not on the surface, might easily have been suspected, situated somewhere between the two, for they have misused the Judiciary and compromised its independence by giving it a politically sensitive role.

I wish to discuss at this stage the position of the potential members of the committee, by which I mean the lay members and not the chairman. This, it seems to me, is both morally intolerable and politically indefensible. Since, in the nature of things and from the terms of the resolution, they will have no personal guarantee that their report is based on a total disclosure of facts or documents or, if it is not, what has been withheld from them, the Government proposal renders it certain that the report can have no personal guarantee of its voracity from the members of the committee, and it can carry in the outside world no evidential value whatever. Indeed, if anything be withheld—and one can only assume from the Lord Chancellor's speech that there will be things withheld—it will be assumed, for all I know rightly, that what has been withheld is the most politically damaging matter to this country. I could never myself agree to serve as a lay member on a body of which only the chairman could decide what I could not and what I could be allowed to see before I issued my report. . . .

What about the civil servants? Natural justice would seem to demand that they should see everything, but according to the resolution that is not necessarily to be the case. Supposing witnesses wish to refer to something which, in the public interest, the chairman has excluded from the consideration of the committee? Often matters of defence assume their importance, materiality and significance only during the course of a hearing. Supposing they wish to refer to witnesses who have given evidence before them but whose evidence they are not necessarily to be allowed to hear? Or to documents available to the previous Administration or to a subsequent Administration? What are the ex-Ministers and civil servants supposed to do about that? And what about the legal representatives, their counsel and solicitors, who apparently to some extent are to be allowed to take part in the proceedings? Are they to be allowed to see the Cabinet documents, and which of them? Are they to be allowed to listen to the other witnesses, and which of them? We are not told.

It is, with respect, a misuse of judicial time and judicial impartiality to employ a full-time judge on an errand of this kind which, so far as I can see, is bound to lead to disaster whichever way it is conducted. In the long history of Parliament—and it is a long and honourable history—we have never up to this day seen a body of this kind. We have never seen set up before a Joint Select Committee of both Houses, falsely called a Commission, presided over by a judge who is eligible only because he happens to be a Member of the House of Lords, sitting in private and operating as a court of an inquiry on incomplete material which it is not allowed to sift for itself—material going into the conduct of Ministers and civil servants, who have no right to attend the whole hearing or to know the full extent of the evidence. . . ."

His views were supported by a number of other speakers, including one other ex-Lord Chancellor, Viscount Dilhorne. Lord Gardiner, also an ex-Lord Chancellor took a contrary view and supported the proposed Joint Committee. However, at the end of the debate, the House rejected the Motion to join with the Commons in the appointment of the Special Commission by 102 votes to 58, and a message was sent to the House of Commons accordingly.

No further action was taken by the Government to appoint an inquiry

into alleged breaches of oil sanctions but criticism of the Lords action was expressed.

**Australia: House of Representatives (Introduction of Legislation Committees).**—The Joint Committee on the Parliamentary Committee System in its 1976 Report* recommended that the standing orders be amended to provide for the appointment of legislation commitees to consider Bills, clause by clause, after they had passed the second reading.

Following consideration and report by the Standing Orders Committee the House agreed to sessional orders to provide for the operation of legislation committees, to operate from 15th August 1978.

The sessional orders provide that immediately after the second reading, or immediately after proceedings under standing order 221 (announcement of appropriation message or motion to refer to a select committee) have been disposed of, the House may refer a Bill (other than an Appropriation or Supply Bill) to a legislation committee. Referral is to be on motion on notice moved by any Member and carried without any dissentient voice.

Membership of legislation committees is by nomination of either the Prime Minister, Leader of the House, Government Whip or deputy Whip, and either the Leader or Deputy Leader of the Opposition or Opposition Whip or deputy Whip who also are empowered to discharge Members nominated, and nominate Members in substitution. Regard is to be had to the qualifications and interests of Members nominated and to the composition of the House. As many legislation committees as are necessary for the consideration of Bills may be appointed. Each committee must consist of not less than 13 nor more than 19 Members, excluding the chairman, with a quorum of 10.

The chairman of a legislation committee must be the Chairman of Committees or one of the Deputy Chairmen of Committees appointed by him.

The sessional orders provide that committees are to meet during a suspension of the sitting of the House arranged for that purpose, unless otherwise ordered, the sitting of the House to be resumed at 10.15 p.m. or such earlier time as the Speaker takes the Chair, unless otherwise ordered.

The first legislation committees met during a suspension of the sitting at a time arranged after consultation between the parties. On the appointment of further legislation committees, pursuant to the sessional order, the committees were given power to meet during the sitting of the House. When a committee has not completed consideration of a Bill at one sitting, a subsequent sitting for the further consideration of the Bill has been determined by the Leader of the House and the committee again given power to meet during the sitting of the House. The usual time of meeting for the committees has been on Wednesday evenings at 8 p.m.

*Parliamentary Paper No. 128 of 1976, pp. 23-7

If at any time during a meeting of a legislation committee a quorum is not present, the proceedings are suspended until a quorum is present, or the committee is adjourned. Other Members of the House who are not members of the legislation committee may participate in proceedings at the chairman's discretion but are not permitted to vote, move any motion other than an amendment, or be counted for the purposes of a quorum.

Consideration of a Bill in a legislation committee follows, as far as possible, the procedures observed in the committee of the whole with the following exceptions:

(1) Speech time limits as specified in standing order 91 do not apply (that is, members may speak for periods not specified).
(2) Any proposed amendment is to be notified to the Clerk to the Committee in time for it to be printed and circulated to members of the committee before it is considered.
(3) The Chairman of the Committee has power to group related amendments together.
(4) Voting is taken by a show of hands; tellers are not appointed.
(5) Where a Bill is amended, the Clerk to the Committee prepares a schedule of the amendments to accompany the Bill, for report to the House by the Chairman of the Committee.

On the Bill being reported a future day is set down for consideration of the report at which time further amendments may be proposed provided notice has been given. On the motion for the adoption of the report, any Member may move for the recommittal of the Bill either in whole or in part to a committee of the whole or to the legislation committee which previously considered it.

Between September and November 1978, 7 Bills were referred to legislation committees. While the new system is still in an experimental phase, many Members have already described it as a reform of major significance.

**Australia (Court Proceedings initiated against Ministers of Former Government by Private Citizen).**—The proceedings of the case, known as the Sankey Case, were referred to in THE TABLE 1976 (Vol. XLIV, pp. 170–1), 1977 (Vol. XLV, pp. 123–4) and 1978 (Vol. XLVI, pp. 109–10).

There were a number of interesting developments in the Sankey Case during 1978 and early 1979. Following a ruling on 3rd November 1977 by the Stipendiary Magistrate at the Queanbeyan Court of Petty Sessions upholding claims of Crown privilege on certain documents connected with the case, Mr. Sankey appealed to the New South Wales Supreme Court against the ruling. On 17th February 1978, Mr. Sankey successfully sought adjournment of the Queanbeyan Court hearing pending the outcome of the appeal to the Supreme Court.

Advice was also given that the Commonwealth Attorney-General would seek to apply to have the case removed to the High Court because of the

importance of the issues involved in the appeal. On 14th March 1978 the full bench of the High Court granted an application by the Attorney-General for the appeal to be removed to the High Court.

On 14th April 1978 further adjournment was sought at the Queanbeyan Court pending the outcome of the High Court decision. The High Court judgments on the Sankey appeal were handed down on 9th November 1978. The 80 page judgments, the first of their kind handed down by the High Court, are of far reaching importance in interpreting the rules of Crown privilege. The Court decision was to the effect that:

(1) The magistrate was wrong in upholding the claim for Crown privilege. In essence the High Court held that it is for the Court and not the Government to decide whether documents are to be produced or protected in the public interest; and
(2) The charges of conspiracy under Section 86 of the Commonwealth Crimes Act were bad in law.

The question of the production of certain documents which had been tabled in Parliament and produced in the District Court (THE TABLE, Vol. XLVI, p. 110) was raised in a cross-claim by the Hon. E. G. Whitlam, Q.C., that the production of such documents would infringe the privileges of Parliament. Acting Chief Justice Gibbs in dismissing the claim said:

"It clearly follows from what I have said that Mr Whitlam's cross-claim for a declaration that the documents in what I have called [the documents tabled in Parliament] should not be disclosed cannot succeed. Those documents have already been published, in the most formal and regular way, by tabling them in Parliament. Not only has the minister concerned refrained from taking any objection, but counsel for the Attorney-General of the Commonwealth has submitted that the documents should be produced. The magistrate was correct in ordering them to be produced."

