The Table

BEING

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

EDITED BY
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VOLUME XLVIII
for 1980

ISBN 0 904979 05 9

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

1980

Price £4.50

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	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙	⊙
	Ontario		⊙	⊙	⊙	⊙	⊙				⊙	⊙	⊙
	Quebec		⊙	⊙	⊙	⊙	⊙				⊙	⊙	⊙
	Nova Scotia		⊙	⊙	⊙								
	New Brunswick			⊙	⊙	⊙							
	Manitoba			⊙	⊙	⊙	⊙						
	British Columbia	⊙	⊙	⊙	⊙								
	Prince Edward Island		⊙	⊙	⊙						⊙	⊙	
	Saskatchewan		⊙	⊙	⊙	⊙						⊙	⊙
	Alberta		⊙	⊙	⊙						⊙	⊙	
	Newfoundland			⊙	⊙	⊙	⊙						
	Northwest Territories	⊙	⊙			⊙					⊙		
	Yukon			⊙	⊙						⊙	⊙	
AUSTRALIAN COMMONWEALTH	COMMONWEALTH PARLIAMENT		⊙	⊙	⊙	⊙	⊙		⊙	⊙	⊙	⊙	⊙
	New South Wales		⊙	⊙					⊙	⊙	⊙	⊙	⊙
	Queensland			⊙	⊙				⊙	⊙	⊙	⊙	⊙
	South Australia		⊙	⊙			⊙	⊙	⊙	⊙	⊙	⊙	
	Tasmania			⊙	⊙		⊙	⊙		⊙	⊙	⊙	⊙
	Victoria		⊙	⊙	⊙	⊙			⊙	⊙	⊙	⊙	⊙
	Western Australia		⊙	⊙	⊙	⊙		⊙	⊙	⊙	⊙	⊙	
	Northern Territory		⊙		⊙	⊙	⊙	⊙	⊙			⊙	
	PAPUA NEW GUINEA		⊙	⊙		⊙	⊙		⊙	⊙		⊙	
	NEW ZEALAND					⊙	⊙	⊙	⊙	⊙	⊙	⊙	
	WESTERN SAMOA						⊙	⊙	⊙		⊙	⊙	⊙
	SRI LANKA	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
INDIA	CENTRAL LEGISLATURE		⊙	⊙	⊙	⊙			⊙	⊙		⊙	⊙
	Andhra Pradesh		⊙	⊙			⊙	⊙				⊙	⊙
	Bihar		⊙	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙
	Gujarat		⊙	⊙	⊙				⊙	⊙		⊙	⊙
	Haryana	*No settled practice*											
	Kerala			⊙	⊙			⊙	⊙		⊙	⊙	⊙
	Madhya Pradesh		⊙	⊙	⊙			⊙	⊙			⊙	
	Tamil Nadu	⊙	⊙	⊙	⊙			⊙	⊙	⊙			⊙
	Maharashtra		⊙	⊙	⊙			⊙	⊙	⊙		⊙	⊙
	Karnataka		⊙	⊙	⊙	⊙						⊙	
	Orissa		⊙	⊙	⊙				⊙	⊙			
	Punjab			⊙	⊙	⊙	⊙					⊙	⊙
	Rajasthan		⊙	⊙	⊙				⊙	⊙	⊙		
	Uttar Pradesh			⊙	⊙	⊙			⊙	⊙			⊙
	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	*No settled practice*											
	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	⊙	⊙	⊙	⊙	⊙	⊙	⊙			⊙	⊙	⊙

CONTENTS

USUAL SESSION MONTHS OF LEGISLATURES - - *Back of title page*

I. **Editorial**
Retirement Notices
Sir Richard Barlas, K.C.B., O.B.E. - - - 7
Alistair Fraser - - - - - - 10
J. R. Odgers, C.B.E. - - - - - 12
J. W. Hull - - - - - - 13
G. B. Edwards - - - - - - 14
Clerks become Members, and vice-versa - - - 14

II. THE SPEAKER IN CANADA AND AUSTRALIA. BY PROFESSOR W. F. DAWSON - - - - - - - 15

III. HOUSE OF COMMONS SELECT COMMITTEES RELATED TO GOVERNMENT DEPARTMENTS. BY R. S. LANKESTER - - - 29

IV. AMENDMENTS TO THE STANDING ORDERS IN NEW ZEALAND. BY D. G. MCGEE - - - - - - 35

V. DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT. BY F. M. A. HAWKINGS - - - - - - - 53

VI. THE COMMITTEE ON PETITIONS OF THE RAJYA SABHA IN THE PARLIAMENT OF INDIA. BY S. S. BHALERAO - - - 60

VII. THE ADMINISTRATIVE ORGANISATION OF THE HOUSE OF COMMONS. BY MICHAEL LAWRENCE - - - - 68

VIII. DETERMINATION OF PARLIAMENTARY SALARIES AND ALLOWANCES — THE OPERATIONS OF THE AUSTRALIAN REMUNERATION TRIBUNAL. BY D. M. BLAKE - - - - 76

IX. DEVOLUTION WITHIN THE UNITED KINGDOM. BY G. CUBIE - 80

X. DIVISIONS AND THE CASE OF THE UNSEEN MEMBER. BY JOHN H. CAMPBELL - - - - - - 85

XI. TOPICS FOR THE TROPICS. BY F. G. ALLEN 87

XII. PARLIAMENT IN THE PUBLIC EYE. BY L. A. HOFT 91

XIII. PRESENTATION OF A CLOCK TO THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS AND OF GAVELS TO THE HOUSES OF ASSEMBLY OF TUVALU AND KIRIBATI. BY J. H. WILLCOX - 93

XIV. PUBLIC PETITIONS: ANSWERS TO THE QUESTIONNAIRE - 98

XV. APPLICATIONS OF PRIVILEGE - - - - - 121

XVI. MISCELLANEOUS NOTES - - - - - - 133

1. *Constitutional*

Saskatchewan: Members' interests - - - 133

Northern Territory: Self-determination - - - 133

India,

Length of term of the Lok Sabha - - - 135

Privileges of Parliament - - - - 135

Bermuda: Members' and candidates' interests - 136

Guyana: Length of Parliament - - - 136

2. *Electoral*

Quebec,

Electoral law revision - - - - 136

Electoral Commission - - - - 136

Northwest Territories: Electoral redistribution and changes in electoral law - - - - 137

New South Wales: Changes in electoral practices - 137

Tasmania: Invalid elections - - - - 138

New Zealand: Electoral irregularities - - - 138

3. *Standing Orders*

House of Commons: Friday sittings - - 140

Isle of Man: Changes in Standing Orders - - 140

Canada: Senate: Senator may voluntarily appear before a Commons Committee - - - 140

Ontario: Standing Orders revision - - - 140
Northwest Territories: Changes in the Rules - 141
Australia: Senate,
Regulations and Ordinances Committee - - 141
Notices of disallowance, etc. - - - - 142
Victoria: Legislative Assembly,
Omission of Committee stage - - - - 143
Member's dissent recorded - - - - 143
Kenya: Sittings of the House - - - - 143

4. *Procedure*
Australia,
Senate: Reference of Bills to Legislative and General Purposes Committees - - - - - 143
House of Representatives,
The sub judice rule - - - - - 144
Introduction of Estimates Committees - - 146
Subordinate legislation – Disallowance - - 148
New South Wales: Legislative Assembly: Procedure on Public Bills - - - - - 149

5. *Accommodation*
Australia: New and Permanent Parliament House - 149

6. *General*
House of Lords: Photographic record of Peers and staff of the House - - - - - 150
Australia: Additional Security Arrangements at Parliament House, Canberra - - - - 151
Fiji: Yaqona Oasis of the Parliament - - - 152

7. *Emoluments*
House of Lords: Peers' Expenses - - - 154
Westminster: Ministers' and Members' remuneration 154
Ontario: Members' pay and allowances - - 154
Saskatchewan: Members' pay and allowances - - 155
New South Wales:
Salaries and allowances for members, Ministers and office holders - - - - - 155
Compensation to non-continuing Members of the Legislative Council - - - - - 155
New Zealand: Parliamentary Salaries and Allowances 156
India: Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 1979 - - 157

XVII. REVIEWS - - - - - - - 158

XVIII. EXPRESSIONS IN PARLIAMENT, 1979 - - - - 162

XIX. RULES AND LIST OF MEMBERS - - - - - 165

XX. INDEX TO VOLUME XLVIII - - - - - 178

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I. EDITORIAL

Last year we included in the Journal an article dealing with the recommendations of the Westminster House of Commons Procedure Committee on a new Committee structure. This year we have included a follow-up article on the first year's operation of the new system. The development of Committee systems is a subject which is of particular interest to members of the Society and the Editors are aware of a number of Parliaments where considerable developments are taking place in this field. Although recent volumes of the Table have included random articles on committee developments, the Editors hope that next year the Questionnaire will be directed to this matter and so draw together in one volume all present Committee systems.

One editorial change which we have made to the present volume is that the membership list at the end of the Journal now lists countries in alphabetical order. We hope that this re-organisation of the list will be appreciated by members and make it easier for them when referring to the Society's membership.

For the first time in many, many years there are no members' records of service listed at the end of the Journal. Members are reminded that it is both useful and interesting to other members if some information is provided about them when they first join the Society.

Sir Richard Barlas, K.C.B., O.B.E.—Having served as Clerk of the House of Commons for just over three years, Sir Richard Barlas retired on 31st July 1979.

He was the first of those who joined the Clerk's Department after the Second World War, having served with distinction in the Royal Air Force. Had it not been for the war, it is possible that the House might never have enjoyed the benefit of his service; a scholar both at West-

minster and Christ Church, Oxford, the young Barlas seemed clearly destined for an academic career, and was already established before 1939 as a master at Denstone College, Staffordshire. Fortunately for Parliament, he did not choose on leaving the forces to resume his former life, but instead joined the staff of the House.

In his early years as a Clerk he followed the usual course of circulation from one office to the other in the Clerk's Department; but even at that stage there was no doubt in the minds of his contemporaries that his energy and flair for organisation, combined with a prodigious memory and more than a man's usual share of robust common sense, marked him out preeminently for advancement. The most willing of willing horses, who never shirked any task imposed upon him, he nevertheless at this period found time for legal studies, and was called to the Bar in 1949 after having gained a first-class degree in constitutional law. These studies contributed in no small measure to his acquisition of an almost unexampled knowledge of the law of parliamentary privilege, to which solid witness was borne by his contributions to successive editions of such textbooks as Halsbury's Laws of England and, of course, Erskine May.

At each turn of his career he was assigned tasks which in earlier times would have expected to have been discharged by Clerks considerably senior. One of the most notable among these was the clerkship of the Select Committee on Procedure of 1959, which conducted the first wide-ranging and unrestricted review of the procedure of the House since 1946. His appointment later that year as Fourth Clerk at the Table came therefore as no surprise to his colleagues; nor did his subsequent elevation to Second Clerk Assistant at the beginning of 1962. Despite the shortness of his tenure of the Fourth Clerkship, he was able during those two years to lay the foundation of his numerous and lasting friendships with Clerks in Parliaments throughout the Commonwealth.

During the earlier part of his period as Second Clerk Assistant he was mainly concerned, as head of the Table Office, with the process of Questions to Ministers, which was the subject of two separate inquiries by the Procedure Committee in1964 and 1967. Barlas was a masterly performer before Select Committees, and the evidence he gave to this and many other committees who sought advice from him remains readable and thought-provoking long after the minutiae of procedure with which their inquiries dealt have been superseded. In 1967, although remaining Second Clerk Assistant, he ceased for the time being his duties at the Table in order to occupy a newly-created co-ordinating post of Clerk of Committees. This was no matter of giving general supervision to an already smoothly-running process; Britain's entry into the European Economic Community required additional committtee machinery to be provided whereby the mass of documentation proceeding from Brussels could be scrutinised on behalf of the House; this in its train entailed an increase of staff, and provision of accommodation for them outside the already overcrowded confines of the Palace of Westminster. Barlas took these organisational

upheavals in his stride, and there could not have been a better overseer to direct them.

In 1974 he became Clerk Assistant, with its then concomitant position of Chairman of the Staff Board, a body which exercised control over establishment matters in relation to all Departments of the House. This was the period of the Compton Review and the Bottomley Report, described in an article in an earlier Volume[1], and the Staff Board were deeply involved in the preparation of material for both enquiries. Comment was made, in another article in the same Volume[2], of the role played by the previous Clerk, Sir David Lidderdale, in these events; the contribution made by Barlas to his sucessful performance of it was immeasurable.

On Sir David's retirement in 1976 Barlas succeeded to the Clerkship, and one of the first tasks which it fell to him to perform was the organisation of the outstandingly successful Conference of Commonwealth Speakers at Westminster in the summer of that year. He was always a notable host to overseas visitors, and his zest in performing this pleasurable duty was fully shared by Lady Barlas. As far as the House itself was concerned, however, the going during Sir Richard's three years as Clerk was not uniformly smooth; until April 1979 a minority Government was in office, with all the difficulties to Chair and Table that this entails. Sir Richard's distinctive achievement was to draw all members of his Department personally into the process of resolving them. Every one of the staff was fully aware of his inexhaustible interest in matters both of principle and detail, and he was always entirely approachable; as a result, the Clerk's Department by the time of his retirement was functioning as a team, to a degree that it is difficult to recall from any previous epoch. Moreover, the time he spent in serving the interests of his colleagues never seemed to diminish his constant availability to Members. He had a love of discussion which, added to a basic and instinctive sociability, gave him an easier and friendlier relationship with Members than had been enjoyed by many of his predecessors.

Shortly before his retirement, tributes were paid to him in the House by the Leader of the House (Mr. Norman St. John-Stevas), the Leader of the Opposition (Mr. James Callaghan) and other Members. In the course of their speeches both Leaders referred to an incident in 1892 when Sir Richard's grandfather John, a poet and an early member of the Social Democratic Federation, had discharged a pistol in the direction of the Palace of Westminster to show his contempt for the institution. The story had a happy ending, in that John Barlas was bailed from prison by Mr. Oscar Wilde; and the debt for any damage to the fabric which he may then have incurred has been more than adequately redeemed by his grandson's outstanding services to this and many other Parliaments.

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1. XLIV, pp. 99–103.
2. *Ibid.*, pp. 13–14.

Alistair Fraser—After twelve years as Clerk of the Canadian House of Commons, Mr. Alistair Fraser retired on 31st August 1979.

Mr. Fraser began his education at elementary and secondary schools in Montreal and Vancouver Island. He received his Bachelor of Arts degree from McGill University, his Bachelor of Law degree from the University of British Columbia and was admitted to the Bar of British Columbia in 1951. During World War II he served in the Royal Canadian Artillery and was discharged with the rank of Lieutenant. From 1952, Mr. Fraser held a number of positions in association with both Houses of Parliament. He was appointed Clerk Assistant of the House of Commons in 1966 and became Clerk on 6th August 1967. His time in that office was one of considerable expansion in the administration of the House and development of its procedures.

On opening day of the 31st Parliament, Mr Speaker Jerome and leaders of all parties paid tribute to the distinguished manner in which Mr. Fraser had presided over these changes.

Working closely with members of the Standing Committee on Management and Members' Services, Mr. Fraser was responsible for the increased staff available to Members of Parliament and their committees, and for the installation of a computerized system for the printing of Parliamentary papers.

Two of the most prestigious scholarships in Canada have been put into effect under Mr. Fraser's guidance. Young adults are brought into contact with Parliament, as a number of graduates of Canadian universities are selected each year to work closely with members and staff of the House of Commons as Parliamentary Interns. In a recently established program, moreover, younger students from across the country are chosen to be Pages of the House of Commons while engaging in their first year of studies at one of the two universities in Ottawa.

During the 30th Parliament, the House decided upon a change of lasting significance — the introduction of television broadcasting to the daily proceedings The Clerk himself was largely responsible for overseeing the physical installation of sophisticated equipment and for ensuring that the Speaker's guidelines for implementation were strictly followed. As the Prime Minister noted in a letter accepting his resignation, Mr. Fraser has every reason to be proud of this signal service to the institution of Parliament and the people it serves.

Even with all this, Mr. Fraser did not lose sight of a Clerk's most valuable service to the institution of Parliament. His expertise in matters of procedure was recognized by all members of the House as well as by the Speaker who acknowledged the extent to which he and his predecessors were beneficiaries of such excellent counsel. Indeed Mr. Fraser's concern for the practices and precedents of the Canadian House of Commons resulted in the publication shortly before his retirement of the fifth edition of Beauchesne's *Parliamentary Rules and Forms*. It was noted by a member of

the House that "the straightforwardness of the new work has gone a long way toward unravelling the mysteries of Parliamentary business for us all".

Tribute in the House pointed to these outstanding accomplishments. After announcing Mr. Fraser's retirement, the Speaker added:

"May I say that since I have been the Speaker of this House and for some time prior to that I and predecessors of mine were the beneficiaries of the excellent counsel and advice of Mr. Alistair Fraser, who distinguished himself as Clerk of the House of Commons and, finally, just as he was leaving office, I think put a fitting stroke into the history book of our procedures and practices by being a co-author of the most recent revision of Beauchesne's Parliamentary Procedures. It is an excellent work and stands as a tribute to him.

I felt at this moment as we change Clerks of the House of Commons that the House would want to join me in paying tribute to Alistair Fraser for all of his great years of excellent and faithful service to the House of Commons, and at the same time wish Dr. Koester, the new Clerk of the House of Commons, the same kind of success with which Mr. Fraser distinguished himself."

The Right Honourable Joe Clark (Prime Minister) spoke as follows:

"I think it is appropriate that we take a moment now to say a few words in tribute to the outstanding service over 12 years of Alistair Fraser as Clerk of the House of Commons .... Each one of us, whenever we came here, who had the opportunity to serve with Mr. Fraser have cause to regret his resignation because he has been not only attentive to his duties but tireless in the discharge of those duties toward all members of the House of Commons. He is responsible to a large extent for the structure of the House of Commons as we know it today. Morever, he looked after programs for parliamentary trainees, he extended more facilities to members, he arranged for the broadcasting of our debates, he supervised major changes to the standing orders and participated in the drafting of the new edition of Beauchesne's *Parliamentary Rules and Forms*, which will be for us a valuable guide for many years. I want also to express my personal recognition of his courtesy and his unfailing attention to all matters on which I have consulted him over my years in the House."

The Right Honourable Pierre Trudeau (Leader of the Opposition) offered his remarks of appreciation by saying, in part:

"When paying homage to someone, one often speaks of "boundless devotion" and that expression has been used so often as to become almost meaningless. Yet I believe it to be an accurate description of the way in which Mr. Fraser served the House of Commons as an institution and its members as individuals. He has indeed shown boundless devotion to a task whose origin dates back to the British parliament at the beginning of the 14th century.

Those who accept the position of Clerk of the House of Commons are not allowed to display the range of opinions and emotions which so delights the heart of a politician. Clerks are not allowed to be cantankerous, exasperated or belittling. Rather they are teachers, conciliators and friends. They do not think of self but bend their will and their stamina to making the House of Commons work. They help each member, regardless of seniority or status, to fit his own aims and responsibilities within the parliamentary framework, bound as it is by long tradition and a maze of complicated rules and procedures.