On 14th November 1978 following the High Court decision the Deputy Leader of the Opposition (Hon. L. F. Bowen) raised with the Speaker as a matter of privilege the question of the possible application of the principle as declared by the Court to the production of ministerial documents in the House when required by any Member, and for Mr. Speaker to be the judge of confidentiality. The Speaker later stated to the House:

Yesterday the Deputy Leader of the Opposition (Mr. Lionel Bowen) raised a matter which he said flowed from the High Court decision on Thursday last in the Sankey case. The Deputy Leader of the Opposition pointed to the declaration of the High Court that when Crown privilege was claimed by the Government in court proceedings it was the duty of the court, and not the privilege of the executive government, to decide whether a document will be produced or may be withheld.

The Deputy Leader of the Opposition drew an analogy between the situation in a court of law and the position in this House when, under Standing Order 321, a document relating to public affairs that is quoted from by a Minister shall, if required by any member, be laid on the table, unless the Minister states it to be of a confidential nature. The Deputy Leader of the Opposition put the proposition that, in relation to the application of this Standing Order, the matter of the confidentiality of the document required to be tabled should be judged by the Speaker and not by the Minister concerned.

The High Court's decision in the Sankey case relates to the withholding of docu-

ments, on the ground of executive privilege, from a court, the duty of which court is finally to determine issues between the parties, which determination gives its judicial opinion the force of law. The Speaker is in a significantly different position. He does not finally determine judicial issues. He administers the Standing Orders and is always subject to the will of the House. Standing Order 321 is clear on its face and unless it is altered the course proposed by the Deputy Leader of the Opposition cannot be adopted.*

On 4th December 1978 the Stipendiary Magistrate in the Queanbeyan Court of Petty Sessions dismissed the first information laying charges under Section 86 of the Commonwealth Crimes Act. The remaining information laying charges of conspiracy under common law was heard on 30th January 1979 and on 16th February 1979 the Stipendiary Magistrate, Mr. D. Leo, gave his opinion that there was not sufficient evidence to warrant the defendants being placed on trial. There had been no *prima facie* case established and the defendants were discharged.

*(Contributed by the Clerk of the House of Representatives)*

### 4. Standing Orders

**Isle of Man.**—Several amendments to the Standing Orders of Tynwald were approved by the Court on 22nd February, 1978. The effect of these was, inter alia,

1. to permit a Petition for Redress to be written in the English language or in the Manx language, provided it is accompanied by an English translation certified by the Petitioner; and
2. to make all members of Tynwald eligible to serve as directors of any body corporate in which Government has either a controlling or a substantial financial interest.

**New Brunswick (Friday sittings).**—Standing Orders 4 and 11 were amended on 21st March 1979 to alter the times when the Assembly meets on Fridays. For a provisional period of one session, they provide that the Assembly shall meet at 10 a.m. rather than 2.30 p.m. on Fridays, and not adjourn for lunch as on any other morning sittings.

**Australia: Senate (Debates on matters of public importance).**—The Senate has, in recent years, made wide use of Sessional Orders and resolutions to give new procedures a trial before adopting them, if found satisfactory. The first such change in Senate procedure to be introduced during 1978 concerned what were formerly referred to as urgency motions. The Standing Orders, not yet amended, provide that, before the Business of the Day is proceeded with, a matter of urgency may be debated on motion, without notice, "That in the opinion of the Senate the following is a matter of urgency: . . .". Other provisions of the Standing Order regulate the support required for the motion (the proposer and four other Senators) and time limits.

*Hansard H of R, 15 November 1978, p. 2867

In March the Standing Orders Committee proposed certain amendments to the procedure on a trial basis. The Committee's first and major recommendation was that the procedure for moving a *motion* to debate a matter of urgency be discontinued and replaced by a provision that a Senator may propose to the President that a matter of public importance be submitted to the Senate for *discussion*. Other recommendations of the Committee were modified when debated in Committee of the Whole, but there was general agreement with the proposals and the Senate adopted the amended procedure as from 8th March 1978 on a trial basis as a Sessional Order for the year. The Sessional Order has now lapsed, and the Senate has reverted to procedures under Standing Order 64 until such time as the Standing Orders Committee and the Senate give consideration to its continuation during 1979.

**Australia: Senate (Nominations to certain Committees by minority groups).**—Standing Orders 36AA and 36AB provide for the appointment of Legislative and General Purpose Standing Committees and Estimates Committees. Prior to their amendment in 1978, the two Standing Orders further provided, *inter alia*, that, unless otherwise ordered, each Committee would consist of six Senators, three being members of the Government nominated by the Leader of the Government in the Senate and three being Senators who were not members of the Government, to be nominated by the Leader of the Opposition in the Senate or by an Independent Senator. Particular Committees in respect of which the Opposition or an Independent made nominations would be determined by agreement between the Opposition and the Independents, and, in the absence of agreement duly notified to the President, the question as to the representation on any particular Committee would be determined by the Senate.

No provision existed in either Standing Order for nominations to be made by any minority group or groups. However, before March 1977 when the two Standing Orders were adopted, Legislative and General Purpose Standing Committees and Estimates Committees were appointed pursuant to Sessional Order, and on occasions when there were minority groups in the Senate the relevant Sessional Orders included references to them. With the election of two Australian Democrats to the Senate in December 1977, their terms beginning in July 1978, a need became apparent for provision for nominations to be made by minority groups under Standing Orders 36AA and 36AB. The subsequent amendments to paragraphs (4) and (5) of Standing Order 36AA and paragraphs (3) and (4) of Standing Order 36AB were designed to overcome the lack of any such provision.

**Australia: House of Representatives (New and changed standing orders).**—Reference was made in an earlier edition of THE TABLE (Vol. XLV, pp. 119–20) to sessional orders introduced in 1976 relating to days

and hours of sitting and adjournment debates. These and other sessional orders relating to routine of business, select committee reports, quorum and division bells continued on a trial basis during 1977.

Following their successful operation, the House on 22nd February 1978 agreed to incorporate the provisions of the sessional orders into the standing orders of the House. The effects of the additional standing orders, not reported earlier in THE TABLE, are summarised as follows:

*Routine of Business*—This change resulted from the development of a practice whereby much of the time set aside for general business and grievance debate on each alternate Thursday morning was taken up by the ordinary routine of business, especially matters of public importance. The standing order now provides that, on alternate sitting Thursdays, general business or grievance debate, as the case may be, takes precedence over matters of public importance in the ordinary routine of business outlined in standing order 101.

*Select Committee Reports*—This change provides for a protest or dissent to be added to the report of a select committee.

*Quorum—Count of Members*—A new standing order 46A states that a Member in the lower galleries or officials' seats behind the bar of the House or in either of the side alcoves, is not to be counted to determine whether a quorum is present.

*Quorum*—This change allows the Speaker to exercise his discretion if it is found that a quorum is not present during a sitting of the House. The order now provides that if the Speaker is satisfied that there is likely to be a quorum within a reasonable time then he announces that he will take the Chair at a stated time. If at that time there is still no quorum present, he adjourns the House until the next sitting day. Similar consequential amendments have been made concerning want of a quorum in committee of the whole and if no quorum is evident on the result of a division.

*Division Bells*—A new standing order 200A provides for the division bells to be rung for only one minute when successive divisions are taken and there is no intervening debate.

**New South Wales: Legislative Assembly (Cognate Bills introduced and considered together).**—Mr. Speaker, on 5th December, 1978, reported that a new Standing Order 248A, adopted by the Legislative Assembly on 29th November, 1978, had been approved by the Governor. The new standing order is as follows:

"Whenever a Minister shall have intimated verbally to the House and in writing handed to the Clerk that bills specified by the Minister are cognate bills:

(a) such bills may be introduced upon one motion for leave and presented and read a first time together;

(b) one motion may be moved and one question put in regard to, respectively, the second reading, the Committee's report stage and the third reading of such bills together;

(c) such bills may be considered in one Committee of the Whole.

Should cognate bills be amended in the Legislative Council the consideration of such amendments may be in one Committee of the Whole."

**Western Australia: Legislative Council (Deputy Chairmen taking the Chair).**—Standing Order No. 35 was amended to enable Deputy Chairmen to take the Chair as Deputy President even though the Chairman of Committees be present in the House. The object of the amendment is to allow the Deputy Chairmen to gain experience in the Chair, and also to ensure that the Chairman of Committees is not precluded from participating in a debate through having to occupy the Chair in the absence of the President.

**Western Australia: Legislative Council (En bloc consideration of Clauses to Bills).**—Standing Order No. 253 was amended by the addition of the following words:

"Provided however that by leave of the Committee it shall be competent for the Chairman to put the question on multiples of clauses where discussion is only required on intervening clauses."

The amendment was designed to facilitate the passage of a Bill containing a great number of clauses. It had been possible only to pass the Bill as a whole or to put the question on each clause individually.

**Maharashtra: Legislative Assembly (Ministers as members of certain Committees).**—Following a recommendation by the Rules Committee, the Assembly agreed on 7th July 1978 to amend Rule 162 and make a number of consequential amendments. The reason was that in some of the Committees, viz., (i) Committee on Public Accounts, (ii) Committee on Estimates, (iii) Committee on Public Undertakings, (iv) Committee on Subordinate Legislation, (v) Committee on Government Assurances, (vi) Committee on Welfare of Scheduled Castes and Scheduled Tribes, Vimukta Jatis and Nomadic Tribes and (vii) Committee on Panchayati Raj, Ministers could not be elected or nominated as Members of the Committee. Instead of having the provision in this regard repeated in different rules relating to various Committees it was thought advisable to have only one rule which might be applicable to all Committees. Rule 162 was therefore, amended for this purpose and consequential amendments made in rules 204, 206, 209, 217 and 225.

## 5. General

**Australia—(Security arrangements at Parliament House, Canberra).**—A number of potentially serious incidents in Parliament House in Canberra over the years have caused concern to the Presiding Officers, who have the responsibility for the maintenance of an adequate degree of security in the Commonwealth parliamentary building.

In considering the measures that needed to be brought into operation to achieve an adequate degree of security at Parliament House, two basic principles were brought into conflict. On one hand, is the undeniable right of people in a parliamentary democracy to observe their Parliament at work and to have reasonable access to their representatives. On the other hand, Senators and Members must be provided with conditions which will enable them to perform their duties in safety and without interference.

The explosion that occurred with loss of life on 13th February 1978 at the Sydney Hilton Hotel, venue for the Commonwealth Heads of Government Regional Meeting, caused a further re-appraisal of the protective arrangements in force at Parliament House, Canberra and the Presiding

Officers decided upon new arrangements to control entry into the non-public areas of the parliamentary building.

A pass system has been introduced to control entry into the non-public areas of the parliamentary building. The public are still admitted without hindrance to the public areas, namely, King's Hall, the lower floor exhibition area and the Chamber galleries. No person other than a Senator or Member is permitted to enter the remainder of the building, that is, the non-public areas, without a pass. Persons permanently employed in the building and others who need to enter Parliament House regularly are issued with photographic identity passes. Visitors granted entry to the non-public areas are issued with visitor passes. Passes must be worn by the pass holders. Senators and Members continue to move throughout the building without a pass.

Visitors entering the Chamber galleries are now required to cloak hand baggage. Ladies' handbags are excepted, though these must be opened for inspection. Visitors are now scanned by a metal detector and, if thought necessary, are required to undergo a body search. All deliveries of goods to the building are checked. The practicality of checking all baggage coming into the building is being examined, as is the possibility of screening all persons entering Parliament House by the installation of detection equipment similar to that used at airports.

Outside doors on the lower floor of the building, other than the regular and manned points of entry, are deadlocked or fitted with alarm systems. The patrol of the building by the night-watchmen has been upgraded and supplemented by an alarm system. The Commonwealth Police have increased surveillance on the exterior of the building. Security measures which already existed and were compatible with the new arrangements, such as the scrutiny of mail by detection machines, have been continued. A co-ordinator of security has also been appointed.

These new measures were advised by the Presiding Officers to members of both Houses on 2nd March 1978.*

(*Contributed by the Clerk of the House of Representatives*)

**Queensland (Financial administration of the Parliament).**— Under the Financial Administration and Audit Act of 1977 "The Clerk of the Parliament shall be the accountable officer with respect to the appropriations of the Legislative Assembly", but the Act was amended in December, 1978, inter alia, by the insertion of the following sub-section:

"(5) For the purposes of:
(a) the financial administration of the appropriations relating to the Legislative Assembly; and
(b) the establishment and keeping of accounts in relation thereto; and
(c) the audit of such accounts,
but to no other extent, such appropriations shall be deemed to be for services under the control of a department, such accounts shall be deemed to be departmental accounts and the appropriate Minister shall be deemed to be the Premier."

*Hansard* H of R, 2 March 1978, p. 335.

**Lesotho (National Assembly meets in the Senate Chamber).**—After attaining independence on 4th October, 1966 the Lesotho Parliament consisted of two Houses, the Senate (Upper House) and the National Assembly (Lower House), and this remained the position until the suspension of the Constitution on 30th January, 1970. When the Parliament was re-constituted on 13th April 1973, it had only one House, the National Assembly, and that is still the case today. However the Senate Chamber is still there, unused, except in 1975 when Lesotho hosted the African Regional Conference of the Commonwealth Parliamentary Association.

The last meeting of the National Assembly was the longest ever in the history of the Parliament, starting on 3rd March, 1978 and sitting continuously up to 21st July, 1978, mid-winter in Lesotho. It was bitterly cold one Monday morning, 19th June, 1978, and the air conditioner in the National Assembly had broken down. After the first hour of business, the Hon. Chief S. H. Mapheleba rose in his place and claimed:

"That it was so uncomfortably cold that concentration on the work of the House was completely impossible."

Whereupon Mr. Speaker suspended the House, which was resumed after 50 minutes when attempts to get the heating system going had completely failed. He then adjourned the House pursuant to Standing Order No. 16 (4):

"Subject to the provisions of the next succeeding paragraph the Speaker may at any time suspend a sitting or adjourn the House".

The next day, Tuesday 20th June, 1978, the House met at 10.30 a.m. in the Senate Chamber. Mr. Speaker made the following communication to the House:

"May I welcome you all, Right Honourable and Honourable Members to our new home, the Senate or Upper House, or the Other Place as it was known and should be known.

Whether or not there will be a Senate in the future is not the business of the Chair. It is a matter for our good Government of which we are all very proud. I am proud —very proud of our Government. I am of course, not trying to influence anyone of you to be proud of the Government, as we are fully democratic in this Kingdom.

I do not know for how long we shall operate herein. Maybe indefinitely because of the freezing temperature in the Other Place.

One visit by the technician from Johannesburg costs us R500 and we have so far paid him more than one thousand. We do not only pay his airfare, but we pay his hotel accounts from which it would appear that he can knock down the foaming beaker with speed and precision.

It is not out of order for us to assemble herein, and we are doing so with the full support of Erskine May."

The House finally returned to the Assembly Chamber on Monday, 19th July, 1978.

(*Contributed by J. M. Khaebana, Clerk Assistant*).

**Lesotho (Opposition Front bencher takes the Chair).**—History was made on Wednesday, 21st June, 1978, when both the Speaker and Deputy Speaker were for some unavoidable reasons not present to take the Chair in the after-lunch sitting. The Clerk announced their unavoidable absence to the House under Standing Order No. 9(2):

"If both the Speaker and the Deputy Speaker are absent the Clerk shall announce the fact to the House, and a motion may forthwith be made and seconded that a named member preside for that day only. Such motion shall be decided without amendment or debate, the question being put by the Clerk, and a second motion naming another member shall not be moved unless the first has been negatived."

Whereupon Hon. M. Makhakhe, from the Government Benches, moved that Hon. M. G. Mokoroane, an Opposition Front Bencher and Chief Whip, do take the Chair of the House. This was seconded by Hon. M. Rapapa from the Opposition Benches and was unanimously agreed to. Mr. Mokoroane sat as Speaker till the House rose at 5.00 p.m. that day.

The next morning, Thursday, 22nd June, 1978, Mr. Deputy Speaker communicated to the House the appreciation of the Chair to the House for the cooperation it had shown in electing one of its Members to preside during the absence of both the Speaker and the Deputy Speaker on the previous day after lunch; and also thanked them for the respect they gave to the Member who presided.

(*Contributed by J. M. Khaebana, Clerk Assistant*)

## 6. Order

**Victoria (Misbehaviour by a member in the Other House).**—Shortly before the rising of the House on 12th April, 1978, the Speaker of the Legislative Assembly received a communication from the President of the Legislative Council informing him that a certain Member of the Assembly had been involved in a disorderly incident in the Legislative Council gallery during the sittings of that House. Mr. President's letter was accompanied by a report made to him by the Usher of the Black Rod concerning the alleged physical assault and a copy of a written apology made to the President by the Member concerned.