Mr. Speaker, the description I have just given is in fact a portrait of Mr. Fraser. In 12 years, he himself became an institution in this House. Apart from the pressures inherent in his position, he was in a sense the key to some revolutionary changes which took place in the workings of the House of Commons and the services to its members. What comes to

mind in particular is the creation of the parliamentary trainees group, which benefitted all parties, the growth in committee staff, the reorganization of the role of the pages of this House, who serve us all, the implementation of the broadcasting service through which our proceedings are broadcast live to the Canadian public.

Mr. Fraser takes with him a unique background and a parliamentary insight which I hope, indeed urge, that he share with others in the productive years which lie ahead of him. He also takes with him the gratitude and affection of members of the House."

After further tributes, it was unanimously agreed by the House—

"That this House, desiring to record its deep appreciation of the distinguished and faithful service of Alistair Fraser, Esquire, B.A., LL.B., as Clerk of the House of Commons, designates him an Honourary Officer of the House of Commons with an entree to the Chamber and a seat at the Table on ceremonial occasions."

J. R. Odgers, C.B.E.—On 9th August 1979, Mr James Rowland Odgers retired from the Clerkship of the Australian Senate.

At retirement, Jim Odgers had served the Australian Parliament for 42 years. He first came to Parliament in 1937 as a clerk and typist on the Parliamentary Reporting Staff, and, after a short term in 1939 with the Joint House Department, commenced his long association with the Senate, as Clerk of Papers and Accountant, in 1942. In 1950 he became a Chamber officer when he was promoted to the position of Usher of the Black Rod. It was whilst he was Black Rod that, in 1953, he completed the first of five editions of his work *Australian Senate Practice*, a work that has inscribed him in the living memory of the Senate. It was also, as Black Rod that on 15th February 1954, he escorted Her Majesty the Queen to open the Third Session of the Twentieth Parliament, the first occasion on which a ruling sovereign had opened the Australian Parliament. In 1955, as Second Clerk-Assistant, he was granted a three month Smith-Mundt leader grant to study the functions and procedures of the American Senate and its Committees. Soon after his return from America he was promoted to Clerk-Assistant and in that capacity, in 1956, tabled a report on his American experience.

The report was the forerunner of two eventual major developments in the Australian Parliament:

(a) the Senate Standing Committee system; and

(b) the Legislative Research Service of the Parliamentary Library.

In 1965, Jim Odgers was promoted to be the eighth Clerk of the Senate, a position he was to hold for fourteen years. During that period he saw both the Senate Standing Committee system and the Legislative Research Service of the Parliamentary Library instituted. Under his direction as Clerk, the Committee system was so firmly established that it became embodied in the Standing Orders. In the 1970's, as Clerk, Jim Odgers saw two double dissolutions of the Parliament and was joint Clerk, with his counterpart in the House of Representatives, of the only joint sitting of the

Senate and the House of Representatives to be held since Federation. Also during his tenure of office, he served on a number of delegations to the Inter-Parliamentary Union, attended meetings of the Association of Secretaries-General of Parliament and was elected to the Executive of that body.

In 1968, in recognition of his services to Parliament, he was made a Commander of the British Empire.

On 8 June 1979, the retiring Clerk's last day in the Chamber, the following motion, moved by the Leader of the Government in the Senate, Senator Carrick, was carried, with supporting speeches from Mr. President and Senators on both sides of the Chamber:

"That, on the occasion of the retirement of James Rowland Odgers, C.B.E., from the position of Clerk of the Senate, the Senate places on record its appreciation of the long and valuable service rendered by him to the Commonwealth Parliament, and conveys to him good wishes for many happy years of retirement."

In moving the motion Senator Carrick said, in part:

"All honourable Senators will have experienced the professional advice and assistance of Mr Odgers and of the other officers he has so ably led as Clerk of this Senate. He has gained the distinction of becoming recognised as something of an authority on parliamentary practice in the English-speaking world . . . . in its own way, the name Odgers has taken its place, with us, in the context that the Erskine May image holds in the minds of students of the Westminster system of parliamentary democracy."

The Leader of the Opposition in the Senate, Senator the Hon. K. S. Wriedt, followed Senator Carrick and said, in part:

"I would perhaps go one stage further than saying that Jim Odgers as we know him, is something of an authority. I think it is fair to say that he is an authority in the area of procedure, particularly in this chamber, and we have been indebted to him over the years. The quite monumental work that he has prepared and updated, *Australian Senate Practice*, is a unique work. It is a curious work, I suppose, because for us in this chamber it is a mixture of the Bible, and the Koran, and the thoughts of Chairman Mao I suppose could be thrown in as well. That might account for the red cover."

Mr President, Senator the Honourable Sir Condor Laucke, added, in part:

"He is indeed a man of absolute integrity, a man of outstanding ability and judgment, who has been completely dedicated to the wellbeing and strengthening of the institution of the Parliament and of the Senate in particular . . . . I wish to express my sincere thanks to him for his quite magnificent assistance to me in my office as President. He is indeed a good and loyal friend, tried and true, to whom, together with his good wife Jean, I tender on behalf of all honourable Senators best wishes for health and happiness in his retirement."

J. W. Hull—After serving the Parliament of South Australia for more than 24 years, Mr. J. W. Hull retired as Clerk of the Legislative Council on 2nd December, 1979. He joined the House of Assembly staff as Clerk

of Papers and Records in 1955, after serving in various government departments. In 1966 he was appointed Second Clerk-Assistant, and in 1973 he was appointed Clerk-Assistant and Serjeant-at-Arms. In 1977 he transferred to the Legislative Council as Clerk-Assistant and Gentleman Usher of the Black Rod and became Clerk of the Legislative Council in 1978. He attended Conferences of Australasian Presiding Officers and Clerks in 1977 and 1979. He was also Secretary of the Commonwealth Parliamentary Association (South Australian Branch) in 1978-79.

G. B. Edwards—Mr. Gilbert Edwards, Clerk of the Legislative Council of Tasmania, retired on 30th June, 1979. He was Third Clerk-at-the-Table 1963-1965, Clerk Assistant and Usher of the Black Rod 1965-1971 and Clerk of the Council from 1971 until his retirement.

Clerks become Members, and vice-versa—In Volumes XLV and XLVI of The Table we published the names of Clerks who have either been, or have become, Members. A few more names have now been drawn to our attention and we list them here:—

Clarke, Charles, Member for Centre Wellington and West Wellington, Ontario 1871–1891; Speaker of the Legislative Assembly, Ontario, 1880–1887; Clerk of the Legislative Assembly, Ontario, 1892–1896.

Jones, John, Member of the Falkland Islands Legislative Council, 1969–1972; Clerk of the Solomon Islands Parliament, 1977–1978.

Lewis, Major Alex, Member for Northeast Toronto, Seat "A", 1920–1926; Clerk of the Legislative Assembly, Ontario, 1926–1955.

Pepys, William John, A Clerk in the House of Lords, 1854–1863; Member of the House of Lords, 1863–1881.

Shaw Lefevre, Sir John, Member of the House of Commons, 1833; Clerk Assistant, House of Lords, 1848–1855; Clerk of the Parliaments, 1855–1875.

II. THE SPEAKER IN CANADA AND AUSTRALIA

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On 24th November, 1978 the Australian House of Representatives rose for its normal Christmas adjournment. In his traditional valedictory remarks, Mr. Speaker Snedden repeated what he had said when elected to the Chair earlier in the year and strongly advocated the adoption of "the Westminster system" of Speakership in Australia. It is not entirely clear from either set of remarks exactly what the Speaker had in mind. Besides using the general term "Westminster system", Sir Billie Snedden also specified continuity in office (thus ensuring impartiality) and separation of the Speaker from party activity, and all forms of business or professional activity outside Parliament.

It is interesting that this same concept has been vainly sought for a number of years in Canada also. Of all the countries in the Commonwealth these two (and presumably New Zealand as well) would seem to be the most logical places to find the Westminster model flourishing. Both countries enjoyed a relatively peaceful colonial period of constitutional development. Both were overwhelmingly British in their parliamentary inheritance, and came to independence peacefully with an unquestioned acceptance of British governmental traditions. Such changes as might have been expected as a result of local conditions should have been similar in the two countries also, as both were geographically huge with a federal system and a sparse population. The only unique feature of the Canadian system is the problem of language which has had some marginal effect over the years, but in terms of the Speaker, has given way whenever a government has deemed it desirable. In spite of the apparent desire in both countries to achieve a replica of Westminster, neither has yet done so. What is perhaps more surprising, Australia and Canada in diverging from the British have developed a Speakership differing markedly from each other.

There is little doubt that Mr. Speaker Snedden referred to two of the major facets of the Westminster system – continuity in office and separation of the Speaker from party activity.[1] In Britain, of course, these two characteristics are absolutes. The decades since the second world war, with the alternation of governments, have firmly established the tradition that a Speaker is re-elected to office until he himself decides to retire. While a vacancy in the office is filled from the party in power, care is taken to ensure that the nominee will be acceptable to the House as a whole by widespread informal consultation before a nomination takes place.[2] The tradition of continuity is, of course, made easier by other sub-

ordinate practices which have been generally followed over the years. Although no one doubts that a Speaker is originally the nominee of the government, tradition requires that he be nominated and seconded from the back-benches. If possible, the nomination should also be put forward by members of different parties. Perhaps more important to the permanence of the Speaker, is the generally held belief that the nominee should have been a relatively inconspicuous member of the House. In recent years this tradition has been broken more than once. While the House has commonly overlooked the holding of minor ministerial posts some time in the past, the translation of Sir Harry Hylton-Foster directly from the Ministerial benches to the Chair was a sharp break with tradition. Even more striking was the selection of Mr. Selwyn Lloyd as a candidate. He had held very senior Cabinet posts only a few years before and was a leading figure in his party.

The separation of the Speaker in England from party activity is also striking. As mentioned previously, it has been customary to select members who have not distinguished themselves in the controversial debates in the House. Once elected the Speaker severs permanently all ties with his own party. He is commonly removed from the House of Commons at the end of his term by the grant of a peerage, and if active in the House of Lords is expected to occupy the cross benches.[3] The most important feature of the Speaker's impartiality from both a practical and a symbolic point of view is his conduct during general elections. It is one of the fictions of British government that a Speaker is not opposed in a general election. In fact, since 1935 the Speaker has been opposed by either formal party candidates or by independents in virtually every election. Nevertheless the Speaker while running for re-election takes no part in the constituency contest. He makes no speeches, running only as the Speaker seeking re-election.

While all of these traditions and practices are not strictly necessary, and indeed are violated by the British themselves from time to time, nevertheless, their cumulative weight has produced in England a Speakership which it is difficult to emulate. The British have achieved a Speaker who is accepted as being independent of any party, who can be given considerable discretionary power, and who has the confidence and respect of every member of the House. It is presumably this type of Speaker that Mr. Speaker Snedden and others would like to see adopted in Australia and Canada.

Status of the Speaker

Clearly in Australia, the Speaker has never had the recognized status that he has traditionally had in England. The formal order of precedence is of little significance, although soon after the war the Speaker moved up several places. More useful, in evaluating the position of the Speaker, is to examine what the members themselves think of the position. The Speakership appears to have been given to Sir Frederick Holder in 1901 as a

consolation prize for not being appointed to the Cabinet[4] and his successor Dr. Carty Salmon was mentioned as a potential minister as well.[5] A few years later a member referred to the "degeneration" of William A. Watt from State Premier to "the status of a constable",[6] while the election of Sir Littleton Groom was characterized as a "slight" on the former Attorney General and another member suggested the move was downward.[7] Other remarks have also been made generally referring to the Prime Minister's wish to dispose of an awkward colleague. Indeed the number of Speakers who have had extensive political careers before being elected to the Chair would indicate that Prime Ministers have regarded that post as a method of retirement rather than a superior career position.

The Canadian experience is somewhat different. *Hansard* may be searched in vain for any of the slighting remarks made in the Australian House. While members of the Opposition may refer to the candidates political background, no attempt has ever been made to suggest that the Chair is not an honour worthy of any incumbent. Opportunity has indeed been present, particularly in 1921 when Lemieux was nominated. As a long serving member with some ten years experience in the Cabinet, he might well have expected a further Cabinet appointment when his party returned to power. Instead, he moved to the Chair, but with none of the condescending remarks that have accompanied such moves in Australia. Other Canadian Speakers have not had the ministerial background of Mr. Lemieux but could easily be considered to have a claim on a Cabinet post. These (such as Mr. Michener) were also elected to the Chair with no suggestion that they had been insulted.

One feature of the Canadian Speaker that has not appeared in Australia is the feeling up to recent times that the Chair is simply one rung on the political promotional ladder. At least two early Speakers, Kirkpatrick and White, considered that their occupancy of the Chair entitled them to a seat in the Cabinet on retirement, although the Prime Minister did not agree. However, some seven Speakers have made the transition from Chair to Cabinet, two of them in the middle of their terms of office. More recently it would seem unlikely that the Speaker has seriously contemplated a move to the Cabinet. There was much discussion that Mr. Beaudoin might become a continuing Speaker until the unfortunate events of the pipeline debate destroyed his reputation. Mr. Michener also might well have been continued indefinitely had he not lost his seat in the election of 1962. More significantly, Mr. Lamoureux approached the Westminster model by twice running for re-election as an independent, and being returned to the Chair for three Parliaments. At the same time, it should be noted that while many Canadian Speakers have left active politics after their term in the Chair a significant number have simply returned to the back benches as private members.

The Man Selected

There are few generalities that can be made about the personal chara-

cteristics of Australian Speakers. None has been extraordinarily old or young at the time of election. In the same way the House has seemed to prefer experienced members who have had a decade or more in the service of the House. Certainly no professional qualifications beyond membership in the House appears necessary. Unlike other parliaments, few lawyers have been elected to the Chair, reflecting undoubtedly the relatively small number of lawyers in the House as a whole.

The typical Canadian Speaker is nearly as difficult to find as the Australian. Long service in the House is not a requisite. While Mr. Sproule had been a member for thirty-three years before his selection, Mr. Michener had served only four years in Ottawa. Lawyers have certainly been over represented with over two thirds of the incumbents being drawn from that profession.

Most noticeable in Canada, of course, is the traditional alternation of French and English Speakers. As in Australia, there has been no attempt made to provide a balanced geographical representation but the question of language has meant that Quebec has provided a disproportionate number of Speakers over the years. Recent experience would indicate that even this may be changing as Mr. MacNaughton was a bilingual English Quebec member while Mr. Lamoureux was a bilingual French member from Ontario. It would appear that in future, competence in both languages might well be a more important qualification for office than racial origin or geography.

What is most noticeable is that a strong partisan political record is easily accepted in an Australian Speaker. Sir Frederick Holder began the custom in 1901 when he was elected to the Chair having been a State Premier and reputedly barely passed over for a Cabinet post. Similarly Watt had been a State Premier and a Federal Minister and Sir Littleton Groom had held innumerable federal cabinet posts. Most notable perhaps is Mr. Speaker Snedden himself. Before his election to the Chair he had held several Cabinet portfolios among them Attorney General and Treasurer. In addition he had been Government House Leader for five years, Leader of the Opposition for three and Leader of the Liberal Party. Rather than disqualifying him, it has even been suggested that such experience was an asset to an occupant of the Chair.[8]

Strong partisanship has never been a bar to being elected Speaker in Canada although it has rarely been found in the institutionalized form that appears in Australia. Only two Speakers in Canada have ever held a federal ministerial post before their election and none has ever been a provincial premier.

While political experience is occasionally considered worthwhile training for the Chair, experience in one of the subsidiary presiding officers positions has rarely been thought necessary. When thought desirable, the qualities shown as a Chairman of Committees have been cited as valuable attributes for a Speaker, but rarely has the suggestion been made that a Chairman was entitled to promotion.

Certainly partisanship in candidates has been noted often during elections to the Chair. This was not true of Sir Frederick Holder but appeared immediately after his death. Salmon was described in 1909 as a "notorious partisan"[9] and being "at the beck and call of the Prime Minister"[10] while his opponent was criticized for participating in partisan debate while holding the post of Chairman of Committees.[11] The following years were not happy ones for the Chair, as they included a period in which a closely divided House provided several opportunities for the Speaker to use his casting vote. The war appears to have provided a period of restraint, but by 1920 a Labour member suggested in nominating a candidate that the Labour party should follow the example of others in electing a Speaker "who is likely to help his own side".[12]

Occasionally a Speaker may even dissipate the good will that he has. John S. Rosevear became Speaker when Nairn resigned office in June 1943. At his re-election in September, the Leader of the Opposition noted the experience of the previous session and commented on the impartiality which Rosevear had shown.[13] Three years later, nominated for a third time, Rosevear met strong charges of partiality from the same Opposition Leader.[14]

Mr. Speaker Cameron, as might be expected, was bitterly accused of partiality. When first elected in 1950 he was welcomed as a poacher turned gamekeeper with few reservations. In little more than a year, accusations of partisanship were common, and the Deputy Leader of the opposition believed that he was "prejudiced, biased and partisan".[15] His two further elections were no more quiet with clear accusations of bias and partisanship. It should be noted however that many of the complaints about Cameron were based on his use of S.O. 303 to suspend members and his aggressive personality which led even the government to move dissent from at least one of his rulings.

A few years later Sir William Aston met similar, although more muted criticism when first nominated. It was pointed out that he had just been Chief Government Whip and as such had followed closely the instructions of the government. It was even suggested by the Prime Minister that his success as a Whip was a prime qualification for the post, although the Opposition was far from convinced.[16] By his next election, the Opposition was more outspoken, and Aston was characterized as "the handpicked stool pigeon of the Prime Minister".[17]

James Cope had a somewhat easier start to his career as the Opposition allowed his first election to go uncontested. Within a year and a half Cope had lost the confidence of the Opposition and suggestions of partiality and unfairness were made, along with remarks about the "necessity" for nominating an Opposition candidate.

The suspicion of the Opposition that a Speaker may not be entirely impartial is almost certainly well based. While remarks made at the time of nomination may reflect only frustration or general annoyance, several other incidents would indicate that party loyalty is expected of a Speaker

and may be a significant factor. The case of Sir Littleton Groom in 1929 certainly illustrates the attitude of the Government to the position of the Speaker. When Groom abstained from voting in Committee of the Whole in the best tradition of the Westminster model, the Government was defeated. His own party disowned him and defeated him in the ensuing election. Walter Nairn remained as Speaker in 1941 when Labor took office although he had been elected by a coalition. Eighteen months later his party colleagues moved a want of confidence motion in the Labor government and both Nairn and the Chairman of Committees resigned, in time to vote against the government two days later. Two incidents in 1975 would also indicate a strong connection between the Speaker and his party, In February when Speaker Cope resigned after a rebuff by the Prime Minister, Fred Daly reports that he expressed his willingness to time his formal letter of resignation to suit the needs of his party.[18] Even more surprising was the presence of Mr. Speaker Scholes at the Prime Minister's Lodge after the dismissal of the Whitlam Government and before the House met for its afternoon sitting.

Numerous nominees in the past, in Canada, have been attacked for their strong partisan feelings. Most notable, of course, was Mr. Speaker Anglin, who as the editor of a newspaper had characterized certain Conservative members as being "loathsome" and "disgusting" and spoke of them as being men who would "wade through filth so vile to Governorships, Judgeships, places in the Cabinet, places out of the Cabinet, profits and so called honours".[19] The House judged the article to be a breach of privilege, but within a year a new Parliament had elected Anglin to the Chair. More recently nominees have not been noted for their strong political views and have been accepted by the House with general approval.

In spite of these attacks from time to time, there is little real feeling in Canada that the Speaker exists to further the ends of his own party. The Canadian custom of changing Speakers with each Parliament has meant, of course, that members have little opportunity to review the activities of the Speaker in the past. Where a Speaker has been retained in office for more than the usual time, he has been returned to the Chair with the full approval of the Opposition.

The appearance of impartiality in Canada has also been helped in recent years by the actions of the incumbents themselves. It has been the custom for the Speaker to sever his party ties completely, attending neither public party meetings nor caucus.[20] Elections provide problems, of course, and the Speaker is forced at such a time to seek election as a party man. A possibly significant move away from this was made by Mr. Lamoureux who not only formally renounced his connections with the Liberal party while in the Chair, but also took the unprecedented step of running as an independent candidate in the elections of 1968 and 1972. The opposition he met in these elections from other parties was not a reflection on his qualities as a Speaker. Rather he was opposed on the theoretical ground

that the electorate should not be deprived of the right to choose between candidates.[21]

Motions of Censure

With the strong political backgrounds of many Speakers, and an underlying lack of belief in their impartiality, it is not surprising that the censure motion has been used in Australia to express dissatisfaction with various Speakers. The more surprising fact is that it has been used so rarely. Up to 1944, censure of the Speaker was proposed only once when a member of the Labour Party in 1913 gave notice of a motion that the Speaker had "lost the esteem, the respect and the confidence" of the House.[22] The motion was never considered by the House.

The next abortive attempt to censure the Speaker occurred in 1944 when a motion to suspend the Standing Orders to permit a censure motion failed.[23] The motion was not pursued. A more serious attempt was made two years later to censure Mr. Speaker Rosevear when the Leader of the Opposition proposed a motion alleging a strong feeling of discrimination. After a brief debate which had little to do with the actual conduct of the Speaker, the Government imposed closure and defeated the motion.[24]

An Acting Speaker in the Chair while the Speaker was absent from the country was the next victim of a censure motion, this time in most specific terms. The motion alleged "serious partiality in favour of Government members", that the Speaker regarded himself "merely as an instrument of the Labour party", failure to interpret the rules correctly, and gross incompetence.[25] The motion arose out of a rowdy debate in November 1948 when three Opposition members were named and the Speaker clearly lost control of the House. Debate on the motion was first postponed for three months from the time of the incident itself and later adjourned for a further seven months. Finally the government moved an amendment which removed all criticism of the Acting Speaker and "deplored" the fact that Clark while acting ably and impartially had not received the support from all members to which he was entitled. The Government eventually moved closure and passed its amendment.[26]

Mr. Speaker Cameron was also the subject to two censure motions. The first had nothing whatever to do with Cameron's ability as Speaker, but concerned his relationship with the Governor General. The two individuals both had long political careers behind them on opposite sides. Ten years before, Governor General McKell (then Leader of the New South Wales Labour Party) had made a scathing attack on Cameron, as Leader of the Country Party. As no apology had been made, Cameron concluded that the opinion of the Governor General had not altered and refused to deal with him except in terms of strict formal courtesy. The Labour Party then moved censure suggesting that Cameron should not have accepted office under the circumstances and questioning if anyone who had ever disagreed with Cameron could get a fair hearing. After a mere three speeches, the government invoked closure and defeated the motion.[27] Five

years later the censure motion was more serious and alleged partisanship, injustice and arbitrariness and misuse of the Standing Orders.[28] Some of the accusations made in this debate were undoubtedly true, as Speaker Cameron had a clear idea of his authority and a willingness to use it. His decision, for instance that a suspended member was banned from the whole of Parliament House was undoubtedly wrong and soon abandoned. The chief annoyance of the Opposition, however, seems to have been the rulings of Speaker Cameron allowing the Labour Party to be labelled Communist, while similar opprobrious remarks aimed at the Government were ruled improper.

Mr. Speaker Aston survived one Parliament before he came under fire in 1971.[29] Once again the exact reasons for the motion are unclear. A leading member of the Opposition had been suspended with probably somewhat more severity than was necessary, but the episode in itself seems too minor to justify the response. From the debate it would seem that the Opposition had been growing frustrated and annoyed by what it considered an increasing number of suspensions and poor decisions. It was also dissatisfied with the number of planted questions asked by Government back benchers and long irrelevant answers by Ministers. All these problems, of course, may be a reflection on procedure in Australia and the way in which the House conducts its business, but hardly constitute a convincing case of bias in the Speaker.

Most recently, Mr. Speaker Cope was the object of one if not two censure motions. The first was quickly disposed of in 1973. Mr. Wentworth moved the novel motion "that Mr. Speaker ought to be ashamed of himself", contending that such wording placed his motion between dissent from a ruling and censure. His justification was a belief that the Speaker had shown an undue deference to the Prime Minister. Unfortunately perhaps, the seconder of the motion was out of town and it lapsed before debate could continue.[30] The Leader of the Opposition moved a formal censure motion the next year. Once again it erupted out of the suspension of a member, but the debate ranged more widely. Again the conduct of the question period was criticized along with the Speaker's gift for repartee. The Opposition made a further suggestion that the Speaker was personally vindictive towards the member suspended, although little evidence could be adduced to support the contention.[31]

While the Canadian Parliament has often had doubts about the impartiality of its presiding officer, and clearly has had reason to doubt his political neutrality, the question has rarely emerged in a concrete form. While many members undoubtedly believe that the Speaker will be sympathetic to the government in ruling on a point of order, the general tenor of debate in Canada is such that decisions of the Chair are normally accepted quietly. On only one occasion since 1867 has the House debated the censure of a Speaker. Mr. L. Rene Beaudoin was elected to the Chair in 1953 with the general approval of the House. Indeed, his knowledge of the rules was such that it was commonly believed that he would be con-

tinued in office indefinitely. The session of 1956 produced one of the most bitter debates in Canadian parliamentary history with the Opposition filibustering one specific bill and the Government relying on the little used Canadian closure rule to achieve passage. In the midst of this acrimonious debate the Speaker made a series of rulings, few if any of which supported the opposition. The crisis arose when at the opening of the sitting one morning he reversed a decision made the night before and severely damaged the opposition's tactical position.[32] Notice of a motion of censure was tabled that day, and a debate followed occupying some part of four days the next week.[33] The censure motion itself was not surprising in the context of the feeling of the House and the general conduct of the debate. It is, however, possible to question the motives of the Opposition in moving it. While expressing their distrust of the Speaker's rulings during one debate only it was suggested that the Speaker had subordinated his position to the will of the Government. Oddly, however, the Opposition demanded, not the resignation of the Speaker, but a dissolution of the House – a remarkable method of disciplining a presiding officer. The motion was defeated on a party vote and Mr. Beaudoin remained in the Chair until dissolution a year later. It is interesting to note that this one episode finished irretrievably any chance of Mr. Beaudoin's return to the Chair even had the Government not been defeated in the election that followed.

Appeals from Rulings

The rules of the Australian and Canadian Houses are completely different when dealing with appeals from Speakers rulings. In Australia a formal motion of dissent may be moved allowing for an extensive debate on a procedural matter. In practice this might well be used as a convenient method of attacking the impartiality of a Speaker, particularly in light of comments made in censure debates or at the time of various Speakers' renominations. In practice, the dissent does not seem to have been used in this way. Debate on the motion must, of course, be relevant and extensive charges of partiality are difficult to put forward. For whatever reason, attacks on Speakers have been limited, and dissents have properly centred around the specific procedural point at issue.

In Canada from 1867 to 1965 it was possible to appeal any rulings to the House. No debate was permitted, although the Speaker was at liberty to permit lengthy debate on the point of order before the ruling was made. A division followed, generally on party lines, and with very rare exceptions the Speaker was upheld. For many years the appeal procedure was rarely used, but from 1945 onwards it became a relatively common event.[34] The climax probably came in the debate in 1956 which brought Mr. Speaker Beaudoin's reputation down, when appeals were deliberately used as a delaying tactic by the Opposition. The continuing use of appeals did nothing but degrade the position of the Speaker and contributed nothing to the procedure of the House. They were, therefore, eliminated

in 1965, at first on an experimental basis, and finally in 1968 permanently. Presumably a motion of dissent of the Australian type could be moved in Canada as a simple substantive motion. The procedure has never been attempted.

Election of the Speaker

The procedure for the election of a Speaker in Canada and Australia indicates most symbolically the changes that have occured in transferring the Westminster model overseas. The general appearance of the election is similar in all three countries, with a visit to the Upper House, the conducting of the Speaker to the Chair and the tradition of "return of thanks" by the newly elected Speaker. The details even here vary from place to place (for instance the British House of Commons now conducts its election with a member of the House in the Chair and not the Clerk as previously) but most of the variations have little significance to the working of the institution.

One or two features, however, do mark a distinct change in the traditional (Westminster) pattern and would appear to provide a barrier in both countries to a full adoption of the Westminster model. Most obviously in Australia is the relatively common event of opposing a Speaker's nomination and running a candidate against him. Sir Frederick Holder was clearly a popular nominee in 1901 and apparently was put forward after extensive consultation with all parties.[35] Holder was re-elected twice without opposition, but his death in 1909 precipitated a change. The Government threw up a nominee without any soundings being taken. The nomination of Salmon at this time precipitated a lengthy debate on the method of choosing a Speaker and no less than three other nominations (one of which was refused). After much confusion, the House elected Salmon but failed to settle the general question of consultation. In fact, such consultation as did occur with Holder seems never to have emerged again. Following an election, Labour took office in 1910 and nominated its own candidate. When putting Salmon's name in contention, the Opposition noted that the Labour Party had changed its views in a year and had guaranteed that the nomination now would be a purely party affair.[36]

The question rested there for a number of years. Only twice in the next thirteen elections for Speaker did the Opposition nominate a candidate. The first time in 1914 when two previous incumbents were nominated, the Opposition candidate on the grounds that he had occupied the post in the previous year and that no change should take place during the war.[37] The nomination of Mahoney in 1920 was based on more interesting grounds. His sponsor suggested that he should be elected because he would be "likely to help his own side."[38]

The general truce ended when Speaker Rosevear was nominated for the third time. He had presided for one session, apparently successfully, after the resignation of Nairn in 1943, but failed to satisfy the Opposition during the succeeding full term having two motions of censure moved

against him. He was, nevertheless, returned to office. Similarly, Speaker Cameron received a unanimous endorsement when first nominated in 1950, but met accusations of partiality and unfairness at his next three nominations, all of which were contested. Speaker McLeay reversed the process. While he was opposed in his first nomination in 1956 in succession to Cameron, he was returned three more times unopposed, with the Opposition commenting approvingly on his fairness.

From the time of McLeay only once has the Speaker been unopposed. The Labour Party appeared to have little to say against Aston in 1967 when he was first elected, although the Leader of the Opposition also nominated a candidate and pointed out that the Australian Speaker was not cut off from politics as in Westminster.[39] By 1969 the Opposition was accusing Aston of partiality and subservience to the Prime Minister when it nominated a candidate.[40] The election of Cope in 1973 provided the only break in what appears to be the modern tradition. The Opposition at that time (led by the present Speaker, Sir Billie Snedden) declined to nominate an alternative on the quite reasonable grounds that a further nomination made little sense when the qualities of the government selection were as yet unknown.[41] By 1974 Speaker Cope had become known to the Opposition, and it put up a candidate of its own. Once again, partiality was alleged, and the Deputy Leader of the Country Party suggested that it was "necessary" to oppose Cope.[42] The resignation of Cope in 1975 not surprisingly provided yet another excuse for the Opposition to attack the Government rather than to debate seriously the qualities of either nominee. The opposition to the election of Speaker Snedden seems to have been largely ritualistic. The counter-nomination of Scholes in 1976 provided the opportunity for Mr. Whitlam to read into the record the letter Scholes had written to the Queen at the time of the Government's dismissal[43] and the nomination of an Opposition candidate in 1978 was justified as giving a choice to the House.[44]

The election of a Speaker in Canada has been a much more quiet proceeding. Only twice since Confederation has the House divided on the question, and there has never been a nominee from the Opposition side. In 1878, Anglin was opposed on procedural grounds, the Opposition contending that, having vacated his seat and being returned in a by-election during the recess, he could not take his seat as a member until after a Speaker had been elected, and was thus ineligible for the post. The House divided and Anglin returned to the Chair.[45] The election of Casgrain in 1936 was opposed on somewhat different grounds, and ones that might be considered to affect his impartial position. Casgrain, in the customary way, had been informed by the Government that he was to be elected, and took over effective control of the House staff before Parliament met. In so doing, he dismissed a considerable number of employees and replaced them with his own patronage appointments. The Opposition raised this in the House at the time of his nomination, but failed to suggest an alternative candidate or even to demand a recorded vote.[46]

Two other aspects of the election of a Speaker are worth noting, as marked deviations from the Westminster model. The first is the selection of a candidate. Holder appears to have been selected by some form of inter-party consultation, but with his death such procedures disappeared. The influence of the party meeting appeared in 1909 and has rarely been absent since. The Labour Party particularly believes in the principle of caucus control and the Speaker has emerged as the man who could not get enough votes to become a minister. Lacking the authority to vote on ministerial appointments, the Liberal Party caucus does not have such a wide control over political offices, but does select its candidate for Speaker. In Canada, by contrast, while intra-party soundings may be taken, there is no doubt that the candidate for the Chair is the choice of the Prime Minister, or at best, the Cabinet.

As a result of caucus control over candidates, the use of two back bench members as proposer and seconder of the government nominee is no mere symbolism. On only three occasions has the practice not been followed. Holder was clearly a popular enough selection to make an exception, and in 1904 and 1907 his return to the Chair was proposed by the Prime Minister and seconded by the Leader of the Opposition. The other exception may well be considered unusual as well, as it took place in 1975 following the dramatic resignation of Cope. On that day, while a back bench member moved the appointment of Mr. Scholes, a minister seconded the nomination.

The Canadian situation also faithfully follows the method of choice. On every occasion since Confederation, either the Prime Minister or the Leader of the House has made the nomination. On a vast majority of occasions, another Minister has seconded. Starting in 1953, and continuing erratically since then, the Leader of the Opposition has seconded the nomination.

Conclusions

Since Sir Billie Snedden raised the question of a Westminster model Speaker in Australia, little has happened in either country to advance the concept. In Australia it seems doubtful if any progress will be made by either party until some very fundamental changes are made in party attitudes. The generally accepted idea of the Labour Party that the Chair is in the gift of the party caucus would seem alone to be enough to prevent the election to the Chair of a member of any other party. Certainly there seems to be no inclination (even on the part of Mr. Speaker Snedden) to remove the Speaker from partisan politics. In Canada recently on the other hand, one might find a ray of hope. After the election of 1979 which brought the Conservatives to power after sixteen years in opposition, the Prime Minister announced his intention of re-nominating the Liberal Speaker of the previous Parliament. Mr. Jerome had not cut himself off from party politics during the election and however popular and successful as a Speaker, could hardly be considered to be an adequate Westminster

model candidate. Those of a cynical turn of mind should not be blamed for ignoring the remarks made in the House about the "historical" nature of his re-election. It seems more likely that Mr. Clark, with only a minority government, was protecting his voting power in the House and was possibly inspired by the example of Mr. Trudeau who made an opposition member Deputy Speaker during his minority government in 1972–4. This assumption would seem to be borne out by the events that followed. Mr. Jerome presided over the short two month session which ended in the defeat of the Government and dissolution. Soon after dissolution, Mr. Jerome announced his permanent retirement from politics and was rewarded by an appointment as Associate Chief Justice of the Federal Court. In the new Parliament following the election of 1980, with a clear majority in the House, Mr. Trudeau reverted to traditional Canadian habits. His nominee as Speaker was Madame Jeanne Sauvé. Mr. Trudeau broke new ground here in only one respect – Madame Sauvé was the first woman ever to preside over the Canadian House (although the Canadian Senate has had two women as Speaker). Beyond that, the candidate was the familiar mix. She sits for a Quebec seat (whereas Mr. Jerome came from Ontario) and had been a Cabinet minister for six years before the defeat of the government in 1979.

While adoption of the Westminster model seems to have made little progress in Australia or Canada, one further question should perhaps be asked of the Members of Parliament in the two countries. Just what is it about the British system that is so desirable? It is interesting to note in passing that in Canada the most concrete proposals that have been made for developing the Speakership have been aimed at variations of a particular idea that involve creating a special constituency for the Speaker (the constituency of Parliament Hill with only Members of Parliament as voters) so that he need not submit himself for election in the ordinary way and so that his electorate should not be disfranchised. Certainly this is not part of the concept of the Westminster model and may produce some answer to the question asked above. Any student of procedure will readily admit that rules and traditions are not readily transferable overseas and both Canada and Australia have developed an indigenous procedure which owes much to Westminster while having a strong local flavour. It might be better for both to forget the Westminster model concept as being unattainable in its pure form, choose the features of the Speakership that they wish to preserve and develop, and find a way of nurturing these in their own countries without attempting to copy them from others or justify them by reference to a foreign country.

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1. For a detailed description of the evolution of the British Speaker, see P. Laundy, *The Office of Speaker*, (London, 1964).
2. This consultation may not be as complete as some members would like. Certainly a significant number did not feel that proper consultation had occurred on the election of Mr. Selwyn Lloyd in 1971. See S. Lloyd, *Mr. Speaker, Sir* (London, 1976), pp. 20–3.
3. This may not be as universally accepted as is generally assumed. It is reported that Lord Ullswater was offered the Colonial Secretaryship in 1922 soon after leaving the Chair. His removal from politics as Speaker was only one reason given by him for refusing. S. Roskill, *Hankey, Man of Secrets* (3 vols. London 1970–4). II, pp. 300–1.