At the commencement of business next day Mr. Speaker read to the House the President's letter and the report which accompanied it, together with the text of the Member's apology. He cited the relevant portions of *May* and then went on to say:

"I draw the attention of the House to two novel features of the particular complaint that will necessarily have an effect upon the course of the procedures to be followed. Firstly, the complaint does not come to this House from a member of this House, as has been the case with complaints generally in the past. Because there is no complainant member, there is no member whose clear duty, in accordance with practice, it will be to follow the complaint with an appropriate motion. Secondly, the complaint comes to the House as a result of a communication from the presiding officer of another place on behalf of that House. The nature of the matter is one which is described in May as being in the nature of a contempt of Parliament, and I do not consider it appropriate for me to rule from the Chair in this particular case on whether there is a prima facie case of privilege. I am raising the matter at the first opportunity because I feel that,

considering the position of the other place and for the sake of good relationships between the Houses, it must surely be my clear duty to so raise it."

The Speaker then invited the Member concerned to be heard in explanation or exculpation. The Member availed himself of this opportunity and having expressed his profound regrets to the House, withdrew from the Chamber.

The Honourable the Premier then moved that having heard the complaint concerning the disorderly conduct of the Member and the member having tendered a full and complete apology to the House in respect of his conduct, the House deplores the unfortunate incident in question and resolves that the apology be conveyed to the President of the Legislative Council and that the House do now proceed with the business of the day.

This motion was seconded by the Leader of the Opposition and supported by the Leader of the National Party. The motion was carried and the House then resumed its normal business, the member concerned being re-admitted.

To complete the matter, Mr. Speaker then advised Mr. President by letter concerning the action which had been taken and conveyed to Mr. President the further apology made by the offending member to the Legislative Assembly. Mr. President formally advised the Legislative Council of the Speaker's communication to him.

The proceedings were brief and, aided greatly by the contrite attitude of the member concerned, were conducted with dignity and sincerity. *May* (p. 173) indicates that in such cases it is the duty of the House to which the member belongs, to take action. In this case not only was that done, but it was considered that the position of the other House was best maintained by Mr. Speaker formally advising their Presiding Officer as to the action taken.

(*Contributed by J. H. Campbell, Clerk of the Legislative Assembly.*)

## 7. Ceremonial

**Queensland (Inauguration of the Mace).**—The first Mace to be used by the Queensland Legislative Assembly, was inaugurated on 29th November 1978, in the Legislative Assembly Chamber.

The Mace was made in Birmingham in 1978. It is forty-eight inches in length, weighs approximately seventeen pounds and is made of sterling silver heavily gold plated in a matt finish.

The head of the Mace follows the traditional pattern, of a crown surmounted by an orb and cross. The flat top of the Mace between the crown consists of a plain silver disc or arms plate, on which is embossed a blue enamelled Maltese cross, with a gold crown superimposed over the central part of the cross. At the base of and encircling the crown is a set of twisted rope borders between which is lettered in relief "Government of Queensland". Immediately above this on opposing sides of the head of the

Mace are the hand-chased coats of arms of Queensland and Great Britain. Thirty-two gemstones are set in the mace—nine opals, two garnets, six amethysts and fifteen sapphires. The base is modelled and hand-chased with five emblems representing the source of Queensland's industrial wealth and is embossed "Legislative Assembly of Queensland, 1859".

His Excellency the Governor of Queensland, Sir James Ramsay declared the Mace to be inaugurated for the use of the Legislative Assembly. Somerset Herald of Arms, in his Tabard, was authorised by Her Majesty the Queen to be in attendance on His Excellency the Governor for the occasion.

## 8. Accommodation and Amenities

**Australia—(New and Permanent Parliament House).**—Further to the report in THE TABLE (Vol. XLV, pp. 119–20) the Joint Standing Committee on the New and Permanent Parliament House was re-established in the 31st Parliament on 7th March 1978 under the joint chairmanship of the President of the Senate and the Speaker of the House of Representatives.

In its 3rd report presented on 30th May 1978 the Committee concluded that the designer of the new House should be selected by a selection process, to be implemented in 2 stages.*

During the Budget sittings of Parliament the matter of the inadequacy of accommodation for Members and staff in the existing Parliament House was frequently raised by Members during the annual Estimate debates in the House of Representatives and by Senators during the examination of Estimates by the Senate Estimates Committees.

On 22nd November 1978 the Prime Minister announced the Government's decision to provide funds for the design and construction of a new Parliament House. He indicated that the new House would be the focal point of the bicentenary celebrations in 1988 and would largely complete the capital's national buildings.

The Prime Minister also announced that at each major stage in the design and construction of the new building, the Parliament itself would be the authority to approve the next step to be taken.

As special and flexible administrative arrangements will be necessary to facilitate the work over the next 10 years the Government decided to create a statutory authority—to be known as the New Parliament House Construction Authority—to control the design and construction. The Authority will act in close association with the National Capital Development Commission (NCDC) and will be responsible to the Minister for the Capital Territory. It will have a chairman and 4 members, one of whom will be the Commissioner of the NCDC.

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*Parliamentary Paper No. 151 of 1978

The Prime Minister indicated that the Joint Standing Committee on the New and Permanent Parliament House should be seen as the advisory authority on behalf of the Parliament. It will be available to advise the Authority on any relevant matter and to report to Parliament if it wishes. In effect it will be a watchdog on behalf of the Parliament.

Broadly the recommendations in the Joint Standing Committee's 3rd report will be followed in the selection of an architect for the project, except that the new Authority will be involved immediately it is established, and a design competition will be conducted on the basis of an invitation to architects registered in Australia to enter. The total project cost has been estimated at A$151 million in May 1978 prices, funded progressively over the next 10 years with the larger annual costs falling in the years 1983 to 1987.

(*Contributed by the Clerk of the House of Representatives*).

**Queensland (Extension to Parliament House).**—On Monday 12th March 1979 the newly completed extension to Queensland Parliament House, called the Parliamentary Annexe, was officially opened by His Royal Highness, the Duke of Gloucester.

Over 1200 guests seated on the lawn witnessed the ceremony. Amongst this gathering was a number of Presiding Officers and Clerks from other Parliaments within Australia who were able to attend.

The Annexe provides living accommodation for all of the eighteen Ministers, for Mr. Speaker and forty non-metropolitan back-bench Members as well as office accommodation for them and for the remaining twenty-three back-bench Members. This bedroom and office accommodation is provided in the tower-block of the twenty-three level building.

The seven-level podium block contains a temporary Legislative Assembly Chamber and temporary offices for Parliamentary Officers and Hansard staff as well as permanent accommodation for the Parliamentary Library.

New kitchens, Members' dining and bar facilities and a staff cafeteria are also provided in the Annexe.

Parliament House, which is now 111 years old, will undergo a three year period of restoration, after which it is expected that the Parliament will resume sittings in that building.

## 9. Emoluments

**Quebec (Salaries and Expenses of Members of the National Assembly).**—An Act to amend the Legislative Act and the Executive Power Act was assented to on 22nd December 1978. The Act fixes at 6% the maximum rate of increase of the annual indemnity of the members of the National Assembly, from 1st January 1979.

It also aims at reducing the multiplier used for calculating the amount

of the additional indemnity granted to the Prime Minister, to the other members of the Executive Council, to the President and Vice-Presidents of the National Assembly, to the members occupying the positions of Leader of the Official Opposition, Party Leader, House Leader, Chief Whip and assistant Whip of the Government or of the Official Opposition, and to the members appointed to act as chairmen of the select committees.

The additional indemnity paid to these members in 1978 will not be altered for the subsequent years until the increase in their basic annual indemnity results in raising their additional indemnity, as a consequence of the new multipliers.

This Act provides for the raising of the annual allowance granted to every member for entertainment expenses from $7000 to $7500.

Finally, it stipulates that a day a member is absent by reason of maternity is not to be considered as a day of absence from the Assembly. Furthermore, it enables the member occupying the position of Leader of the Opposition to be indemnified for expenses incurred in respect of official duties performed at the request of the President of the National Assembly.

**Australia (Parliamentary Salaries and Allowances).**—Reference was made in the last issue of THE TABLE (Vol. XLVI, pp. 122–3) of the rates of salaries and allowances effective from 1st June 1977. The Remuneration Tribunal made its next Reports and Determinations on 19th June 1978. On 17th August 1978 the House rejected those determinations affecting Special Allowance and Travelling Allowance for Ministers of State and Additional Salary, Special Allowance of Office and Travelling Allowance for Office Holders of the Parliament. The determinations affecting Basic Salary and Travelling Allowance of Senators and Members took effect from 1st July 1978, and varied the salaries and allowances as shown below:

A. SALARIES

(*a*) All Senators and Members receive a yearly Parliamentary Allowance of $25,692. Members receive an electorate allowance of $9,000 for an electorate of less than 5,000 square kilometres and $13,000 for an electorate of 5,000 square kilometres or more. Senators receive an electorate allowance of $9,000.