4. *Aust. H. of R. Debates*, July 28, 1909, p. 1686.
5. *Ibid.*, p. 1699.
6. *Ibid.*, February 28, 1923, p. 18.
7. *Ibid.*, January 13, 1926, pp. 18 and 20.
8. *Ibid.*, February 17, 1976, pp. 3–4.
9. *Ibid.* July 28, 1909, p. 1698.
10. *Ibid.*, p. 1702.
11. *Ibid.*, p. 1698.
12. *Ibid.*, February 26, 1920, p. 36.
13. *Ibid.*, September 23, 1943, p. 17.
14. *Ibid.*, November 6, 1946, p. 17.
15. *Ibid.*, June 12, 1951, p. 25.
16. *Ibid.*, February 21, 1967, p. 8.
17. *Ibid.*, November 25, 1969, p. 9.
18. F. Daly, *From Curtin to Kerr* (Melbourne, 1977), p. 208.
19. *Can. H. of C. Journals*, April 17, 1873, pp. 167–9.
20. Note the statement of Mr. Speaker Beaudoin in a speech to the Empire Club of Canada, Toronto October 25, 1956.
21. J. Jerome, "The Speakership in Canada", *The Parliamentarian*, Vol. LIX, No. 2, April 1978.
22. *Aust. H. of R. Debates*, November 6, 1913, p. 2936.
23. *Ibid.*, September 28, 1944, pp. 1676–82.
24. *Ibid.*, July 26, 1946, pp. 3196–3203.
25. *Ibid.*, February 24, 1949, pp. 655–6.
26. *Ibid.*, September 8, 1949, pp. 110–39, 147–61.
27. *Ibid.*, April 20, 1950, pp. 1691–1702.
28. *Ibid.*, May 10, 1955, pp. 543–62.
29. *Ibid.*, April 21, 1971, pp. 1763–81.
30. *Ibid.*, April 12, 1973, pp. 1395–9.
31. *Ibid.*, April 8, 1974, pp. 1117–25.
32. See, *Can. H. of C. Debates*, June 1, 1956.
33. *Ibid.*, June 4, 6, 7 and 8, 1956.
34. See E. Forsey, "Constitutional Aspects of the Canadian Pipe Line Debate", *Freedom and Order*, (Toronto 1974), pp. 128–48.
35. *Aust. H. of R. Debates*, July 28, 1909, pp. 1669–1716.
36. *Ibid.*, July 1, 1910, p. 26.
37. *Ibid.*, October 8, 1914, p. 27
38. *Ibid.*, February 26, 1920, p. 36.
39. *Ibid.*, February 21 1967, p. 8.
40. *Ibid.*, November 25, 1969, pp. 8–10.
41. *Ibid.*, February 27, 1973, p. 8.
42. *Ibid.*, July 9, 1974, p. 7.
43. *Ibid.*, February 17, 1976, pp. 4–6.
44. *Ibid.*, February 21, 1978, pp. 4–5.
45. *Can. H. of C. Debates*, February 7, 1878, pp. 1–11.
46. *Ibid.*, February 6, 1936, pp. 1–13.

HOUSE OF COMMONS SELECT COMMITTEES RELATED TO GOVERNMENT DEPARTMENTS

BY R. S. LANKESTER

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The decision of the House of Commons substantially to change the structure of Select Committees and the reasons for it were described in an article in the last issue of The Table[1]. The Procedure Committee which sat from 1976 to 1978 produced some seventy-six recommendations on a wide range of procedural matters, but they firmly gave priority to their proposals concerning the re-organisation of the select committee structure, proposals on which they were unanimously agreed in principle.[2] After the election in 1979, the incoming Conservative Government announced its general agreement with this particular group of recommendations and on 25th June 1979 the Government's proposals, which substantially implemented the wishes of the Procedure Committee in this field were debated. The changes were designed, in the words of Mr St. John-Stevas, Leader of the House, "to redress the balance of power (between Parliament and the Executive) and to enable the House of Commons to do more effectively the job it has been elected to do"[3] – that is, "to subject the executive to limitations and control; to protect the liberties of the individual citizen; to defend him against the arbitrary use of power; to focus the mind of the nation on the great issues of the day by the maintenance of continuous dialogue and discussion; and, by remaining at the centre of the stage, to impose parliamentary conventions or manners on the whole political system"[4]. In short, this was a deliberate and determined attempt to give the Commons the means to make the departments of state accountable for their policies and actions in a more continuous, systematic and detailed way than had been the case for many years.

At the end of that debate, the House agreed to a Standing Order[5] which provided for the appointment of committees to examine the expenditure, administration and policy of twelve principle government departments and their associated public bodies (a polite phrase which comprises those organisations sometimes referred to as "quangos"). The committees were:—

Agriculture
Defence
Education, Science and Arts
Employment
Energy
Environment
Foreign Affairs

Home Affairs
Industry and Trade
Social Services
Transport
Treasury and Civil Service

The Foreign Affairs Committee, the Home Affairs Committee and the Treasury and Civil Service Committee were each empowered to appoint one sub-committee. Further, a sub-committee drawn from the membership of two or more of the Energy, Environment, Industry & Trade, Transport and Treasury & Civil Service Committees could be set up from time to time to consider any matter affecting two or more Nationalised Industries.

In addition the Standing Order provided for a Committee to examine the Reports of the Parliamentary Commissioner for Administration and of the Health Services Commissioners for England, Scotland and Wales, that is the "Ombudsmen".

The House had already agreed to re-appoint a number of domestic committees as well as the Public Accounts Committee. It now took formal decisions to abolish the Expenditure Committee and not to re-appoint the Committees on Nationalised Industries, Science and Technology, Race Relations and Immigration, and Overseas Development.

The Procedure Committee which sat from 1976 to 1978 had not recommended Select Committees to review Scottish and Welsh Affairs. Devolution proposals were then in the air. The referenda in Scotland and Wales having put an end to these proposals, a Committee on Welsh Affairs[6] was appointed in June, and a Committee on Scottish Affairs[7] in October, to examine the expenditure, administration and policy of the Welsh and Scottish Offices respectively, and their associated public bodies.

Although the original twelve departmental committees were agreed to on 25th June and the Committee on Welsh Affairs on the next day, there was a considerable delay before their Members and those of the Committee on Scottish Affairs were nominated.

Hitherto, the practice was, and with other select committees still is, that motions nominating members to serve on Select Committees are moved by a government whip, the names therein being put forward by the Whips of the various parties. The Procedure Committee had recommended, and the House on 25th June accepted, that for departmental Committees the Committee of Selection should propose who should serve on them, the House retaining the final right of decision.

There followed some five months of more or less discreet lobbying before, on 26th November, Mr. Philip Holland, the Chairman of the Committee of Selection, was able to make his proposals to the House. In doing so, he revealed that the two major parties had evolved their lists of names differently, although even at the end of the debate it was not

clear just how each party had agreed on its nominees, beyond the general agreement of all parties not to nominate members of the Government, Parliamentary Private Secretaries or regular Opposition Front Bench Spokesmen.[8] It was clear, however, that the Committee of Selection had encountered many problems in carrying out the new procedure, or as Mr. Holland put it, that they were "on a hiding to nothing."[9] Whatever the problems had been, the motions were now agreed to, and the departmental Committees were in business with their members appointed for the remainder of the Parliament.

An informal Chairmen's Liaison Committee, compromising the chairmen of certain of Select Committees, came into being in 1967. It was designed to provide an opportunity for Chairmen to discuss administrative and other problems common to select committees and to exchange their views collectively with ministers. The House, in 1968 delegated to this Committee the power to give approval to select committees to travel overseas.

The Procedure Committee recommended that this curious situation of an informal body, with an undefined membership, exercising in addition to its original consultative functions a power formally devolved from the House, should come to an end and that a formal Liaison Committee be appointed by the House. This recommendation was accepted in principle by the Government at an early stage of the process of changing the select committee structure, but a formal proposal did not appear on the Order Paper until the beginning of December and it was the 31st January 1980 before the House considered and approved the motion,

That –

(i) a select committee shall be appointed, to be called the Liaison Committee —

(a) to consider general matters relating to the work of select committees and

(b) to give such advice relating to the work of select committees as may be sought by the House of Commons Commission;

Twenty-two Committees are represented on the Liaison Committee all but one by their Chairman, the exception being the Services Committee'

All the major proposals of the Procedure Committee relating to Select committees had now been dealt with by the House, and for the larger part implemented. Perhaps what is most striking is that in this very serious attempt to make the investigatory Committee system more effective the new Committees were delegated no greater powers. Their essential purpose is, as it was for earlier Select Committees, to examine certain defined matters and to report thereon to the House. They have no power to delay the House's consideration of any matter nor to amend any bill, or any estimate. Nor have they any claim, as of right, to the time of the

House, beyond the general convention that two or three supply days each session are available for the discussion of reports from select committees, one of which is devoted to reports from the Public Accounts Committee. Their only weapons are the power to question and the effectiveness of the arguments in their reports with which they support their conclusions.

With the Committees only a few months into their work, it is too early to give a judgment on what they will achieve. While their formal powers may be no greater, they are certainly thicker on the ground than their predecessors, their staffing, while still modest in comparison with that, say of congressional committees in the United States, has been strengthened and they can be expected over the years to acquire a progressively greater insight into the working of the departments they scrutinise. They have certainly made ample use of their existing power to employ part-time advisers, over seventy now having been appointed by the various Committees.

There is, moreover, the reasonable expectation that if it becomes clear that their work would be significantly enhanced by further resources, they will be afforded them. The Leader of the House assured the House of this when the Committees were appointed[10]. As a double assurance the control of the vote for the House of Commons is now vested in the House of Commons Commission, described in the article by Michael Lawrence in this volume (pp68-74). The Commission itself looks to the Liaison Committee for advice on matters concerning Select Committees, as the order of reference of the Liaison Committee cited above makes clear, and there is no longer any question of Treasury approval being required for additional expenditure.

Two principal factors, in my view, will determine the achievements of the new structure. First the priority given to Committee work by Members. They may have conflicting claims on their time, and many of these claims have greater party political significance than the, in some respects, bi-partisan co-operation on select committees. This has, hitherto, been a limiting factor on the effectiveness of select committees. If Members can be convinced that the new committees will achieve a greater impact than their predecessors and can secure from departments a greater accountability, then they may well give greater priority to attending meetings, mastering committee papers and adding greater cogency to their questioning.

The second factor is the goodwill extended to committees by the Government. Select committees are given the power to send for persons, papers and records and this power is absolute as regards private persons and bodies. It is, however, severely limited in regard to state papers. committees moreover cannot themselves secure the production of those papers which they can properly require, by going, for example, directly to the courts. Their only course, if papers are refused, is to report the

matter to the House, where, in normal circumstances, the Government commands a majority. There have in the past been many occasions when departments have successfully refused to give committees the papers which they had sought. Inquiries have been hampered and Members have, thereby, become less inclined to throw good time after bad.

In the debate on 25th June[11], Mr. St. John-Stevas pledged the Government to make available to select Committees as much information as possible, including confidential information on the understanding that Committees would handle it accordingly. The Procedure Committee secured and published a copy of the Memorandum of Guidance for Government Officials called to give evidence to select committees. This Memorandum of Guidance has now been revised and made available to Members. While it follows fairly closely the lines of the earlier version, there is a generally more forthcoming flavour to it.

One example of this concerns the Government's replies to reports. It is the established requirement that departments reply to reports which deal with matters within their responsibility by way of written observations. There have, hitherto, on occasion, been considerable delays – of a year or more – before replies to reports have been published. These delays have greatly diminished the effectiveness of any continuing dialogue on the subject which a committee might have wished to have with the department. The Procedure Committee recommended that replies should be provided, wherever possible, within two months. The Memorandum of Guidance now requires departments to do their best to reply within two months and, where this is not possible, to inform committees why, before the two months is up. In any case they must reply within six months. This ability to maintain a dialogue on a particular matter will be one of the strengths of the departmental committees.

The Memorandum gives the chief grounds on which departments will still decline to provide evidence. They are that the cost of doing so would be excessive; that it would be prejudicial to national security; that it would undermine the collective responsibility of Ministers to disclose the advice given to Ministers by civil servants, to reveal inter-departmental exchanges on policy issues or information about cabinet committees or their discussions; and that the advice given by Law Officers nor information held in confidence concerning the private affairs of individuals or institutions should not be disclosed.

These reservations are broadly unchanged from earlier days, although the Prime Minister – in answer to a Parliamentary Question – has disclosed that the Cabinet has four standing committees[12]. In practice, departments have heeded the guidance and have on occasion given evidence and made witnessess available when their instincts would have been to resist doing so. Ministers, in particular, have been very ready to give evidence if asked, and many have done so. Departments have not disguised that all this has added considerably to their work load.

Each individual committee is master of its own proceedings and makes

its own decisions on the scope and nature of the inquiries. There has inevitably been a considerable variation between the working styles of the various Committees. No doubt they will learn from their own experiences and from each other. Overall, in their first few months, they appear to be satisfied with what they have achieved and the House has given no indication that they are not doing what it expected of them.

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1. The House of Commons Select Committee on Procedure 1976 to 1979 by W. A. Proctor; Vol XLVII of the Table, pp. 13–36
2. See First Special Report from the Select Committee on Procedure HC No. 267, 1978–79.
3. *Hansard* 25 June 1979, col. 36
4. *ibid* col. 35
5. S.O. No. 86A
6. S.O. No. 86B
7. S.O. No. 86C
8. *Hansard*. 26 November 1979 Cols. 1029 sqq
9. *ibid.* Col. 1030
10. *Hansard* 25 June 1979, col. 216
11. *Hansard*, 25 June 1979, col. 45
12. *Hansard* 24 May. cols. 179–180 *written*

IV. AMENDMENTS TO THE STANDING ORDERS IN NEW ZEALAND

BY D. G. MCGEE

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Following a report by a select committee, a number of amendments to the rules and practice of the New Zealand House of Representatives were adopted towards the end of 1979. The following article describes the more important of these amendments, and discusses the way in which they came to be adopted and the role of Standing Orders Committees generally in New Zealand.

A select committee on the standing orders was set up on 6 October 1978 the last sitting day of the 38th Parliament, the first such committee since 1974. Pursuant to the Legislature Amendment Act 1977 the business before the committee was ordered to be carried over to the next session of Parliament and a committee having the same terms of reference appointed to continue consideration of that business during the period following the prorogation and subsequent dissolution of the 38th Parliament and before the meeting of the new Parliament.* In fact the select committee appointed on 6 October 1978 never met as the prorogation and dissolution of Parliament followed closely on its being set up. The first meeting to consider the standing orders in February 1979 was technically of the committee appointed pursuant to the 1977 Act (which by section 2(3) is deemed to be a committee of the House of Representatives). The new Parliament met in the following May consequently bringing an end to the life of that committee and shortly afterwards a new select committee on the standing orders was constituted by resolution of the House. This select committee completed the task of examining the standing orders and procedures of the House and reported back later that session. Three committees of the House were therefore charged at various times with the work of considering the standing orders.

The committee (or committees) consisted of 9 of the most senior members of the House: the Prime Minister, Deputy Prime Minister, the Leader of the House and another Minister, and, from the Opposition, the Leader and Deputy Leader, a former Chairman of Committees, and a Whip. The committee elected Mr Speaker as its chairman. The leader and sole representative in Parliament of the Social Credit League, the third party in New Zealand's political structure, was not included in the membership of the committee – a fact of which he was critical and as a result of which neither he nor his party made submissions to the committee. In point of fact the committee did not call for any submissions nor did it hear evidence

* For the Legislature Amendment Act 1977 see *The Table* Vol. XLVI p. 23.

in person from witnesses. Despite this, unsolicited written testimony was received from a number of individuals and organizations alerted to the committee's work by press reports of its constitution. The proceedings of the committee were not ordered to be open to the public, and the committee transacted all its business *in camera*.

The procedure followed by the committee in carrying out its task was to hold an initial meeting at which a large number of topics were identified as being worthy of detailed investigation. In the case of some topics thus identified a particular problem (with or without a proffered solution) which the committee or a member of the committee wished to see overcome was indicated. In the case of other topics the matter was raised 'at large'. The Chairman and the officers of the committee organized these disparate topics into a logical work programme, and then the officers prepared working papers as the basis for the committee's consideration of each topic. The committee worked through the programme of topics in this way referring to the submissions it had received as they bore on the topic under consideration. As the committee's attitude to the problems thus raised and the solutions offered became clearer, further working papers were prepared on each topic so that by a process of refinement the committee reached and elaborated on, decisions on each of the matters raised. At the conclusion of this process on each topic or group of topics a draft for the committee's report with suggested amendments to the standing orders where appropriate was submitted to the committee. These in turn were revised as a result of consideration by the committee. Finally the approved drafts for the report were collated into one whole which was considered and adopted by the committee as its report.

One factor which caused the committee to expedite its consideration of one matter thus identified – divisions – was the imminence of the move of ministerial offices to a new Executive Wing, the Beehive. This building which is situated within Parliament Grounds is adjacent to the main Parliament House building which contains the Chamber and is linked to it by a short walkway at the first-floor level. All ministerial offices which had been situated in the main building close to the Chamber were to be removed to various floors in the Beehive and consequently would be somewhat further from the Chamber. The need to take this new situation into account as far as divisions were concerned prompted the committee to seek leave from the House to present an interim report proposing amendments to the standing orders on divisions so that these could be adopted and brought into effect in time for the removal timed for the end of September 1979. An interim report was accordingly presented and the new rules adopted in time for this changeover. The changes to the procedure on divisions are outlined below.

The composition of the committee has already been described. While such a distinguished membership brings its own problems of finding convenient times at which to hold meetings, it does have the result that the report of such a committee is unlikely to be sidelined, as I believe can

happen with reports on procedure in other Parliaments. In New Zealand Standing Orders Committee reports are dealt with fairly promptly following their presentation and are usually adopted totally or near totally. On this occasion the Committee reported to the House on 7 November 1979, at which time a short debate took place. The consideration of the standing orders was then set down as an order of the day, the understanding being that it would be dealt with as the last item of business of the session. The House subsequently adjourned for the holding of the Commonwealth Parliamentary Association Conference and reached the consideration of the standing orders on the penultimate day of the session, 13 December. The main debate was held on the motion moved by the Leader of the House to go into committee to consider the standing orders. Following the passing of the motion the Leader of the House invited Mr Speaker to take charge of the amendments recommended by the Standing Orders Committee. This proposal was agreed to unanimously. In committee Mr Speake occupied the Chair at the Table on the right of the Chairman of Committees usually reserved for Ministers or members in charge of a Bill or class of estimates under discussion. Mr Speaker doffed his wig during the committee proceedings.

All the amendments recommended by the Standing Orders Committee were agreed to in committee (plus three other drafting amendments formally moved by Mr Speaker). However on this occasion a number of other members moved further amendments to the standing orders, all of which were defeated. This contrasted with the last occasion on which the standing orders had been amended in 1974 when the recommendations of the Standing Orders Committee were agreed to with very little debate and without other amendments being offered. Part of the reason for the more noticeable lack of unanimity on this occasion arises from the fact that the Social Credit League, which was not represented in Parliament in 1974, did not have its member on the committee and therefore did not share in the consensus that tends to form around the committee's recommendations. Another reason may be that parliamentary reform itself is becoming a political issue on which the two main parties are beginning to diverge. This will obviously have important implications for the future.

At the conclusion of the consideration of the standing orders by the committee of the whole House the Chairman of Committees reported to Mr Speaker that the committee had gone through the standing orders and made amendments therein, whereupon the Leader of the House formally moved that the amendments agreed to in committee be adopted and come into force forthwith. This motion was carried without debate. Shortly afterwards the House adjourned at 2.30 a.m. on Friday 14 December. One consequence of the House adopting the amendments to the standing orders and bringing them into immediate effect was that instead of meeting later that morning at 9 a.m. the House met at 9.30 a.m. – one of the amendments being that sitting hours on Fridays should be 9.30 a.m. – 1 p.m. instead of 9 a.m. – 1 p.m. as had been the case since 1974.

The mention of a consensus forming around the Standing Orders Committee's recommendations does not mean that that committee reaches all its conclusions unanimously. The 1979 report records instances of division of opinion among its members on various matters. However there is a strong degree of acceptance throughout the House of the committee's recommendations once a decision is reached. This acceptance has been gained largely by a sparing use by the Government of the day (at least for the last 50 years) of its majority when issues involving changes to the standing orders are concerned. Indeed in these matters the possession of a majority as often operates as a power to veto changes rather than being used to impose controversial procedural changes on a recalcitrant Opposition. It is in the sense of there being a tacit understanding that important amendments to the standing orders will not be adopted without a broad agreement being reached that one can speak of a consensus forming around the report. On issues of importance the report itself is a product of a certain amount of bargaining and give-and-take between the parties, and emerges from the committee as a package of reforms.

The procedural impact of such reports is not limited to the detailed amendments to the standing orders which they recommend and which are subsequently adopted by the House. New Zealand's House of Representatives in common with a number of other former colonial legislatures has a standing order which provides that in cases not provided for by the standing orders, Mr Speaker is to decide, taking for his guide the current rules, forms and usages of the House of Commons of the United Kingdom, so far as they are applicable. A considerable body of 'Speaker's law' has consequently grown up, both deciding points not adverted to in the standing orders (although these are more of a code than are those of the House of Commons for example) and interpreting and explaining doubtful points in the standing orders themselves. The requirement to be guided by the House of Commons in deciding matters not covered by the standing orders legitimizes the frequent references to *Erskine May* which the Speaker, members and Clerks make during the course of a session. However it has been emphasized by Speakers that House of Commons practice is only a guide and is not to be slavishly followed where a New Zealand practice or line of precedent has grown up.

The terms of reference of successive Standing Orders Committees have invariably empowered the committee to recommend whatever amendments to the standing orders and procedures may be thought desirable. Such committees have therefore felt no compunction in keeping under review the decisions of Speakers and Chairmen of Committees, and considering whether or not it was desirable that these be amended. Often such a review has led to the proposal of a standing order which has brought to an end a line of authority developed by a number of presiding officers, but the committee has not always adopted the course of proposing changes to the standing orders to deal with 'Speaker's law'. On a number of occasions it has merely recommended in the body of its report the adoption of a

different practice from that then current and left it to the Speaker to exercise a discretion given him by the standing orders in a different manner to that previously followed. As an example we may take the rule which was in force until 1972 that in Committee on the Estimates members were not allowed to discuss questions of policy. This was a rule of at least 40 years' standing reiterated by various Speakers' rulings, but not enshrined in the standing orders. The 1972 Standing Orders Committee looked at the whole Estimates procedure and recommended a number of amendments to the standing orders governing it, but did not propose a standing order on this particular aspect. However in the section of the report discussing the proposed changes the committee tersely stated "Discussion of policy is to be permitted at all times". While the amendments to the standing orders proposed in the report were all adopted by the House, the report as such was not the subject of a formal motion beyond the laying of it upon the Table. Nevertheless this quite momentous change to the scope of debate on the Estimates (which, as the recent Standing Orders Committee remarked has altered the character of the whole debate) was accepted by all concerned – the Speaker, Chairman and members – as having been accomplished at the behest of the Standing Orders Committee. The change was not challenged on any point of order, but if it had been, its legitimacy is explicable as the Speaker (or more properly in this case the Chairman of Committees) having altered his view on a matter which fell entirely within his discretion – a question of relevancy in debate on the Estimates. The consensus spoken of above applies in respect of the Chair too. It is willing to follow and be guided by recommendations contained in Standing Orders Committee's reports, accepting such recommendations, as everyone does, even though they are not embodied in formal resolutions, because of the prestige of the committee concerned. The latest Standing Orders Committee was no less forthright in recommending procedural changes of this nature, as will be adverted to below.

That ultimately such a practice depends on the recommendation operating on a matter within the Chair's discretion, causing it to change previous rulings, was illustrated during the 1978 and 1979 sessions and highlights some of the limitations in relying on this method of procedural amendment. A further recommendation of the 1972 Standing Orders Committee was that during the fixed time (16 days) which was provided that year for consideration of the Estimates, the Opposition was to select the classes it desired to discuss and control the length of time spent discussing each department's Vote which is contained in the Schedule to the annual Appropriation Bill. Following that recommendation it became the convention that when the Opposition indicated that it had no wish to speak further on a particular Vote, and the Minister in charge of that class of Estimates had briefly replied to points raised in the debate, the question that the Vote stand part of the Schedule was put immediately. In both the 1978 and 1979 sessions however Government members sought to prolong discussion on particular Votes after Opposition members had

stopped seeking the call. The Chairman's right to call Government members in these circumstances was challenged as being contrary to the 1972 Standing Orders Committee's report, which in itself indicates the authority which is assumed to vest in reports of that committee. Both the Chairman and the Speaker (who was recalled to rule) held that this particular recommendation of the committee depended on the co-operation of the whips and was not one which the Chair could enforce as the Chair had no power to put the question upon a matter in the absence of the carrying of a closure motion, or to refuse to call a member who had not exhausted the number of calls given to him by the standing orders. This particular practice recommended by the Standing Orders Committee, unlike that previously discussed, was ultimately unenforceable for it was not dealing with a matter within the Chair's discretion. The latest Standing Orders Committee set about devising a standing order to make mandatory the practice of deferring to the Opposition as to the time spent on each class of Estimates.

The 1979 changes to the standing orders and procedures

Legislation

In the area of legislative procedure a number of changes have been made to the manner in which Government bills (public bills in the charge of a Minister) and private members' public bills are introduced.

Since 1974 a maximum time of 2 hours for the debate on the introduction of a Government bill has been provided. This time is divided between the Government and the Opposition and is used at their discretion, no limit being placed on the number of calls any member may take. The 1974 procedure has worked satisfactorily and the recent Standing Orders Committee sought only to refine the rules by providing that while no member is to be restricted as to the the number of calls he may take, on no one occasion is he to speak for longer than 5 minutes. The speech of the Minister when moving the motion and the speech of the first Opposition member to speak in the debate are exempt from this 5 minute limitation, although each continues to count towards the 2 hours allowed overall for the debate. The committee hoped that such a change would encourage shorter contributions to the debate from individual members while providing an opportunity for more members to speak if they wished. A further change designed to promote a more informed debate on the introduction of Government bills is to be the distribution to the Opposition as soon as possible in the day's sitting of a limited number of copies of bills about to be introduced. Hitherto copies of a bill have been made available only when the Minister moved the motion for its introduction. Members wishing to participate in the debate were faced with the problem of hastily scanning the bill's provisions while the Minister was explaining the reasons for its introduction. Making copies available before the introduction debate commences (but not earlier than the start of the sitting) will help to ameliorate this difficulty.

Unlike the introduction of Government bills the introduction of private members' bills has not been subject to an overall time limit, but has been a straightforward debate on a motion, moved after notice given, for leave to bring in the bill, on which each member could speak for up to 10 minutes. Private members' bills have in recent years become an increasingly popular vehicle for members on both sides to float ideas for possible future inclusion in their party's programme rather than as a means of passing legislation, only two such bills having reached the statute book in the past 30 years. The committee felt that a disproportionate amount of time was being spent on private members' bills when all that what was needed was a procedure which gave an opportunity for a concentrated debate on the introduction with opportunites for further consideration in appropriate cases. For this purpose it recommended that a 2 hours overall time limit be applied to the debate on the introduction of private members' bills. The member introducing the bill and the member immediately following him are to be permitted to speak for a maximum of 15 minutes, other members will be limited to 10 minutes. Provision is made for a speech in reply to the debate of 10 minutes by the member in charge of the bill.

A further change of procedure is designed to deal with the future course of such bills. In New Zealand, the Crown's right of financial initiative is enshrined in an Imperial statute, the New Zealand Constitution Act 1852 – the Act which first granted representative government to the then colony. Section 54 of that Act is still in force and provides that it is unlawful for the House of Representatives to pass a bill appropriating any money to the public service unless the Governor-General has first recommended to the House that it make provision for the specific public service towards which such money is to be appropriated. The House has in its standing orders adopted a potentially even more restrictive rule regarding the financial initiative of the Crown, barring even a proposal for the appropriation of public money unless a message recommending it is received from the Governor-General in the same session. In respect of a private member's bill such a message (if it is to be forthcoming at all) should be announced to the House before the bill to which it relates is brought in.

Despite these rules Speakers since the last century have taken the view that private members' bills which would necessitate an appropriation of public money may be brought in even in the absence of a recommendation from the Crown, but that such bills must be ruled out of order before proceeding to the second reading stage. A practice had grown up of such bills being accorded a second reading debate by leave of the House and being ruled out of order at the conclusion of that debate before the question for their second reading was put. The Standing Orders Committee considered that this practice should cease. It recommended that in future Mr Speaker should intimate before the introduction debate commences whether the bill would necessitate an appropriation of public money and, if it does, rule it out of order following its first reading (which follows automatically on the introduction of a bill) unless the Leader of the

House indicates that it is to receive Government support or unless the House decides to refer it to a select committee. Bills which do not require an appropriation of public money would still proceed to a second reading in the normal way. The new procedure devised by the Standing Orders Committee is an example of the phenomenon discussed above of a change initiated by that committee which is not implemented by amendments to the standing orders. There are to be no amendments to the standing orders in connection with this matter. The innovation of the Leader of the House indicating whether the bill will receive Government support does not absolve the bill from the requirement that for it to be passed by the House a recommendation from the Governor-General that provision be made for the appropriation of public money for its purposes must be made. Nevertheless the new practice can be expected to lead to more private members' bills being ruled out of order following their introduction, and less time being spent on debating such bills at the second reading stage.

Select committees

New Zealand has a well-developed system of select committees. During the past decade the work transacted by such committees has to an increasing extent involved the consideration of legislation following its introduction into the House. When bills are referred to a select committee, the committee invites submissions from the public and then hears evidence, usually in public session, from witnesses, before deliberating on the Bill and the evidence, and reporting back to the House with recommendations for amendments to the Bill (if any). Other subjects for investigation with a view to the formulation of policy or future legislative action (the original stuff of select committee work) are still often referred to select committees for consideration, but the principal task of such committees is coming to be that of acting as a link in the legislative chain. Perhaps the most important changes initiated by Standing Orders Committees in recent years have been directed to fostering this process, and the latest committee was no exception.

The consideration of a bill by a select committee is not a substitute or alternative method of procedure for consideration by a committee of the whole House. A committee of the whole House considers all public bills, regardless of whether they have been before a select committee (although this stage may now be dispensed with on Imprest Supply Bills – see below). Select committee consideration is recognised as an independent stage in the passage of a bill, although until now it has only been a mandatory stage for bills involving Crown lands and for local bills (private bills are subject to an entirely different procedure), other bills being referred to a select committee *ad hoc* on motion, usually following first reading. Although there was no requirement so to refer such bills, in recent years almost half of all Government bills introduced were referred to select committees in this way. The Standing Orders Committee agreed in principle to a proposal that in future all Government bills should be referred to select

committees automatically following their introduction, and amendments to implement this proposal have been adopted.

It is now provided that all Government bills except those falling into two categories, shall after their first reading stand referred for consideration by a select committee. The question of which particular committee shall consider the bill is to be determined by a motion which the Minister in charge of the bill is obliged to move immediately it is declared so to stand referred. The Standing Orders Committee considered that two types of bills should not stand referred – 'money' bills and bills which it was required to introduce and pass in the course of one sitting. The latter exception is fairly obvious and a bill is exempted from the requirement of reference to a select committee if a motion is agreed to by the House according urgency to its passage.

Money bills – the former category – are defined as bills of a financial or budgetary nature dealing substantially with taxation, the appropriation of money to the Public Account, or the imposition or alteration of any charge on the Public Account. The Committee was sensible of the need to exclude from select committees as far as possible vehement party political confrontation. In the past select committees have performed much valuable work in a bi-partisan manner, undisturbed by the full glare of publicity which has led to an 'arena' effect on the floor of the House. While the work of select committees is inevitably expanding in importance the Standing Orders Committee hoped not to lose the good features of the system as it has developed. It felt that money bills, apart from their constitutional significance, would inevitably involve a high economic policy content, arguments about which would not be susceptible of resolution in a committee room or at all. Where major conflicts over Government policy (particular economic policy) were likely to arise it was better for these to be played out in the Chamber instead of causing acrimony in a select committee and perhaps poisoning the atmosphere there. Money bills as defined are not required to be referred to a select committee and Mr Speaker is vested with the power to decide whether or not a bill is a money bill, and is expressly empowered to defer his decision on the matter following the bill's introduction in order to consider the bill's provisions at leisure.

After examining the overall organisation of select committees, particularly in view of recent developments with departmentally-oriented committees in the United Kingdom, the Standing Orders Committee concluded that no changes to the basic select committee structure were warranted. However a number of changes were recommended to the terms of reference of some of the select committees which are habitually set up; for example the committees on Education and Labour were combined into one, the Social Services Committee was recast into a Health and Welfare Committee, and energy was substituted for mining as being within the old Commerce and Mining Committee's purview. Two committees, the Island Affairs Committee and the Road Safety Committee were

recommended for disestablishment. None of these changes involved amendments to the standing orders. In all cases the motions passed at the beginning of the session setting-up the committees were rescinded, and, where appropriate, new motions embodying the new terms of reference were passed. However these changes in themselves are of little importance as the motions setting out the terms of reference of select committees do no more than indicate Parliament's intention to refer to those committees matters falling into the relevant subject-category. Most committees do not themselves have any power to initiate investigations of their own motion, even into matters cognate to the subjects described in the motion setting up the committee. Subjects for investigation must be separately referred to a committee by the House (and even in the case of the automatic referral of bills to select committees in the future, the question of which particular committee to which a bill is to be referred must be determined by motion on each occasion a bill is introduced).

Certain select committees have their terms of reference set out in the standing orders. One of these is the Statutes Revision Committee. Although this is so, this committee also had no independent power to initiate its own investigations. It was dependent on matters being referred to it by the House, except that during an adjournment or a recess, the chairman of the committee or any five members of the House could require a statutory regulation to be referred to the committee for investigation. The point was made to the Standing Orders Committee that this committee could profitably be given the power to initiate its own investigations into delegated legislation without waiting for instructions from the House, and without being concerned with whether the House was in session or not. This limited power to initiate investigation was conceded to the committee, making it and the Public Expenditure Committee the only select committees able to undertake any work without the specific prior authorisation of the House.

Financial procedure

A number of changes to this more specialised form of legislation were adopted following the Standing Orders Committee's report. The cornerstone of financial procedure in New Zealand is the annual Appropriation Bill. It is in moving the second reading of this Bill (the introduction being taken formally) that the Minister of Finance delivers his Budget, and the debate on its second reading is the principal debate of the session. The Bill, which authorises the Crown's expenditure for a year, is not normally passed until well into the current financial year. Interim authority to incur expenditure is obtained by the passing of Imprest Supply Bills of which there are at least two each session although more may be required depending upon the financial circumstances. These Imprest Supply Bills are passed through all their stages at one sitting, almost invariably on a Friday when the House meets in the morning – the debate on the second reading of the Bill providing an opportunity for a general economic debate

to be held periodically throughout the session. The passage of the Bill is not used as an occasion for any detailed scrutiny of public expenditure.

The Standing Orders Committee considered that the uncertainties as to when the House would rise on an Imprest Supply day which this method of proceeding introduced could be overcome by imposing a time limit to proceedings on the Bill. For this purpose a time limit of 4 hours for the second reading debate has been adopted which is slightly less than the time spent on the second reading of such Bills in the last two years. Within this 4 hours most of the normal procedures for the passing of legislation will apply. The convention which had grown up whereby the Minister in charge of the Bill formally moved the second reading but did not speak to it, thus permitting the Opposition to open the debate on grounds of its own choosing, has been written into the standing orders; however, the Minister is to be guaranteed 10 minutes in which to reply to the debate before the expiration of the 4 hours. Other members' speaking times are limited to 15 minutes. At the conclusion of the second reading debate all questions necessary to complete the Bill's passage are to be put without further debate. Provision is made for the committee stage to be dispensed with except where the House specifically resolves otherwise (for example where a committee stage is necessary to deal with the unlikely situation of an error being detected in the printed Bill's provisions).

The usual practice of introducing Imprest Supply Bills only on Friday mornings is also to be changed. The reasons for this are bound up with the question of the broadcasting of Parliament which has been a feature of the New Zealand House of Representatives since 1936. Proceedings are broadcast on radio during all normal sitting hours of the House, and are only broadcast outside these hours on the direction of the Leader of the House. Concern has been expressed from time to time at the importance of some debates which were held outside normal sitting hours and which it was solely within the Government's discretion to decide whether to broadcast. Debates which perennially fall into this category include those on Imprest Supply Bills, which invariably run beyond the normal time for the adjournment of the House (1 p.m. on a Friday). The new time limit on proceedings on Imprest Supply Bills would in itself, of course, much reduce this problem. However, there was a feeling among members that Imprest Supply debates should not be held on Friday morning (when the listening audience is assumed to be negligible) but should be held at 7.30 p.m. at the commencement of the evening session of one of the other sitting days (when the listening audience is assumed to be more substantial). As the House adjourns at 10.30 p.m. on these evenings this would still leave an hour or so of the proceedings unbroadcast unless the Government of the day directed otherwise.

The Standing Orders Committee accepted that there were advantages in holding Imprest Supply debates in the evening and it has been made mandatory for all Imprest Supply Bills, except the first one in any session. The first such Bill may still be introduced on a Friday (but does not need

to be) as it conveniently tailors into arrangements which are often made at the beginning of the session. The passage of the first Imprest Supply Bill is an item of business which is transacted early in the session, often as early as the first week, with the House meeting for the swearing-in of members (where appropriate) and the State Opening of Parliament on successive days, followed by an Imprest Supply debate at the end of the week. Such an arrangement of business is convenient and is still permitted under the new rules. On the question of broadcasting, the problems are to be met by a blanket rule directing the broadcasting of all proceedings on an Imprest Supply Bill, regardless of whether they are within normal sitting hours or not.