(*b*) Salaries of office for Ministers and Office Holders of the Parliament remain unchanged.

B. SPECIAL ALLOWANCE

Special allowances for Ministers and Office Holders of the Parliament remain unchanged.

C. TRAVELLING ALLOWANCE

Travelling allowances for Ministers and Office Holders of the Parliament remain unchanged. Revised rates for Senators and Members are:

| | |
|---|---|
| Canberra | $45 |
| Elsewhere | $49 |

D. POSTAGE STAMP ALLOWANCE

A Senator or Member is, for parliamentary or electorate business but not for party business, entitled to be provided quarterly in advance with 3,000 postage pre-paid official envelopes (at ordinary letter rate within Australia—currently 20c) to be available in Canberra and in the capital city within his home state or territory, and to be posted only from Parliament House and from one nominated Post Office within the electorate; this entitlement is to be suspended for all Senators and Members during the course of an election other than a by-election (i.e. from the date that writs for an election are issued until polling day). A Senator or Member is provided with a franking machine in his electorate office, the cost of postage registered therein to be at government expense, up to a maximum equivalent to the cost of 500 letters per month at the ordinary letter rate, payable quarterly in advance. The entitlement under this provision is provided in such a way that it may not be capable of conversion in cash or kind (including stamps). The following are provided with unlimited postage in relation to the duties of their office:

President of the Senate
Speaker of the House of Representatives
Ministers of State
Leader of the Opposition
Leader of the Opposition in the Senate
Deputy Leader of the Opposition
Deputy Leader of the Opposition in the Senate
Government Whip in the Senate
Opposition Whip in the Senate
Government Whip in the House of Representatives
Opposition Whip in the House of Representatives.

(*Contributed by the Clerk of the House of Representatives*).

**New South Wales (Travelling Allowances).**—Under the provisions of the Parliamentary Remuneration Tribunal Act, 1975, the Tribunal (The Hon. D. M. Selby, retired Judge) determined new salaries and allowances for Ministers, office holders and Members of Parliament, to apply from 1st January 1979.

The Tribunal also fixed new travelling allowances, to operate from 1st January 1979, for the Premier, Ministers of the Crown, Leader and Deputy Leader of the Opposition in the Legislative Assembly, Chairmen of Select and Joint Committees and the President of the Legislative Council and Speaker of the Legislative Assembly, travelling in Australia on the business of the Commonwealth Parliamentary Association, or for the purpose of attending official functions involving meetings with the Presiding Officers of the Australian Parliament or of the Parliament of a State of the Commonwealth. The new rates are:

| | Capital Cities (including Canberra) | Other Areas | Where no overnight stay is involved |
|---|---|---|---|
| | $ | $ | $ |
| Premier | 75 | 57 | 28 |
| Ministers of the Crown, Leader, Deputy Leader of Opposition in Legislative Assembly, Chairman and Members of Select and Joint Committees, President of Legislative Council and Speaker of Legislative Assembly. | 60 | 47 | 23 |

The Tribunal also approved of the reimbursement of certain travelling expenses, viz.—

(*a*) When a Member of the Legislative Council or of the Legislative Assembly travels by taxi on parliamentary business from Sydney Airport to the city or from the city to Sydney Airport he shall be refunded an amount equivalent to the fare of the airline bus from the Airport to the airline terminal.

(*b*) Where the residence of a Member of the Legislative Council is so situated that it is impracticable for him to utilize railway or intra-State air services in travelling to Sydney for the purpose of attending a sitting of the Council or of a Select or Joint Committee of which he is a Member, and his place of residence is more than 100 kilometres from the nearest airport regularly served by Trans-Australia Airlines or Ansett Airlines of Australia, from which airport regular flights to Sydney are maintained, he shall be paid an amount equivalent to 17 cents per kilometre for the distance driven by him directly from his place of residence to the nearest of such airports and return when he drives to such airport for the purpose of attending a sitting of the Council or a meeting of a Select or Joint Committee of which he is a Member, and returns home therefrom, upon the following conditions:

(*i*) that he satisfies the President of the Legislative Council as to the existence of the circumstances mentioned above; and

(*ii*) that he certifies to the President as to the distance driven by him to reach the airport and return home therefrom.

(*Contributed by the Clerk of the Legislative Council*).

**New Zealand (Changes in the Conditions of Service of Parliamentarians).**—*Introduction*—The arrangements for the determination of parliamentary salaries and allowances have been amended considerably over the last five years. Until 1974 a Royal Commission was established after each general election to enquire into the conditions of service of members, and its recommendations implemented administratively, or by Order in Council. In 1974 this procedure was suspended and a Commission—the Higher Salaries Commission—was created by regulations promulgated under a 1948 statute giving the Government wide

powers in respect of social and economic policy. This Commission, consisting of three persons, was given the task of determining the salaries and allowances not only of members of Parliament, but also of the highest paid officers of a large number of quasi-governmental agencies and local authorities, and of top public servants (including the Clerk of the House of Representatives). The Commission's determinations also needed to be implemented by Order in Council.

In 1977 these arrangements were put on a permanent statutory basis in the Higher Salaries Commission Act 1977. The Commission's jurisdiction was widened to include power to determine the superannuation rights of members of Parliament, including the power to itself amend the 1956 statute in which the parliamentary superannuation scheme is contained. It was further enacted that determinations of the Commission are to have effect according to their tenor and do not require to be effected by Order in Council. Under the new system for the first time there is thus no opportunity for the Government or the House to decline to implement or to delay the implementation of a determination, as has happened on previous occasions.

*Salaries and Allowances*

Acting under these wide powers the new statutory Commission issued its first general determination of members' salaries and allowances on 31st August 1978. In an explanatory memorandum attached to their determination the Commission noted that it was a commonly held view in New Zealand and overseas that members "should live under a continuing self-denying ordinance as an example to the country at large". To some extent parliamentarians had themselves fostered this attitude by declining or delaying salary increases awarded to them in the past. Consequently salaries had fallen behind levels which independent assessments regarded as properly rewarding the duties and responsibilities of a member. The Commission fixed the following salaries and allowances with effect from 1st April 1978 (previous rates shown in brackets):

**Salaries**

| | | |
|---|---|---|
| Prime Minister | $45,000 | ($41,177) |
| Deputy Prime Minister | 35,000 | ( 31,912) |
| Other Ministers with portfolio | 31,000 | ( 27,588) |
| Ministers without portfolio | 25,000 | ( 23,882) |
| Parliamentary Under-Secretaries | 24,000 | ( 20,794) |
| Speaker | 28,750 | ( 26,353) |
| Chairman of Committees | 24,750 | ( 22,647) |
| Leader of the Opposition | 31,000 | ( 24,000) |
| Deputy Leader of the Opposition | 24,000 | ( 20,794) |
| Chief Government and Opposition Whips | 22,000 | ( 19,250) |
| Junior Government and Opposition Whips | 20,500 | ( 18,323) |
| Members | 18,000 | ( 17,088) |

**Allowances**

| | | |
|---|---|---|
| Prime Minister | $9,750 | ($8,500) |
| Deputy Prime Minister | 4,250 | ( 3,700) |
| Other Ministers with portfolio | 4,000 | ( 3,500) |
| Ministers without portfolio | 3,150 | ( 2,750) |
| Parliamentary Under-Secretaries | 3,150 | ( 2,750) |
| Minister of Foreign Affairs (additional) | 3,500 | ( 3,000) |
| Speaker (plus electorate, day and travelling allowances, and residential accommodation and certain services at Parliament House) | 6,700 | ( 5,860) |
| Chairman of Committees (plus electorate and day allowances, and residential accommodation at Parliament House) | 5,400 | ( 4,740) |
| Leader of the Opposition (plus a house allowance or day and night allowances, and a travelling allowance) | 4,000 | ( 3,500) |
| Deputy Leader of the Opposition (plus electorate, day and night allowances) | 6,200 | ( 5,400) |
| Members (including Whips) (plus electorate, day and night allowances) | 4,600 | ( 4,000) |

*Notes*

1. Electorate allowances vary between $475–$2,340 according to the classification of electorate on a scale from wholly urban to predominantly rural.
2. Day allowances are unchanged at $8 for each attendance at a sitting of Parliament, or, during a recess, at a select committee or caucus committee.
3. Night allowances of $20 ($18) for each night on which members require overnight accommodation away from their homes to attend sittings of parliament etc.
4. Setting-up allowance of $250 ($100) payable to each member on his election to Parliament for the first time.
5. Travelling allowances for Ministers, Under-Secretaries, the Speaker, and the Leader of the Opposition, and their spouses of $40 ($35) a day when travelling within New Zealand on public service.
6. House allowances for Ministers and Under-Secretaries at $600. The Leader of the Opposition receives a house allowance if he resides in Wellington, day and night allowances if he does not.

*Superannuation*

A superannuation scheme providing benefits for ex-members and their spouses has been in effect since 1947. Essentially members contribute 11% of their salary which is matched by a like contribution from public funds. This provides a retiring allowance for members who have served at least 9 years and are over the age of 50, of one thirty-second of the member's basic salary when he retires, for each year of service as a member. Membership of the scheme is compulsory.

The Higher Salaries Commission exercised its new powers to make amendments to the scheme in a determination issued on 8th December 1978, and the changes it made are outlined here:

1. The legislation setting out the details of the scheme contains a provision that the retiring allowance payable to any member cannot exceed two-thirds of his salary at the date of his retirement.

In effect this means that after a member serves 22 years (parts of a year are not counted) and has thus built up an entitlement to a retiring allowance of two-thirds of his salary, he is marking time as far as building up an entitlement to a retiring allowance of a certain proportion of his final salary is concerned. In this respect he had already reached the limit, yet he was required to continue to contribute on the same basis as before.

The Commission, which received representations about this point in the scheme and agreed that it was unfair to long-serving members, have ameliorated the position in two ways. First, for members whose service exceeds 22 years, contributions from salary are reduced to 8%. Second, each year served as a member after 22 years entitles the member concerned to have one one hundred and twenty-eighth part of his final salary added to the two-thirds to which he is already entitled. Thus, when the provision has been in effect long enough, a member retiring after 31 years of service will be entitled to a retiring allowance of two-thirds plus nine one hundred and twenty-eighths of his final salary—that is, almost three-quarters of his last salary instead of only two-thirds under the present provision. This change operates from 30th November 1975 (the day following the 1975 general election).

2. The other area of the scheme considered by the Commission was how it relates to members elected at by-elections. General elections in New Zealand are almost invariably held towards the end of November every third year. The minimum qualifying period of service as a member being 9 years meant that a member elected at a by-election had to face election four times in order to qualify for a retiring allowance, whereas his brethren elected at a general election qualified after three elections.

The obvious way to remove this distinction was to enable members returned at by-elections to "buy-into" the scheme by permitting them to be treated as members from the date of the previous general election, and it was this solution that the Commission adopted. Members returned at by-elections after 30th November 1975 may elect to pay contributions to the scheme as if they had been members of Parliament from the time of the preceding general election. However, there are some important conditions attached to this right. First, it only applies to members elected before July in the second calendar year following a general election. In practice this means it applies only to by-elections held in the first half of the life of a Parliament. Whether the possible anomalies that this could produce in respect of a member elected a few days or months too late to take advantage of the provision will lead to pressure for its extension is too early to predict.

The second condition is that the member concerned must decide whether he wishes to buy-into the scheme within three months of the

general election following his return to Parliament. If he does not act by this time, he loses the opportunity to take advantage of the new rule altogether. Finally when a member does decide to buy-into the scheme he pays the additional contributions for the period between the general election and the by-election at 11% of his salary as at the date he decides to buy-in. This means that the longer he delays in deciding to buy-into the scheme the greater the risk he runs of it becoming more expensive to do so.

*(Contributed by David McGee, Clerk-Assistant of the House of Representatives).*

*Behind the Speaker's Chair.* By Donald Wade (Austick Publications, Leeds, 1978. Hardback £5, paperback £3).

The Parliamentary mechanism operates at many levels. When for example in May 1940 a motion for the adjournment of the House of Commons was carried by some 40 votes, the consequence was that Neville Chamberlain fell, and Winston Churchill became Prime Minister. What the vote *meant* was quite different from what it *said:* it meant that the House was of the opinion that Mr. Chamberlain and his Government were not conducting the war with sufficient vigour and efficiency, and so he had to go.

The question why the House of Commons has come to use a procedure which is, in a sense, so divorced from reality is a fascinating one, and Lord Wade, as a veteran M.P. and former Liberal Chief Whip, is well qualified to deal with its practical implications. And on the whole that is what he does in this book. There is not much theoretical stuff (why, for example, there must be no debate without a Question before the House) and not very many historical disquisitions (how, for instance, the maddening behaviour of the Irish M.P.s finished, quite against their will, by giving the Government and official Opposition virtually total control over the time of the House).

No, Lord Wade sticks strictly to the practical level, to the methods by which those responsible for running the machinery carry out their task. In fact, if you were wondering whether to devote your life to being a Whip, Lord Wade's book would be the perfect primer. Not many of us, presumably, nourish this particular ambition, and so for the rest the book must serve as a clear and simple exposition of a subject that is plainly important and, as here treated, also of considerable interest.

Any student of Parliamentary affairs knows how easily an Assembly of several hundred members, left to itself, will lapse into confusion, and conversely how difficult it is to make it work as the ultimate decision-maker, as a sounding-board for public opinion, as a channel for complaints, and perhaps also as the central pillar of support upon which the Government rests. If the Assembly is to be and do all these things, someone must devise a fairly exigent system, and a team of people must then devote all their time, energy and skill to making that system work. At Westminster, that team consists of the Party Whips and their staffs, and Lord Wade's book is probably the best modern description of their *modus operandi.*

On another level it would of course be equally true to say that the task of making the system work belongs to the Speaker, Clerks and Serjeant-at-Arms, whose Bible is Erskine May. Has Lord Wade then written an Erskine May for Whips? Not quite; not an eighteenth edition at any rate, for this is not an austere book. Agreeably we are led through a description with some of the historical background filled in, of the Whips' office in

both senses of that term. There are three chapters on the corresponding theme in the Lords and the future of that House, and a final section on the need for reform of Parliament in general and proposals to that end.

Like its author, the book is urbane, responsible, sensible. On its subject, it must be regarded as the last word for the time being.

(*Contributed by Robert Perceval, formerly Clerk Assistant of the Parliaments*).

*In Search of the Constitution.* By Nevill Johnson (Pergamon Press, 1978. £6.50).

There are few set pieces on the British Constitution written today, even by academics. The distrust of theories, which is such a well-known trait of politicians in Britain, means that much of the inevitable theorizing that goes on is cloaked in modest and informal dress, for instance in the memoirs and diaries of Cabinet ministers.

Mr Johnson is an academic (he is Nuffield Reader in the Comparative Study of Institutions and Professorial Fellow at Nuffield College, Oxford), but his book is no exception to this rule. He tells us that it is a development of a series of letters to a Continental colleague, which has permitted him to adopt an informal style. The twelve essays in the book, which are only loosely connected, are not in fact presented as letters, but are accurately described in the subtitle: "Some Reflections on State and Society in Britain".

Mr. Johnson's field of interests and views are far from modest. He passes under review, in the brief space of 235 pages, the whole of the British constitution, British politics, and most of the interests and institutions that lie behind the workings of State and Society in Britain. The result is neither easy to read nor coherent; it is very allusive, and a large knowledge of contemporary politics is necessary if one is to follow Mr. Johnson's argumentative jumps.

His book is not, to be fair to Mr Johnson, intended to be an impartial survey, but rather a polemical presentation of a certain view of the realities of British life, and the action needed to remedy the faults identified. Mr Johnson is clearly on the right of the active debate in British politics today, and his book is principally a development of the argument that the British constitution has been thrown out of balance by the weight of its centralised government, the inefficiency of its institutions, and the apathy of its people in the face of their problems.

It is a very combative book, since few escape stern criticism; but it does not seem a completely effective piece of polemic, since the ideas are not deployed so as to demonstrate, so much as to assert. Mr Johnson makes some very bald statements: "if the matter is looked at unsentimentally, it cannot be doubted that much of the critical activity of Parliament is misguided and without practical effect: it is kept going in deference to a myth . . . ". Or again: "there has been great deference shown in this country to a large and arrogant interpretation of public powers. ." Or again: "in terms of foregone opportunities the price which the British people pay for

the survival of the Labour Party in its present form is astonishingly high – a macabre tribute both to sentiments of loyalty and devotion as well as to those of apathy and indifference." Such statements may be fun if one agrees with them; but particularly when they are used in a loose argument, they are not likely to persuade one out of a contrary view, or to inform any innocent bystander.