Mention has been made above of the Appropriation Bill as the cornerstone of financial procedure in New Zealand. While the Budget is debated on the second reading of this Bill, the detailed Estimates of expenditure for each Government department are considered and voted on its committee stage, being contained in the Schedules to the Bill. The practice is for the Public Expenditure Committee and the other select committees to examine particular classes of the Estimates in detail, questioning officials from the relevant Government department, and then for the committee of the whole House to debate and pass that class during the committee stage of the Appropriation Bill. Sixteen days are allocated each session for consideration of the Estimates in committee of the whole House, the intention being when this procedure was introduced that the Opposition would control the amount of time spent on each class of Estimates. As noted above difficulties arose in enforcing this convention and a complicated provision has been adopted designed to ensure that the Opposition has this right in the future, the Chairman being obliged to put the question whenever, following a speech by the Minister in charge of the class of Estimates under discussion (who is thus given the last word, although not a formal speech 'in reply'), no member other than a Government member seeks the call. The Government is thus denied the opportunity of prolonging the debate – not a common occurrence in any case.

The supplementary estimates are contained in a second Appropriation Bill and are considered class by class in a committee of the whole House on that Bill. Unlike the main estimates no limit has hitherto been placed on the amount of time which could be spent considering supplementary estimates and in 1978, 30 hours were occupied in their passing.* The Standing Orders Committee agreed that it was desirable to fix a limit on the amount of time which could be spent on the supplementary estimates. An additional complication in the passing of supplementary estimates, however, is that it has been the practice to take the second reading and committee stage of the bill consecutively at the same sitting. The second reading of the bill has not always been debated – the House usually preferring to launch straight into a consideration of the supplementary

* see *The Table* Vol. XLVII, pp. 104, 105.

estimates in committee – but occasionally in recent years the Opposition has forced a debate on the second reading – a debate which, because there has been no convention as to its scope, has been fraught with problems of relevancy. The third reading of the Bill is not taken immediately but is left to near the end of the session and is traditionally used as the vehicle for a winding-up debate on the parliamentary year. It was recognised therefore that any time limit would have to cover both the second reading and committee stage of the bill, and for this purpose a limit of 4½ hours for the two stages was agreed. At the end of this period all questions necessary to dispose of the supplementary estimates are to be put immediately in the same way as they are at the end of the sixteenth day on the main estimates. No provision is made for dispensing with the committee stage altogether should it not be reached before the expiration of the 4½ hours allowed (as for the Imprest Supply Bill) but if this did occur the committee stage would be purely formal and very brief. For the committee stage a similar rule to that outlined above on the main estimates has been adopted ensuring that the Opposition controls the amount of time spent on each class of supplementary estimates.

The question of broadcasting the debate was considered at some length by the Standing Orders Committee but it was unable to agree to a blanket extension of broadcasting during the supplementary estimates as it had done for Imprest Supply Bills. By way of a compromise however it was agreed that the second Appropriation Bill would be set down for second reading at 4 p.m. on the day on which it was to be taken. This would ensure that the 4½ hour proceedings on it would all be broadcast in future (the House adjourning for dinner between 5.30 – 7.30 p.m. and broadcasting automatically continuing to the normal rising time of 10.30 p.m. which would then coincide with the end of proceedings on the bill).

Divisions

As discussed above, changes to the location of ministerial offices within the parliamentary complex necessitated a re-think of the procedure on divisions. Hitherto, on a division being called, the bells have been rung for 3 minutes, at the close of which time the doors into the Chamber and the lobbies were locked. The Speaker then re-stated the question and, if a division was still insisted upon (which it almost invariably was) would direct the House to divide and appoint tellers. Members would at that point begin filing into the lobbies to record their vote on the question. After a few minutes the tellers would report the numbers at the Table and Mr Speaker would declare the result. The whole process from the initial calling for a division occupied 9 or 10 minutes. For divisions consequential on the carrying of a closure motion the same procedure applied, except that the bells were rung for only 1 minute instead of 3.

While the considerable amount of time thus occupied on divisions was the subject of criticism in its own right, a more immediate problem was the fact that Ministers would find it most difficult to reach the Chamber

within the 3 minutes warning of a division they would receive by the ringing of the bells, particularly if they had problems with lifts. Experiments conducted with the parliamentary messenger staff suggested that it took at least 4 minutes to walk from the Prime Minister's suite (which is farthest from the Chamber) to the Chamber assuming there were no physical obstructions on the stairway (which in an only partially completed building would not necessarily be so). It was concluded that to give all members present within Parliament Buildings a reasonable opportunity to reach the Chamber in the event of a division 5 minutes must elapse between the ringing of the bells and the locking of the doors. To deal with the unacceptable extra time spent on divisions that a simple change of this nature would occasion, the division procedure was recast.

The essence of the new procedure is that the telling of the votes may now commence as soon as the division is called, rather than waiting for the bells to cease ringing and the doors to be locked. Under the new rules, following a call for a division Mr Speaker directs the House to divide and appoints tellers while the bells are ringing. The bells are rung for 5 minutes and the doors locked, and Mr Speaker then re-states the question, but without again putting it and without again asking the House if a division is desired. By that time members would already have been voting on the question for the best part of 5 minutes, and the tellers should be in a position to report the numbers fairly promptly following the locking of the doors.

This system was implemented some 3 months before the end of the session so it has been subject to a period of trial and has proved a most beneficial development. As expected the tellers are able to report the numbers very soon after the doors are locked, often almost immediately after. In the result the time spent on each division is now of the order of 6–7 minutes, a saving of 3–4 minutes per division. Thus the need to ring the bells longer has not in the event prolonged divisions but has led to the development of a system which, by utilising that particular period of time, has actually shortened them. It is specifically provided that members may not enter the Chamber while the bells are ringing, cast their vote, and then leave before the conclusion of the division. Members voting in the division must remain in the Chamber until the result of the division is declared by Mr Speaker. The long-standing rule that every member present within the Chamber or the lobbies when the doors are locked must vote in the division is retained. Members who are present when a division is called but who do not wish to vote have 5 minutes therefore to absent themselves, otherwise they must vote. On divisions following a closure motion the procedure is repeated except that the bells are rung for only 1 minute.

The new procedure has led to other changes in practice not anticipated when the amendments were proposed, notably in relation to the whips and tellers, and pairing. It had been the normal practice for the two Government and the two official Opposition whips (or any other member for the time being acting as a whip) to act as tellers for each side of the question. During the three minutes the bell was ringing the junior Govern-

ment whip would approach the Opposition whips and agree pairs for the division (these are recorded in *Hansard*). Under the new procedure this arrangement has not been found to be convenient, for if the whips/tellers were to spend part of the five minutes while the bells are ringing agreeing pairs, this would lose some of the advantage derived from beginning the telling of votes immediately. Consequently the office of a whip and that of a teller are tending to diverge rather than telling being merely an aspect of a whip's job. Non-whips from both sides of the House are serving as tellers, leaving the whips to deal with the question of pairs.

Privilege

In 1976 Parliament was plagued with a spate of allegations of breaches of privilege. So much so that the Speaker at that time, the late Sir Roy Jack, was prompted to remark at one point:

> "I have some concern that if we do not have an increase in zeal for discretion and a decrease in zeal for raising questions of privilege we shall shortly all be in the dock and there will be nobody left to judge us." (NZPD, Vol. 404, p. 1428.)

The excess of zeal for raising questions of privilege provoked criticism, not least from members of Parliament themselves, at the number of spurious matters that were being raised under this head. Since 1976 there has been something of a reaction against making allegations of breaches of privilege and 'zeal for discretion' has by and large prevailed. There nevertheless remained a general feeling that the existing procedure permitted matters of privilege to be raised too lightly, and interest in tightening the procedure was stimulated by a report of the Committee of Privileges of the House of Commons made in 1977.

The basic idea put forward in that report of the initial raising of a matter of privilege being made privately with the Speaker rather than on the floor of the House has been adopted. Members wishing to raise matters of privilege in future are required to refer the matter in writing to the Speaker before the next sitting of the House. Matters of privilege occuring in the House itself must also initially be raised in writing with the Speaker. This may be done immediately the incident occurs. It is then for Mr Speaker to determine whether a question of privilege is involved. The requirement for Mr Speaker to direct his mind to whether a question of privilege is involved rather than whether there has been a *prima facie* breach of privilege is intended to be merely a change in terminology, rather than in substance. The *prima facie* breach concept is well recognised but it has at times given the mistaken impression that the Speaker has ruled that a breach of privilege has occurred. It is hoped that referring in future to whether a question of privilege is involved will prevent this impression getting abroad. It is not intended in any way to lower the standard applied by the Speaker in considering whether allegations of breach of privilege require to be further ventilated.

Mr Speaker is required to report to the House at the first opportunity

on the allegation only if he considers that a question of privilege is involved, Allegations which are not sustained by the Speaker will therefore not be given an airing on the floor of the House, with the attendant publicity they tend to attract. The fact that Mr Speaker rules that no question of privilege is involved in a complaint does not prevent the member who raised it from giving a notice of motion in respect of it, but it does mean that no precedence will be accorded such a motion as a matter of privilege. In any case in which Mr Speaker does report to the House that a question of privilege is involved in a complaint which has been made to him, the Leader of the House must move forthwith that the matter be referred to the Committee of Privileges. No changes to that Committee's procedure in considering questions of privilege are recommended.

Notices of motion

One of the first items of business each sitting is the giving of private members' notices of motion each of which is recited *viva voce*. Following procedural changes made in 1974 members are required before the next sitting to submit a copy of each notice of motion they intend to give in order that the Speaker may vet it for compliance with the standing orders. Only if the Speaker does not rule it out of order at this stage may the member proceed to give it. The giving of notices of motion is regarded by private members as a very important activity as, occurring early in the proceedings, it is done before a fully attended House, and tends to gain more attention from other members and from the parliamentary press gallery, than many other aspects of parliamentary work. The giving of the notice is in fact of much more significance than the embryo motion. Most notices of motion once having been given never proceed any further than that; only about 1 in 20 ever being moved and debated, and even in these cases the debate on each being limited to 30 minutes and the question lapsing at the end of that time without the House pronouncing formally on its merits.

In these circumstances much time is expended concocting notices of motion which reveal the party policies of the giver in a favourable light, and which denigrate or ridicule those of his opponents. The notices of motion which tend to be devised as a result of this system often contain a great deal of extraneous material of fact, argument and comment supporting the proposition advanced, to such an extent on occasion that the proposition itself is totally obscured. As the House no longer formally expresses its opinion on private members' motions by putting even such few motions as it debates to the vote this does not matter greatly from one point of view. However the inclusion of extraneous matter tends to provoke members to reply to allegations or comments made in motions at the time these are given, usually by raising points of order in regard to them. Consequently the giving of notices of motion does not reveal the House in its most disciplined mood, although it can be an entertaining time for the observer.

These problems are probably not susceptible of a completely satis-

factory solution. The oral delivery of notices of motion will always provoke some members unless the Speaker is given power to exclude all but the most anodyne of notices, and no one wishes to see this occur. The Standing Orders Committee recommended, and the House adopted, a preamble to the standing order dealing with the form and content of notices of motion, providing that they must be expressed in a form, and with content, appropriate for a resolution of the House, and that they must indicate clearly the issue to be raised for debate, and include only such material as may be necessary to identify the facts or matter to which the motion relates. It is hoped that by spelling out in this way basic requirements for the form a notice of motion must take, the Speaker's hand will be strengthened in curbing the worst excesses of the present system.

Ministerial statements

Until the recent procedural amendments, the making of ministerial statements was not governed at all by the standing orders, although these did obliquely recognise that there was such a thing as a ministerial statement. The making of ministerial statements has developed as an aspect of the House granting an indulgence to a Minister of the Crown to make a statement on a matter of public interest without any question being before the House. Such rules as had grown up around ministerial statements were entirely Speaker-made, and this body of precedence, being of some vintage, and directed mainly to the case of a non-controversial statement, did not deal adequately with announcements of Government policy, particularly economic policy of the so-called 'mini-budget' variety. For instance the rules contemplated that the Leader of the Opposition would be granted leave to comment on the statement but that his remarks must be uncontroversial, an extremely difficult and impracticable rule in many circumstances.

The Standing Orders Committee felt that the time had come to deal formally with ministerial statements in the standing orders. Instead of relying upon the indulgence of the House being accorded them to make a statement, Ministers are now empowered to make statements to the House at any time (even during the course of a debate) except while a member is speaking. The Leader of the Opposition (or the member acting as the Leader of the Opposition at the time) is given the right to comment on the statement for a maximum of 5 minutes without being restricted to making uncontroversial remarks. Finally provision is made for a further response from the Minister, this time subject to a 5 minute time limit.

Broadcasting

A formal amendment to the standing orders to permit radio broadcasting of all proceedings on Imprest Supply Bills has already been referred to. A further matter which was raised with the Standing Orders Committee but which is not governed by the standing orders, was the question of using extracts from the radio broadcasts of Parliament on radio and

television news programmes. The broadcasting of all normal sitting hours of Parliament is carried out by a public body – the Broadcasting Corporation of New Zealand – which operates radio and television networks. Both the Broadcasting Corporation and other private radio stations have in the past raised the question of using extracts from the broadcast parliamentary material to enhance their news and current affairs programmes. Although it appears that the copyright in the recording of the debates is held by the Broadcasting Corporation and that Parliament could not interfere with the Corporation's use of that copyright (for example by re-broadcasting extracts of debate) in any case, the Corporation has not sought to exercise its rights in this regard without Parliament's concurrence.

The Standing Orders Committee could see no reason why extracts from parliamentary debates should not be used on news programmes and recommended accordingly in its report. This recommendation was met with general acceptance by members, although it was not formally embodied in a resolution. Beginning with the session in 1980 the broadcasting media will be able to use recorded extracts of parliamentary debates in news and current affairs programmes. The same standards of fairness and accuracy which apply to current methods of reporting Parliament will apply in respect of their use. Private radio will also be able to use extracts from the broadcast material, with the permission of the Broadcasting Corporation.

Oath of Allegiance

Finally mention may be made of a standing order adopted 50 years ago which has been revoked because it is apparently beyond the powers of Parliament. This particular standing order purported to confer on the Speaker as from the confirmation of his election by the Governor-General a commission authorising him to administer the oath or affirmation to members. Under the New Zealand Constitution Act, members are required to take and subscribe an oath of allegiance (or make an affirmation) before sitting and voting in the House "before the Governor, or before some person or persons authorised by him to administer such oath". It has been the practice for the Governor-General after confirming the election of a Speaker to confer on the Speaker a commission authorising him to administer the oath prescribed by law. In these circumstances the standing order purporting to confer a commission on the Speaker seemed clearly to be contrary to the statute under which the authority to administer the oath is conferred, quite apart from any question of the standing order being in conflict with the Royal Prerogative. Consequently it has been revoked.

V. DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT

BY F. M. A. HAWKINGS

A Clerk in the House of Lords

On Thursday 7th June 1979 polling took place in the United Kingdom to elect representatives to the European Parliament from 81 constituencies in Great Britain and Northern Ireland. The orthodox first-past-the-post system was used for all 78 constituencies in Great Britain, while the three Northern Ireland seats were filled under the single transferable vote system of proportional representation. Of the other eight Member States of the European Economic Community (EEC), three also voted on 7th June and five voted on Sunday 10th June 1979 – each Member State voting on the day of the week that was customary for it. Counting did not begin in any Member State until all the voting was complete. The elections were constitutionally unique, since they were the first time that representatives from the United Kingdom had been elected to an international body by universal suffrage.

The elections derived from Article 138 of the Treaty of Rome establishing the EEC, supplemented by an Act of the Council of Ministers dated 20th September 1976.[1] This Act established the basic constitution of the directly elected European Parliament, except for its powers. The Parliament consists of 410 seats, distributed amongst the Member States as follows: Belgium 24, Denmark 16, Germany 81, France 81, Republic of Ireland 15, Italy 81, Luxembourg 6, Netherlands 25, and United Kingdom 81. When Greece joins the Community the Parliament will increase in size, and may do so again if Portugal and Spain also join the EEC. It will sit for five-year periods.

For the elections held in 1979, each Member State made its own provisions regarding the electoral system to be employed, but Article 7 of the Act of 20th September provides that the Parliament "shall draw up a proposal for a uniform electoral procedure"; this could lead to the United Kingdom's first-past-the-post system being replaced by a form of proportional representation for European elections. But since ultimate agreement and implementation of a uniform procedure rests with the Council of Ministers and Member States it remains to be seen how early it will be possible to establish one.

The formal powers of the directly elected Parliament do not at present differ from those of the nominated Parliament which preceded it; they derive from the Treaty of Rome. The Parliament's powers are generally "advisory and supervisory", and it does not possess a role in the legislative process comparable to that of most national parliaments. It expresses its opinion on proposals for European legislation, but cannot amend or veto

them. On the other hand, it can suggest amendments which may be incorporated in draft legislation forwarded to the Council of Ministers for adoption. And it does have certain specific powers of amendment, modification and rejection over the Community budget which it quickly put into use in December 1979.[2]

Members of the European Parliament can put oral and written questions to the Council of Ministers and to the Commission, and by a two-thirds majority of those voting on a motion of censure it can oblige the Commission, the executive arm of the Community, to resign as a body. Although no formal amendment of these powers is likely in the foreseeable future, it was widely believed before direct elections that the Parliament would try to increase its influence once it had been elected by universal suffrage, particularly in controlling the administration and implementation of Community affairs. This has been borne out by events since June 1979. The Parliament has a system of fifteen specialist committees, which prepare reports for debate in plenary session.

In the United Kingdom, a Select Committee of the House of Commons was set up in 1976 to consider the organisation – but not the principle – of direct elections. In its three reports,[3] the Select Committee discussed and made recommendations on a wide range of issues raised by the proposed elections, for instance, the size and composition of the European Parliament, the date of the elections, the period for which the Parliament should be elected, the domestic legislation that would be required in the United Kingdom, the electoral system to be used, the franchise and financing the elections. Some of these matters were settled by the Act of the Council of Ministers of 20th September 1976, while others were dealt with in the United Kingdom by primary and secondary legislation. The House of Lords Select Committee on the European Communities also reported on direct elections in 1976,[4] when it discussed the powers of the European Parliament, its site and the issue of the dual mandate (simultaneous membership of the European Parliament and a national Parliament).

The arrangements for direct elections in the United Kingdom were subsequently laid down by the European Assembly Elections Act 1978 and subordinate measures. One of the Act's more important provisions was that no treaty providing for an increase in the powers of the European Parliament can be ratified by the United Kingdom unless it has been approved by an Act of Parliament, thus effectively preventing any formal extension of the European Parliament's powers without approval by Westminster.[5] The Act provided that all those eligible to vote in parliamentary elections, with the addition of Peers, should be entitled to vote in the European elections, and it enabled Peers and ministers of religion (who are disqualified from membership of the House of Commons) to stand as candidates for the European Parliament.

Constituencies for direct elections were drawn up by the Boundary

Commissions for England, Scotland and Wales, by grouping together existing Westminster constituencies. They generally average about 500,000 electors, and the largest constituency geographically, Highlands and Islands, stretches from the Mull of Kintyre to the Shetland Islands. Under its system of proportional representation, Northern Ireland is treated as a single constituency electing three representatives. Additional arrangements covering matters such as deposits (fixed at £600) and expenses (limited to £5,000 per candidate plus 2 pence for every elector in a constituency) were made by subordinate legislation.