Mr Johnson's point is that Britain needs a completely new constitutional settlement, involving a revision of all institutions, and everyone's attitudes to them. He suggests, for instance, limitations on the sovereignty of Parliament and a redefinition of the relations between the Government and Parliament. "We should cease to be bewitched by the myth of the Crown in Parliament." He may be right to advocate such sweeping changes; but many will fail to be convinced by his arguments. He certainly does not underestimate the difficulty of achieving his ends and this finally gives his book a slightly despairing tone.

(*Contributed by Douglas Slater, a Clerk in the House of Lords*)

*Human Rights and Parliament* By Subhash C. Kashyap, (Metropolitan Book Co., 1978, 75 Rupees).

This is the work of a distinguished Indian constitutional lawyer, Dr. Subhash C. Kashyap. THE TABLE has been fortunate enough in the past to include articles by Dr. Kashyap and there is no question as to his learning and expertise. His latest work again displays the careful and painstaking approach to constitutional problems and developments for which he is well known but the thesis that parliament plays an important role in the defence of human rights is surely self-evident.

The book is set entirely in the Indian context and brings together in one discussion a number of different parliamentary developments in the subcontinent. It contains many valuable appendices, such as the Constitution of India and the Universal Declaration of Human Rights which are both central to the book's argument. It also emphasises the remarkable Indian achievement of maintaining the world's largest democracy in a land of 630 million people, of whom many are the world's poorest. It is therefore a very readable and interesting book.

The term "Human rights" is a subjective one, capable of different interpretations in different ages and under different modes of government. All government, whether democratic or autocratic, is designed, in the eyes of the ruler, to protect the state and its citizens; this may of course mean in certain circumstances that citizens are denied their rights or even that tyranny sets in. But it cannot be denied that Mrs. Gandhi's State of Emergency was imposed because *she* felt that it was best for the country and its people. The conflict (admitted in the book) that exists between economic and political rights illustrates the relative values that different rulers place on a variety of human rights. What makes a parliamentary democracy a more potent force for human rights than a dictatorship is the opportunity for the people, from time to time, to give their judgment on what they

want. This is what they did in India in 1977 when they voted out of office a party which had controlled their affairs for twenty-seven years.

On points of detail in Dr. Kashyap's book, it is worth drawing attention to two. The first is the age-old difficulty of sovereignty and where it reposes. In India, sovereignty is said to rest in the Constitution and not in Parliament. It is apparent however that no Indian Parliament feels necessarily bound either by the Constitution or by decisions of previous parliaments. Indeed, insofar as the book's argument is that it is Parliament, and not the courts, which is the defender of human rights in India, then it follows that the Constitution must occasionally change at the will of Parliament.

The second is the author's argument that "in a situation of weak executive and/or weak legislature . . ., basic human rights of the common man may not easily find a potent protector" (p. 60). This generalisation is open to challenge if by "weak executive" is meant one which can be produced only by a wavering coalition in Parliament. In the recent General Election in the United Kingdom, the Liberal Party campaigned for a "People's Parliament" where they would have enough seats to influence the policies of either of the two major parties who might form a government. They claimed that this would make Parliament more representative of the people's wishes and so be more powerful in the protection of their rights.

To conclude, the book has a great deal of interesting, factual detail about the working of Parliament in India and the ways in which it has attempted to look after the rights, both economic and political, of all the people. If the argument that parliament ensures basic human rights is self-evident, the development of parliamentary machinery in India for this purpose is not so well known. This book provides the information.

## XVII. EXPRESSIONS IN PARLIAMENT, 1978

The following is a list of examples occurring in 1978 of expressions which have been allowed and disallowed in debate. Expressions in languages other than English are translated where this may succintly be done; in other instances the vernacular expression is used, with a translation appended. The Editors have excluded a number of instances submitted to them where an expression has been used of which the offensive implications appear to depend entirely on the context. Unless any other explanation is offered the expressions used normally refer to Members or their speeches.

**Allowed**

"cockeyed conservationists" (*Cayman Is Procs.* 6.9.78, p. 10)
"congestion of nonsense" (*Bermuda H. A. Hans*, 1978)
"deliberately misleading" (*W. A. Debates*, 1978, p. 1853)
"increased taxation by stealth and deceit" (*Aust. Sen. Hans*, 10.10.78, pp. 1247–39)
"pathetic" (*Bermuda H.A. Hans.*, 1978)
"stupid" (*Aust. Sen. Hans*, 19.10.78, p. 1476)
"subservient Senators" (*Aust. Sen. Hans*, 1.6.78, p. 2290)

**Disallowed**

"badtameez" (ill-mannered) (*R.S. Deb*, 8.12.78)
"bhrashtachari" (corrupt person) (*R.S. Deb.*, 15.5.78)
"bloody" (*Q'ld Hans*, 1978 p. 1773)
"buffoon" (*W.A. Debates*, 1978, p. 856)
"bully" (*U.P.V.S. Procs*, 20.4.78, p. 76)
"cheat" (*R.S. Deb*, 30.11.78)
"communist" (*Bermuda H.A. Hans*, 1978)
"congenital idiot" (*W.A. Debates*, 1978, p. 4204)
"conspirator" (*Aust. Sen. Hans*, 9.6.78, p. 2667)
"corrupt" (*Aust. Sen. Hans*, 24.11.78, p. 2537)
"crook, you're a" (*Q'ld Hans*, 1978 p. 1727)
"deceiving the people of Tasmania" (of the State Premier) (*Aust. Sen. Hans*, 5.4.78, p. 814)
"despicable" (*N.Z. Hans*, Vol. 420, p. 2885)
"dill" (*W.A. Debates*, 1978, p. 4990)
"dingo" (*Q'ld Hans*, 1978 p. 2190)
"double hypocrite" (*Aust. Sen. Hans.*, 6.4.78, p. 933)
"ethically punctilious, if only . . . (High Court Judge) were always as" (*Aust. Sen. Hans*, 22.2.78, p. 47)
"exercise their absolute power in a corrupt form" (*N.S.W.L.C.P.D.*, v. 127, p. 3694)
"fabricate some other lie" (*R.S. Deb.* 30.11.78)

"fascist" (*Bermuda H.A. Hans*, 1978)
"fraud and a fiddle" (*N.Z. Hans.*, Vol. 418, p. 1316)
"friend of Hitler" (*Aust. Sen. Hans.*, 22.2.78, p. 46)
"ganda" (nasty) (*R.S. Deb.*, 8.12.78)
"grubby little socialist" (*N.Z. Hans.*, Vol. 420, p. 2708)
"gutter, what . . . did they drag you out of" (*W.A. Debates*, 1978, p. 878)
"habit of talking nonsense" (*Punjab V.S. Debs*, 4.4.78)
"habitual liar" (*Aust. Sen. Hans.*, 28.9.78, p. 1041)
"hypocritical" (*Aust. Sen. Hans.*, 16.3.78, p. 664)
"incompetent" (*Punjab V.S. Debs*, 15.12.78)
"irresponsible" (*Punjab V.S. Debs*, 15.12.78)
"Janata Sarkar hatyari hai" (Janata government is a murderer) (*R.S. Deb*, 1.12.78)
"Joal Vidhan Sabha" (fake Assembly) (*W. Bengal Debs*, 13.3.79)
"liar, I want to expose him as a (*N.S.W.L.A. Hans*, 1976–78, p. 12224)
"loafer" (*U.P.V.S. Procs*, 17.3.78, p. 31)
"mannerless and mean fellow" (*R.S. Deb*, 15.5.78)
"mischievous political show pony" (*Aust. Sen. Hans.*, 24.8.78, pp. 375–6)
"misdirect the Royal Commission (*Aust. Sen. Hans.*, 23.8.78, p. 297)
"miserable rabbit" (*Aust. Sen. Hans.*, 1.6.76)
"most anti-black racist" (of a State Minister) (*Aust. Sen. Hans*, 24.5.78, p. 1732)
"No wonder most of his clients went broke when he was an accountant" (*N.S.W.L.A. Hans*, 1978, p. 517)
"pagal" (mad) (*R.S. Deb*, 9.8.78)
"power has certainly corrupted" (*Aust. Sen. Hans*, 6.4.78, p. 909)
"old humbug" (*Aust. Sen. Hans*, 2.6.78, p. 2346)
"outrageous lie" (*Aust. Sen. Hans*, 22.2.78, p. 45)
"question the sincerity" (of the Prime Minister) (*Aust. Sen. Hans*, 9.3.78, p. 513)
"racist" (*N.Z. Hans*, Vol. 417, p. 375)
"scabs" (*New Brunswick Debs*, c. 1757, 9.6.78)
"shut-up" (*Bermuda Hans*, 1978)
"slimed" (*Q'ld Hans*, 1978 p. 663)
"stuff-up" (*Vict L.A. Hans*, 8.12.78, p. 7467)
"stumbled from the Chamber" (*N.S.W.L.A. Hans*, 1976–78, p. 12683)
"tame Maori" (*NZ. Hans*, Vol. 421, p. 4166)
"traitor and murderer of the people" (*R.S. Deb.*, 1.12.78)
"truth, Member would not know the, if he saw it" (*N.Z. Hans*, Vol. 418, p.1276)
"unctuous twit" (*N.Z. Hans*, Vol. 421, p. 3981)
"unfit to be Leader of the House" (*Punjab V.S. Debs.*, 15.12.78)
"union basher" (*Aust. Sen. Hans*, 31.5.78, p. 2202)
"unmitigated liar" (*Victoria L.A. Hans*, Vol. 3336, p. 673)
"untrue" (*Punjab V.S. Debs.*, 8.5.78)
"white Idi Amin" (The Prime Minister) (*Aust. Sen. Hans*, 27.9.78, p. 981)
"worm" (*Bermuda H.A. Hans*, 1978)

## XIX. RULES AND LIST OF MEMBERS

# The Society of Clerks-at-the-Table in Commonwealth Parliaments

*Name*

1. The name of the Society is "The Society of Clerks-at-the-Table in Commonwealth Parliaments".

*Membership*

2. Any Parliamentary Official having such duties in any legislature of the Commonwealth as those of Clerk, Clerk-Assistant, Secretary, Assistant Secretary, Serjeant-at-Arms, Assistant Serjeant, Gentleman Usher of the Black Rod or Yeoman Usher, or any such Official retired, is eligible for Membership of the Society.

*Objects*

3. (*a*) The objects of the Society are:

(i) To provide a means by which the Parliamentary practice of the various Legislative Chambers of the Commonwealth may be made more accessible to Clerks-at-the-Table, or those having similar duties, in any such Legislature in the exercise of their professional duties;

(ii) to foster among Officers of Parliament a mutual interest in their duties, rights and privileges;

(iii) to publish annually a JOURNAL containing articles (supplied by or through the Clerk or Secretary of any such Legislature to the Officials) upon Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

(iv) to hold such meetings as may prove possible from time to time.

(*b*) It shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon these subjects which any Member may make use of, or not, as he may think fit.

*Subscription*

4. (*a*) There shall be one subscription payable to the Society in respect of each House of each Legislature which has one or more Members of the Society.

(*b*) The minimum subscription of each House shall be £15, payable not later than 1st January each year.

(*c*) Failure to make such payment shall make all Members in that House liable to forfeit membership.

(*d*) The annual subscription of a Member who has retired from parliamentary service shall be £1.25 payable not later than 1st January each year.

*List of Members*

5. A list of Members (with official designation and address) shall be published in each issue of the JOURNAL.

*Records of Service*

6. In order better to acquaint the Members with one another and in view of the difficulty in calling a full meeting of the Society on account of the great distances which separate Members, there shall be published in the JOURNAL from time to time, as space permits, a short biographical record of every Member. Details of changes or additions should be sent as soon as possible to the Officials.

*Journal*

7. One copy of every publication of the JOURNAL shall be issued free to each Member. The cost of any additional copies supplied to him or any other person shall be £3.50 a copy, post free.

*Administration*

8. (*a*) The Society shall have its office at the Palace of Westminster and its management shall be the responsibility of the Clerk of the Overseas Office, House of Commons, under the directions of the Clerks of the two Houses.

(*b*) There shall be two Officials of the Society, one appointed by the Clerk of the Parliaments, House of Lords, and one by the Clerk of the House of Commons, London; each Official shall be paid an annual salary, the amount of which shall be determined by the two Clerks. One of these Officials shall be primarily responsible for the editing of the JOURNAL.

*Account*

9. Authority is hereby given to the Clerk of the Overseas Office and the Officials of the Society to open a banking account in the name of the Society and to operate upon it, under their signature; and a statement of account, duly audited, and countersigned by the Clerks of the two Houses of Parliament at Westminster shall be circulated annually to the Members.

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## XX. MEMBERS' RECORDS OF SERVICE

**Note.**—**b.**=born; **ed.**=educated; **m.**=married; **s.**=son(s); **d.**=daughter(s).

*Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.*

**Bray, Allan Victor.**—Usher of the Black Rod and Clerk of the Record, Legislative Council, Victoria from [1]8. 11. 1978; [2]*b.* 9th December 1944; *m.* 1*s*, 1*d*; *ed.* Northcote High School; joined Victorian Public Service 1962; appointed to Parliamentary staff 1964; occupied various positions in the Department of the Legislative Assembly from 1964 until appointment as Usher.

**Jones, John A., O.B.E., MA.**—Former Clerk of Solomon Islands Parliament, currently Parliamentary Office Management Adviser, Gilbert Islands Legislature; *b.* 30th August 1921; *ed.* Blundell's School, Tiverton and Jesus College, Cambridge; *m*; RAF (Pilot) 1941–45; war service Europe and S. E. Asia; Colonial Administrative Service 1946; E. Nigeria 1946–55; Fed. Nigeria 1955–65; The Gambia 1965–68 (Permanent Secretary to Prime Minister and Secretary to Cabinet; Adviser to P.M.); Falkland Islands 1969–72 (Colonial Secretary and Acting Governor of Falkland Is. and Acting High Commissioner, British Antarctic Territory); Solomon Is. 1974–78 (Secretary, Public Service Commission; Directing Secretary, Independence Constitution Committee; Clerk of Parliament); Gilbert Is. (1979).

**Khaebana, J. Moriee.**—Clerk Assistant, National Assembly of Lesotho; *b.* 30th October 1939; *ed.* St. James and Intermediate Schools, Maseru; Ohlange Institute, Durban, Natal; Huddersfield College of Technology, Yorkshire, England; *m*; 1*s.* and 3*d*; joined the Legislative Council as Clerical Officer on 25th January 1960; appointed Senior Clerical Officer in the New National Assembly in 1966; Table Clerk and Hon. Speaker's Private Secretary 1970; and Clerk Assistant since 1st October 1976.

**Pakose, Frank I. P.**—Second Clerk Assistant, National Assembly, Lesotho; *b.* 8. 11. 1926; *ed.* Mariazell Primary and Secondary Schools; St. Francis College, Marianhill; University of South Africa; *m*; 5*d*; teacher for 16 years in secondary schools in Lesotho, Natal and Uganda; Inspector of Schools, Lesotho, Jan. 1968–Mar. 1973; Acting Education Officer, Apr. 1973–Mar. 1974; Education Officer, Apr. 1974–Mar. 1975; Senior Education Officer, Apr. 1975–Feb. 1979; joined National Assembly on 7th March 1979 as Clerk Assistant II.

**Pitso, Peter Lefu.**—Clerk, Lesotho National Assembly; *b.* 15th March 1930, Ramabanta's, Lesotho; *ed.* Roma College; University of South Africa, University of Ottawa; *m*; 1*s* and 2*d*; Secondary School teacher 1959–1966; joined Lesotho Civil Service as Inspector of schools in 1966; Education Officer 1967–1972; Education Planner 1972–74 following completion of a Course on Educational Planning held at the IIEP in Paris; Permanent Secretary for Education 1974–76; Permanent Secretary for Rural Development 1976–79; Clerk to the National Assembly since February 1979.

**Venkataswamy, T.**—Secretary, Karnataka Legislature; *b.* 1st July 1923; *m*; 2*s*, 1*d*; schooling in Bangalore; graduated in Arts subjects from St. Joseph's College; obtained B.L. Degree in Madras Law College; entered the Bar at Bangalore soon after graduation; joined Subordinate Judicial Service in the erstwhile Mysore State in 1952; served in various districts as a Judicial Officer on promotion as District and Sessions Judge; served as Additional Law Secretary to Government of Karnataka and joined Legislature Secretariat on 1st March 1976 as Special Officer; became Secretary 1st July 1976.

# XXIII. INDEX TO VOLUME XLVII

## ABBREVIATIONS

(Art) = Article in which information relating to several territories is collated.
(Com.) = House of Commons.