Nominations closed on 12th May; 283 candidates in all put their names forward in the 81 constituencies. 9 out of the 36 members of the existing British delegation to the nominated European Parliament stood for election to the new Parliament, and 7 other members of the Westminster Parliament (1 MP and 6 Peers) were also candidates. However, both the major parties discouraged the dual mandate for members of the House of Commons, with the result that at this election and even more so at future elections, Britain will have far fewer dual mandate members than most other Member States. The parties financed the campaign from their own funds, but the European Parliament provided funds to the political groups established within it for the purposes of disseminating "information about the elections". These funds were divided amongst constituent national parties by the groups themselves. The European Parliament also mounted a neutral information campaign itself, jointly with the Commission.

The political parties in the United Kingdom have differed considerably in their attitudes to the European Parliament and to direct elections. On Britain's accession to the European Community, the Labour Party declined to send a delegation to the nominated Parliament until July 1975, and did not decide actually to contest direct elections until May 1978. In the Conservative and Liberal Parties, on the other hand, the issue was never in doubt. The Labour Party's manifesto for the elections was based on the need for "fundamental reform" of the EEC, working towards a "wider but much looser grouping of European states". The manifesto stated that the Labour Party is firmly opposed to any extension of the powers of the European Parliament, which should remain a largely consultative body. Reforms were needed in the ability of the House of Commons to reject, amend or repeal EEC legislation and in Community regional, industrial, budgetary, fisheries and development policies. The manifesto declared that if the fundamental reforms it contained were not achieved within a reasonable period of time, the Labour Party "would have to consider very seriously whether continued EEC membership was in the best interests of the British people".

Towards the other end of the spectrum, the Liberal Party published a joint manifesto with the other 11 parties from 7 Member States forming the Liberal and Democratic group in the European Parliament. The present European Community, it stated, must be developed into a "true

union", with a "European Government" replacing the existing Commission and a "Council of States" replacing the Council of Ministers. The union would be based on a Declaration on Basic Human and Civil Rights to be adopted by the Parliament and ratified by Member States, and it would have a common currency. The manifesto stated that the role and powers of the directly elected Parliament should be developed, particularly in the budgetary and legislative fields, and that the Parliament should have the right to nominate the members of the Commission.

Somewhere in between these two positions, the Conservative Party's manifesto advocated playing a constructive role in a substantially unchanged Community. The European Parliament, the manifesto stated, already possessed sufficient formal powers to fulfil its proper role; but its political influence would grow after direct elections. The Conservative Party was committed to Britain's membership of the Community, emphasising that Britain's prosperity and position in world affairs were closely linked to those of her European partners. But the Conservatives were advocating a "common-sense Community" which avoided harmonisation of national laws for its own sake and unnecessary interference in national affairs.

Where the two main parties came closer together was in stressing the need for reform of the Community's common agricultural policy and budget. Although there remained differences of emphasis, both the Labour and Conservative manifestos stated that "fundamental reforms" of the common agricultural policy were necessary to end the present combination of high food prices and expensive surpluses of unsold produce. Both parties also agreed that Britain's present net contribution to the Community budget was disproportionately high in view of her level of prosperity (seventh out of the nine Member States in terms of gross domestic product per head), and that reform was called for to rectify this.

The manifestoes of both major parties contained many policies and objectives that only a national Government could achieve. At the first attempt, at least, the habit of writing a programme for a possible Government – instead of a small group in a consultative assembly – had not been completely lost by the British political parties.

The outcome of the elections in the United Kingdom was regarded by European enthusiasts as a disappointment and by cynics as a flop. Turnout was about 32 per cent, compared with a poll of 76 per cent in the general election only a month before. The United Kingdom's turnout was the lowest in the Community, the average for the Nine being 63 per cent. In London North East the poll was as low as 20 per cent, and in Liverpool 24 per cent; in Northern Ireland, on the other hand, it was 57 per cent.

The elections were a landslide for the Conservative Party. They won 60 out of the 78 seats in Great Britain, with 17 going to the Labour Party and 1 to Mrs Winnie Ewing, the Scottish Nationalist candidate for the Highlands and Islands. The Liberal Party won 13 per cent of the votes

cast in Great Britain, but gained no seats. In Northern Ireland, two of the three seats went to Unionists (of different sorts) and the third was won by Mr John Hume, now leader of the Social Democratic and Labour Party. One of the elections, that of Mrs Shelagh Roberts for London South West, was declared invalid because of Mrs Roberts' membership of a United Kingdom statutory body at that time. In a by-election in September 1979, Mrs Roberts was re-elected with a reduced majority.

In the Community as a whole, parties of the centre and right dominated those of the left. Parties of broadly the same persuasion come together in the European Parliament to form political groups. There are six such groups, plus one "group" of independents who co-operate with one another to gain the advantages (for instance in rights to speaking time) accorded to political groups. After the elections, the Socialist Group, to which the British Labour Party belongs, was the single largest group, with 112 out of the 410 seats. The Communist and Allies Group, the other main group of the left, won 44 seats.

On the right, the largest group was the European People's Party, whose main components are the German CDU and the Italian Christian Democrats; this group had 108 seats. The next largest group, and the other main group of the right, was the European Democratic Group with 63 seats[6] – the British Conservatives plus 3 Danish members and one of the two Ulster Unionists.

In the centre, there are two groups: the Liberal and Democratic Group which won 40 seats, and the European Democrats for Progress, who won 22. The European Democrats for Progress are mostly French Gaullists, plus 5 Irish Fianna Fáil members, Mrs Ewing, and a Danish member.

DISTRIBUTION OF SEATS AT THE PARLIAMENT'S FIRST SESSION

Country	Soc	EPP	ED	Comm	LD	DEP	TCDG	Others	Totals
Belgium	7	10	—	—	4	—	1	2	24
Denmark	4	—	3	1	3	1	4	—	16
France	21	9	—	19	17	15	—	—	81
Germany	35	42	—	—	4	—	—	—	81
Italy	13	30	—	24	5	—	5	4	81
Luxembourg	1	3	—	—	2	—	—	—	6
Netherlands	9	10	—	—	4	—	—	2	25
Republic of Ireland	4	4	—	—	1	5	1	—	15
United Kingdom	18	—	60†	—	—	1	—	1	80*
Totals	112	108	63	44	40	22	11	9	409

† Excluding Mrs Roberts but including an Ulster Unionist.
* Excluding Mrs Roberts.

Since the European Parliament forms no executive, there is no majority and no opposition. Voting coalitions change on different issues; although

the European People's Party (the Christian Democrats) can frequently be found voting with the European Democratic Group (the Conservatives), or the Socialists with the Communists, this is far from always so. When national interests are at stake, coalitions on strictly "political" lines tend to break down, and British Conservatives may be found voting with, say, French Communists.

The directly elected Parliament met for the first time on 17th July 1979. It now holds plenary sessions for five days each month, with occasional special sessions for a particular reason – for instance first consideration of the Community budget. Committee meetings and meetings of the political groups take place in the other weeks of the month when the Parliament is not meeting in plenary session.

As yet it has no permanent site. Most plenary sessions of the directly elected Parliament have so far been held in Strasbourg, but the Parliament's staff are based in Luxembourg and the Parliament now has a "hemicycle" (chamber) in Luxembourg in which it occasionally meets. Most Committee meetings are held in Brussels, and political group meetings are often held elsewhere. So much travelling is expensive and time consuming (lorryloads of documents have to be driven across Europe), and cannot but harm the Parliament's work. However the decision on a permanent site rests not on the Parliament itself but with the Member States (though some parliamentarians dispute this), and neither Luxembourg nor France want to cede their claim on the Parliament to the other or to a new site altogether. Like the adoption of a uniform electoral procedure, this is likely to provoke political wrangles for some time to come.

The Parliament quickly demonstrated that it intended to make an impact on Community policies. In December 1979 it rejected the draft Community budget for 1980, after the Council of Ministers had rejected amendments proposed by the Parliament and had failed to include in the budget certain items requested by the Parliament. This was an unprecedented move, and six months after the rejection the Community is still without a budget, surviving on monthly allocations of one-twelfth of last year's budget. On the other hand the subsequent inaction on a new budget by the Council of Ministers and the overshadowing of the budget rejection by other pressing Community issues have emphasised how limited the Parliament's powers are, and how dependent the Parliament is on initiatives from the Commission and the Council of Ministers.

It is not yet clear what relationship will develop between the directly elected European Parliament and national Parliaments in the long run. Some Member States – for instance Germany – will be able to maintain a fairly close relationship via dual mandate members. In the United Kingdom, this will not be possible, because of the small number of dual mandate holders.

In 1978 the House of Lords Select Committee on the European Communities published a report on relations between Westminster and the

European Parliament after direct elections,[7] which was debated in the House of Lords on 30th January 1979.[8] The main recommendation of the Committee was that a European Grand Committee should be set up to permit discussion between members of the two Parliaments on matters of mutual interest. The Grand Committee would consist of the members of the EEC scrutiny committees of both Houses and of their sub-committees, all British Members of the European Parliament (MEPs) and such other members of either House of Parliament as that House might appoint; the Select Committee suggested that it should meet regularly three times a year to begin with, holding extra meetings if required. Nothing along these lines has yet been established. After considerable debate in the House of Commons Services Committee and the House of Lords Offices Committee, Members of the European Parliament have been granted limited access to the Palace of Westminster, together with some rights to sit in the Galleries of the two Houses. MEPs also attend backbench party committees by invitation, and may be invited to give evidence to Westminster Select Committees on matters of interest to them. So the links remain informal at present, and Westminster has been less welcoming to the new parliamentarians than the parliaments of some other Member States.

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1. Decision 76/787/ECSC, EEC, Euratom; Official Journal of the European Communities Volume 19 No L278
2. See page 58 below.
3. HC 489, 515 and 715, session 1975–76.
4. Twenty-Second Report of the European Communities Committee, Session 1975–76, HL 119 (HMSO).
5. A broadly similar provision in France requires an amendment of the French constitution (and hence a referendum) before the European Parliament can increase its formal powers.
6. Excluding Mrs Roberts
7. Forty-fourth Report, session 1977–78, HL 256–I and II.
8. HL Debs. vol. 398 cols. 18–105

VI. THE COMMITTEE ON PETITIONS OF THE RAJYA SABHA IN THE PARLIAMENT OF INDIA

BY S. S. BHALERAO

Secretary General of the Rajya Sabha

The right to petition the King or the ruler of a State is one of the oldest rights and in India it can be traced back to ancient times.

In modern times, in a democracy, it is well recognised that a citizen who has a grievance against the Government or any public authority has an inherent right to seek redress. Article 350 of the Constitution of India thus provides:

> "Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be".

This is the only provision in the Constitution which speaks of a citizen's right to submit a representation to any public authority for the redress of his grievance. An aggrieved citizen can also quite legitimately seek the assistance or use the good offices of the elected representatives of the people – the members of Parliament – to whom the Government of the day is answerable. The members of Parliament have at their disposal such parliamentary procedures and devices as Questions or interpellations, adjournment motions, calling attention notices, half-an-hour and other discussions to ventilate grievances or to question the propriety of policies and measures, or actions and lapses, of government or any public authority responsible to Government.

In India, the two Houses of Parliament, through their respective Committees on Petitions provide yet another forum for the citizen to secure redress against acts of injustice committed by any public authority. Although this forum is available only in a limited number of cases, it has proved to be an important link between the people and the Government effectively exerting influence on different aspects of public life by removing grievances and giving due respect to the opinion of the citizen. Through this forum Parliament comes to know the requests and complaints of the citizens thus making it more capable of performing its task of overseeing governmental activities.

The Committee on Petitions is one of the oldest Standing Committees of the Central Legislature in India. Its origin can be traced to a Resolution moved in September 1921, in the then Council of State, which sought to empower the Council, if necessary by statute, *inter alia* "to receive public petitions on all matters relating to public wrong, grievances or disability, to any act or acts of public servants or to public policy". The then Govern-

ment appointed a Committee to examine this matter and in pursuance of the recommendation of this Committee, the first Committee on Public Petitions was constituted in February 1924. The Committee received its present nomenclature, namely, the Committee on Petitions, in the year 1933.

Following the first general elections to the House of the People (or the Lok Sabha) and the State Legislative Assemblies under the Constitution, the Council of States or the Rajya Sabha was constituted in the year 1952. The Committee on Petitions of the Rajya Sabha was appointed in the same year (viz. 1952). At that time it consisted of five members only. According to the rules relating to presentation of petitions as they existed in 1952, the scope of the Committee was very limited as it covered the petitions presented to the House only with regard to Bills published in the Gazette of India or introduced in the House or in respect of which notice for leave to introduce had been received. The functions of the Committee were also restricted to consideration of the petitions on pending Bills. The Committee used only to recommend the circulation of the petitions *in extenso* or in a summary form, for the information of the Members so that the Members could, if they so desired, pursue the points mentioned in the petition and influence the course of the Bill in the House. There was, therefore, no scope for the presentation of petitions concerning matters of public importance save the ones covered by a pending bill.

In 1962, the Rajya Sabha appointed a Special Committee of the House to revise the then existing Rules of Procedure. That Committee recommended that the scope of the Rules relating to petitions be enlarged so that petitions might also be presented on any matter of general public interest provided that it is not one–

(a) which falls within the cognizance of a court of law having jurisdiction in any part of India or a court of enquiry or a statutory tribunal or authority or quasi judicial body or commission;
(b) which raises matters which are not primarily the concern of the Government of India;
(c) which can be raised on a substantive motion or resolution; or
(d) for which remedy is available under the law, including rules, regulations or bye-laws made by the Central Government or by an authority to whom power to make such rules, regulations or bye-laws is delegated.

The Special Committee also recommended an increase in the membership of the Committee from 5 to 10. These recommendations were accepted by the House in 1964 and the Rules were amended accordingly.

Under the Rules of Procedure and Conduct of Business in the Rajya Sabha, all petitions to the Rajya Sabha are required to be drawn up in a prescribed form which has been appended to the Rules. The essential requirements for the admission of a petition for presentation to the House are that–

(1) it should be formally addressed to the Rajya Sabha;

(2) it should be couched in respectful and temperate language;
(3) it should contain the name and designation of the petitioner with his address duly authenticated by his signature;
(4) every petition, if it is to be presented by a member, should be countersigned by him; and
(5) it must contain a precise statement of grievances and a prayer for their redressal.

A Member who is desirous of presenting a petition to the House has to give advance notice thereof to the Secretary-General of the Rajya Sabha. After receipt of the petition, it is examined by the Secretariat to determine its admissibility according to the Rules. If the Chairman of the Rajya Sabha admits the petition, the member concerned is permitted to present the petition on a date convenient to him and the necessary entry is made in the List of Business of the day for the presentation of the petition.

The Rules of Procedure also permit the reporting of the petitions received in the office by the Secretary-General to the House. Prior to 1964 when, as mentioned already, petitions could be presented only on Bills or other matters pending before the House, the Secretary-General often used to receive petitions on pending Bills from individuals and bodies, and report them to the House. This practice, however, is no more in vogue; at present only those petitions which are countersigned by a member of the House are presented to the Rajya Sabha. No discussion or debate is permitted at the time the petition is presented. After presentation by a member, every petition stands automatically referred to the Committee on Petitions.

The Committee on Petitions, under the Rules of Precedure, is appointed by the Chairman of the Rajya Sabha. It consists of 10 members, and the Chairman of the Committee is appointed by the Chairman of the Rajya Sabha from amongst the members of the Committee. Normally, the term of the Committee is one year, after which it is re-constituted.

The functions of the Committee are to examine (1) every petition referred to it; and (2) to report to the House on specific complaints contained in the petition. To enable the Committee to report on the specific complaints, the Committee is empowered to take such evidence or call for such papers as it deems fit. Thus, the Committee has ample powers not only to make recommendations about specific complaints contained in the petition but also suggest remedial measures either in a concrete form applicable to the case under consideration or to prevent recurrence of such cases in future.

In practice, the Committee orders the circulation of those petitions which deal with Bills or matters pending before the House, in extenso or in summary form. So far as the petitions on matters of general public interest are concerned, the Committee examines in depth the complaints and grievances contained therein, calls for formal comments from the relevant Ministries or Departments of the Government and examines witnesses, including the petitioners and the representatives of the Mini-

stries or Departments concerned with the subject matter of the petition. The Committee also undertakes on-the-spot study tours to gain first-hand knowledge of the problem which is the subject of the petition under the Committee's consideration. The Committee meets as often as required and its sittings are held in private. The members function in a non-partisan manner in the Committee.

The Committee's recommendations are arrived at by in-depth discussions and are, by convention, unanimous. The Report of the Committee deals exhaustively with the specific grievances or complaints of the petitioners, the arguments advanced by them to fortify their plea, the viewpoint of the relevant Ministries and Departments of the Government and the Committee's recommendations in the light of the evidence collected by it in regard to matters raised in the petition.

As has already been mentioned earlier, during the period from 1952 to 1964, there used to be petitions in the Rajya Sabha only on pending Bills and so only a few reports were presented. Of late, however, with the growing understanding of the importance of the Committee, the number of petitions presented and reported upon has considerably increased. This will be shown by a few interesting facts. For instance, between 1952 and 1963 only 15 reports were presented; however, between 1964 and 1977, 35 reports were presented and since then 11 further reports have been presented. The number of sittings during which petitions were considered also indicates the seriousness with which the Committee has addressed itself to its business. For example, one petition was considered by the Committee in 44 sittings (51st Report), while another was disposed of in 3 sittings (47th Report). Obviously, the length, or the number, of sittings held depends upon the importance of the subject matter of the petition.

After the report has been presented to the House, the Secretariat forwards copies of the Report to the Ministry concerned and asks it to furnish to the Committee within a period of six months, information regarding action taken by the Government to implement the recommendations contained in the report. This is done to ensure that the recommendations of the Committee are implemented effectively and expeditiously and do not remain merely on paper. If the Ministry feels any difficulty in implementing the recommendations, it approaches the Committee giving reasons as to why the recommendations cannot be, or cannot be fully, implemented by it. In the light of the reasons given by the Ministry, the Committee reconsiders its recommendations. The Committee may or may not accept the contention of the Ministry. In cases, where the Committee feels strongly that its recommendations should be implemented, the Secretary of the relevant Ministry is called before the Committee with a view to impressing upon him the need and urgency of implementing a particular recommendation about which the Government have expressed any reservations. All the decisions of the Committee are reported to the House.

It may be relevant to refer to a few important reports to indicate how

the Committee has fulfilled its role as one of the agencies of Parliament to redress public grievances.

The 20th Report of the Committee dealt with the question of the laying-off of workers of a leather factory in Kanpur. The petition was submitted by the workers of this factory. The Committee went into the affairs of the company and recommended its take-over by Government so that "this Unit which is one of the biggest of its kind in Asia and which had been rendered sick could be rejuvenated for defence requirements and for earning foreign exchange". It is interesting to point out here that subsequently the factory was nationalised.

The 21st Report of the Committee dealt with the problem of released Emergency Commissioned Officers in the Defence Forces who were recruited in the wake of conflict between India and Pakistan in September 1965. The Committee recommended a number of financial benefits that should be given to these officers to alleviate hardships caused to them due to their release from the Army. In the 23rd Report, the Committee dealt with grievances of persons affected by the construction of a dam on the river Beas and problems connected with their rehabilitation elsewhere. In the 24th Report, the problems of villagers whose lands were acquired for the setting up of a defence project were considered by the Committee.

The 25th Report dealt with the prayer of handloom weavers who had demanded that the manufacture of sarees by powerlooms should be prohibited and such manufacture should be reserved for the handloom sector only.

The 29th Report dealt with the subject of protection and proper preservation of the monuments of archaelogical and historical importance such as Bodh Stupa at Sanchi, the Udayagiri caves in and around Vidisha District of the State of Madhya Pradesh, and other monuments at Udiapur, etc. The Committee made recommendations in respect of each of the monuments, after visiting them and seeing their condition on-the-spot.

The 30th Report dealt with a petition demanding that all medical representatives and salesmen employed by the pharmaceutical manufacturing and distributing companies in India should be brought within the scope of the definition of "Workman", contained in the Industrial Disputes Act. The Committee acceding to the prayer recommended that legislative measures should be undertaken for the purpose without any further loss of time. In pursuance of this recommendation, separate legislation, namely the Sales Promotion Employees (Condition of Service) Act, 1975 was enacted.

In the 31st Report, the Committee dealt with a petition urging that a cement factory being set up in the village of the petitioners should provide employment opportunities for people residing in that locality. The Committee recommended that in order to instil a sense of participation of the local people, it was essential that due representation should be given to them in the matter of employment in the factory.

The 32nd Report dealt with the reservation of jobs for physically

handicapped and mentally retarded persons. The 33rd Report considered a petition of employees of the then Burmah-Shell Company in regard to their job security and legal protection for safeguarding their interests vis-a-vis the management of the company. The Committee also recommended amendment of the definition of 'Workman' to cover certain categories of employees.

The 36th Report dealt with a petition of some persons praying for the opening up of a second shift in a Medical College in Delhi for students who had failed to secure admission in any medical college in spite of their securing First Division in the Pre-Medical College Examination. The Committee recommended that every effort should be made for the enrolment of these students in medical colleges run by the Central Government either in or outside Delhi by giving them weightage of a few marks, if necessary, during the next academic session.

In its 47th Report, the Committee had an occasion to consider the petition of handicapped persons praying for the grant of exemption from payment of road tax in respect of all types of vehicles owned or used by physically handicapped persons and for the supply of petrol to them at concessional rates (i.e. free from excise duty) for the vehicles which require the use of petrol. The Committee reported favourably on this petition and now not only the vehicles used by handicapped persons are exempted from payment of road tax but handicapped persons also get petrol at a concessional rate in accordance with a scheme formulated by the Government.

The 49th Report of the Committee dealt with the problem of promotional avenues for Income Tax Officers. The Committee dealt with the subject at great length. Although, finally, the Government expressed its inability to implement the recommendation of the Committee in view of the conflicting claims of different categories of Income Tax Officers, the report assumed considerable importance amongst the officers, the Government and the public and even now some correspondence is going on in regard to certain recommendations contained in the report which was presented four years back.

The 50th Report dealt with the problem of resettlement of displaced persons uprooted from certain areas of the State of Jammu and Kashmir after the Indo-Pak conflicts in 1971.

The 51st Report of the Committee dealt extensively with the question whether political rights like contesting elections should be granted to Government employees throughout the country or in other words whether in regard to political rights Government servants should be treated on par with other citizens. Although the Committee did not recommend acceptance of the petitioners' prayer in this behalf, the Committee made a significant recommendation that the rules relating to formation of trade unions by Government servants should be liberalised so that their grievances were properly looked into. The Committee also recommended to Government that legislation should be enacted as early as possible for

regulating the service conditions of Government employees which was being carried out by means of rules.

The 52nd Report of the Committee dealt with a subject of topical importance the world over, namely, water and air pollution. In this Report the Committee considered a petition of the residents of a town in the State of Orissa praying for environmental protection from water and air pollution due to discharge of industrial effluents by a chemical company. The Committee made many recommendations in this report, not only touching upon the particular prayer of the petitioners but also other matters having a bearing on the nationwide problem of air and water pollution. Among other things, the Committee recommended that the Central Board for the Prevention and Control of Water Pollution should immediately collect, compile and furnish technical data relating to water pollution and devices for its effective prevention and control, and that Government should prescribe by law that expenditure incurred by the industries to check pollution is mentioned separately in their annual accounts and any violation of the provision should be deemed a contravention of the pre-condition imposed in the industrial licence.

In its 53rd Report, the Committee considered various grievances of the poor weavers engaged in handloom weaving in the state of Tamil Nadu. They recommended certain beneficial and welfare measures for the protection and benefit of the poor weavers which should be undertaken by Government.

In its 56th Report, the Committee considered a petition asking for the encouragement of the Unani system of medicine (in existence in the country for over seven centuries) along with other systems of medicine. The Committee recommended a number of steps that should be taken by the Government of India, in cooperation with State Governments, for the developemnt of the Unani system of medicine in the country.

The subject matter of the petition dealt with in the 57th Report of the Committee was a prayer for the setting up of public creches in Chandigarh for the children of working women. The Committee did not confine itself merely to the particular prayer but traversed the whole ground and recommended the setting up of public creches on a no-profit-no-loss basis at national level. The Committee was of the view that providing public creches for children of working women was a social obligation on the part of the Government of India, which should be implemented in conjunction with the State Governments, Social Welfare Organisations etc. As the Committee observed, "in the International Year of the Child, there can be no greater objective to be achieved than consideration of the welfare of the children in India".

In the 60th Report presented to the House recently, the Committee considered the anomalies in the pay structure of the Headmasters working in the Middle Schools of Delhi. The Committee impressed upon the Government that an upward revision of the pay scales of the teachers was essential, keeping in view the crucial role played by the teachers in mould-

ing the life and character of the young generation of the country and recommended that the pay structure should be rationalised and no financial implications should be allowed to override justice and fair play to which the Headmasters were entitled.

A cursory look at these reports would show that the Committee has proved itself to be a valuable instrument for the redressal of public grievances. It has established itself as a forum which has brought the people nearer to Parliament since the petitions have touched upon a very wide range of subjects. At the same time, it may be observed that although one of the oldest Parliamentary institutions, it is one of the less known Committees so far as the public is concerned. Very little is known to the people in general about the usefulness or functioning of this Committee. One reason may perhaps be that India is a vast country with multifarious problems, and people by and large may not be familiar with the various parliamentary processes, agencies and instruments available for looking into their problems and grievances. From the reports so far presented, one could safely conclude that if people are educated about the work done by this Committee and its potential, they would approach the Committee for redressal of their grievances more readily. There is, therefore, a need for greater public awareness of the existence and functioning of this Committee so that it may better serve the purpose for which it has been set up.

It is well recognised that due to pressure of business, it is not always possible for Parliament to go into details of public grievances which arise continuously and call for quick relief, with the changing complexion of society. The Committee on Petitions as an instrument of Parliament, in its own limited way, fills the gap and serves as a bridge between the people and their Government. While the members of Parliament have the right to ventilate public grievances on the floor of the House, the Committee has got the power to compel Governmental attention. Herein lies the success and utility of the Committee as a Parliamentary institution for promotion of public good.

VII. THE ADMINISTRATIVE ORGANISATION OF THE HOUSE OF COMMONS

BY MICHAEL LAWRENCE

Head of the Administration Department

Introduction

On 22nd October, 1973, the Speaker of the House of Commons at Westminster, Mr. Selwyn Lloyd, announced from the Chair, at half past three in the afternoon which is the recognised time for important Parliamentary statements, that he had decided that there ought to be a review of the administrative services of the House in order:—

> "To consider and make recommendations (if necessary involving legislation) on the organisation and staffing of the House of Commons".

This statement surprised the House coming as it did out of the blue and not based so far as Members were aware on any dissatisfaction on their part with the services provided by the five Departments of the House. Indeed only a few years previously, in the session of 1966–67, there had been a thorough inquiry into this very subject by a team from the Treasury's Organisation and Methods Division. On that occasion, however, the reasons for an inquiry were well-founded and it was initiated by Members themselves. Since the 1966 inquiry was the beginning of structural administrative reform in the House of Commons, or at least the first step towards such reform since 1812, it is important to give the background to it and to draw the contrast between 1966 and 1973.

Movement towards reform, 1964–65

The general election of October 1964 was one of those which resulted in a substantial change in the membership of the House of Commons and brought many new faces to Westminster amongst all Parties. Such change tends to be cyclical though the periods vary and are not necessarily linked with political turnabout although 1931 and 1945 are obvious examples of a coincidence of the two. For example, the general election of 1959, which resulted in a Conservative majority of 100, did not seem to affect fundamentally the nature of the membership of the House of Commons whereas that of 1964, which resulted in a Labour majority of 4, certainly did and the change was noticeable in both major Parties.

One consequence of the election of 1964 was that the new membership of the House of Commons soon showed itself dissatisfied with the conditions under which they were expected to carry out their Parliamentary duties and the scale of the facilities available to them. Soon afterwards, however, on 23rd March, 1965, a significant statement was made to the

House by the Prime Minister in which he announced that Her Majesty the Queen had agreed that control of the Commons' part of the Palace of Westminster should vest in the Speaker. Members were at last masters in their own House — except for the lingering and insidious control by the Treasury over the money (the Parliamentary Vote) which in effect dictated the size and effectiveness of the staff and services available to Members and therefore their own activities. Nevertheless it was the signal to go ahead and on 27th April, 1965, a select committee was appointed, the Select Committee on the Palace of Westminster, which carried the matter further.

The Select Committee reported to the House in July and made many recommendations of which by far the most important was one which proposed the appointment of a House of Commons Services Committee.

The advent of the Services Committee, 1965–66

The House for its part acted promptly in this matter and, following a debate on the Committee's report, appointed in November a Select Committee on House of Commons (Services) with the following order of reference:—

> "To advise Mr. Speaker on the control of the accommodation and services in that part of the Palace of Westminster and its precincts occupied by or on behalf of the House of Commons and to report thereon to the House".

This order of reference remains unchanged today for the very good reason that the fifteen years of the Select Committee's existence have been a story of consistent success. Its membership unusually for Select Committees at Westminster does not reflect the proportionate Party strength (of the 19 Members now serving on it only 10 are Government supporters) and its work has always reflected its Members' concern for the best interests of the House as a whole and never sectional or political interests. The fact that its Chairman is invariably the Leader of the House (the short Parliament of 1974 being an exception) and that the Deputy Chief Whips of the two main Parties are also Members has proved a help rather than a hindrance, as might have been thought, in this process.

The reforms of 1966–67

This article, however, is not concerned with the work of the Services Committee, as it has been known colloquially for many years, because this has been described from time to time in other volumes of The Table. It could not, however, have been written had not the Committee passed on 7th March 1966, shortly before the dissolution of Parliament, the following resolution:—

> "That Mr. Speaker be advised to ask the Chancellor of the Exchequer to order an investigation by the Organisation and Methods Division of the Treasury into the work and staffing of the Departments of the Clerk of the House, the Speaker and the Serjeant at Arms".

This was the genesis of the movement for reform of the House's administration, and the inquiry conducted under able leadership by the Treasury Organisation and Methods team, which has been referred to above, and in close consultation with the staff of the House produced a report which after due consideration by the Services Committee formed the basis for a much improved administrative structure and a more coherent pattern of service to the House and to Members. There were now five Departments instead of three, the new ones being the Department of the Library and the Administration Department, and the new organisation began to settle down well. Then only six years later came the announcement of the Speaker of 22nd October, 1973.

The Compton Inquiry

The reason for another inquiry may lie in column 707 of Hansard for that day:

> "*Mr. Speaker*. . . . . After consulting the Leaders of the main political Parties, the Leader of the House and others concerned in these matters . . . . ."

That the initiative in the course of these consultations should have come from the Government rather than from the Opposition Parties can hardly be doubted so the question must be asked, "What prompted the Government to take the line that they did?". On this kind of matter affecting Parliament it is usual for the Government if they seek advice from their permanent officials to turn to their top man, the Head of the Civil Service. At that time, this post was held by Sir William Armstrong whose career from the age of 24 had been in the Treasury of which he had been the Joint Head from 1962 until 1968 when he took charge of the Civil Service Department on its creation. No doubt the Government turned to him for advice and as a result, an inquiry which in the light of the precedent of March 1966 should have originated with Members themselves through the House of Commons (Services) Committee by way of a recommendation to Mr. Speaker, which it was entirely for him to accept or reject as he judged appropriate, came about by quite different methods.

The inquiry into the organisation and staffing of the House of Commons was conducted by Sir Edmund Compton who, like Armstrong, had been a Treasury man to the core until his translation to the post of Comptroller and Auditor General. In the circumstances it was natural that there should be much disquiet on the part of those directly affected, namely the permanent staff of the House, and the course of the subsequent inquiry by Compton did nothing at all to dispel this – rather the reverse. The staff sensed, since they were directly involved in it, that it was being somewhat rushed, that propositions even factual evidence were not being dissected or thought through and that parallel inquiries were being conducted by Compton and his team into certain matters outwith their terms of reference, for example in the matter of grading. Compton reported to the Speaker in July 1974, the report was published at once and two things

immediately stood out from its conclusions. The structure, staffing and indeed control of the Commons' staff would be brought into line with the Government's own civil service and civil service control of the House machinery would be strengthened still further by a specific recommendation that the Chancellor of the Exchequer should be able to arrange at any time for an independent inquiry into the numbers, pay and conditions of service of the permanent staff of the House, In other words control of their staff would be taken away from Members and given to the Treasury who would thus be placed in a powerful position vis-a-vis the House of Commons. Control by the Executive over both the money available to Parliament and the staff who serve it is not the best way to ensure the independence and strength of the principal democratic body of the realm.

Fortunately, the battle was not over. The Speaker had assured the House in October 1973 that the results of Compton's inquiry would be referred to a small committee of Members for their consideration after which the House would come to a decision. And so it was that on 3rd February, 1975, a Committee of eight distinguished, senior Members of the House representing all shades of opinion were appointed by the Speaker for this purpose.

The Bottomley Report

The Committee under the chairmanship of the Right Honourable Arthur Bottomley worked hard during a very busy period of the Parliamentary year and on 24th July, 1975, produced a unanimous report which had the full support of the permanent staff and was subsequently endorsed by the House with no dissenting speeches. The Report and its recommendations are too wide-ranging to summarise here (it is House of Commons paper No. 624 of 1974–75) but four major achievements resulted from it.

1. The report of the Compton Inquiry was rejected.
2. The House of Commons achieved total control over its staff.
3. The House also achieved total control over its own expenditure apart from Members' remuneration which remained a matter for the Government and the House to settle between them.
4. An administrative framework was created within which a unified House of Commons Service could develop with a pattern of common recruitment and promotion procedures and much improved personnel management and staff relations.

It was possible for many of the Report's recommendations and guidelines for the future to be implemented by administrative action on the part of the House Departments but certain basic legislation was also necessary in order to:—

1. Create the House of Commons Commission, a statutory body consisting of the Speaker as Chairman, the Leader of the House, (both of them ex-Officio), a Member nominated by the Leader of the Opposition and three back bench Members appointed by the House·

2. Empower the Commission to be the employer of all the permenant staff in the House Departments and to regulate their pay, etc., and conditions of service broadly in line with those of the Home Civil Service.
3. Empower the Commission to introduce annual financial estimates for the House of Commons for ". . . . the expenses of the House Departments and, to such extent as (they) may determine, of any other expenses incurred for the service of the House".
4. Empower the Commission to increase or reduce the number of House Departments and allocate functions to them.

The House of Commons (Administration) Act 1978

The Act which gave effect to the Bottomley Report's proposals, and which included other provisions of a relatively minor nature in addition to the main ones set out above, was the House of Commons (Administration) Act, 1978, and it passed into law on 20th July, 1978, two and a half years after the House had debated the Report which gave rise to it. Considering that it replaced legislation which had been passed 166 years previously, 2½ years may not seem an unduly long time to have waited but for most of the permanent staff it was an anxious time. With no overall Government majority in the House and the possibility of a general election at any time, and realising that a new Parliament invariably brings with it a very full legislative programme, it was of vital importance that this enabling legislation should proceed expeditiously. In the event, and despite some dragging of feet in certain quarters whose influence was fortunately either not very great or else effectively neutralised, the Bill reached the statute book safely and its provisions came into effect legally on 1st January, 1979.

Administrative organisation under the Act of 1978

The statutory controlling body is the

House of Commons Commission

already referred to above and in their hands lie all policy decisions affecting finance, administration and staffing and they are, of course, the employing authority. They have, however, under powers open to them under the Act delegated much of their responsibility to a

Board of Management

which consists of the Heads of the six Departments with the Clerk of the House, who is also the Accounting Officer, as its Chairman. On 1st January, 1979, there were only five Departments, namely,

Department of the Clerk of the House
Department of the Serjeant at Arms
Department of the Library
Administration Department
Department of the Official Report

but on 1st April, 1980, the catering organisation of the House of Commons became by a decision of the Commission a fully fledged Department of the House, as follows

Refreshment Department.

The Board of Management exercises corporate authority over all the Departments; it is responsible for the co-ordination of administrative policy and functions and for policy with regard to personnel management and staff relations; it constitutes with the Administration Committee (see below) the management side of the House of Commons Whitley Committee (the joint management/trade union body); and it advises the Commission as required. Despite the corporate authority exercised by the Board responsibility for the functioning of individual Departments, including recruitment, employment, etc., rests on a delegated basis (from the Commission) with

Heads of Departments

whose separate functions can be summarised in very general terms as follows:—

Clerk's Department.	Procedural services.
Serjeant's Department	Housekeeping, ceremonial and security.
The Library.	Library services. Provision of parliamentary papers (Vote Office).
Administration Department.	Financial services for Members, staff and the various services of the House. Personnel matters, superannuation, relations with unions, etc.
Official Report.	Production of the Official Report (Hansard) for the House and its Standing Committees on public bills.
Refreshment Department.	Refreshment facilities for Members, permanent staff and others working in the building, also for guests of the above.

The Board has appointed a Committee, the

Administration Committee

chaired by one of its own members, the Head of the Administration Department, and consisting of the Deputy Heads of the other five Departments. Its principal task is to advise the Accounting Officer on the complementing, grading and pay of all the permanent staff, who at present number just over 850. The Committee also exercises responsibility in certain other areas of staff management and constitutes the management

side of the General Purposes Sub-Committee of the Whitley Committee (see above). This session a Grading Review of all posts in the House of Commons Service, as recommended by the Bottomley Report, is being carried out by a firm of management consultants and this is being organised, on behalf of the Commission who authorised the expenditure, by the Administration Committee in its capacity as the Steering Group for the Grading Review with, of course, close consultation with the unions.

Conclusion

We are as yet in the early stages of what is for the permanent staff of the House a fairly fundamental change of administration. There is much progress still to achieve and quite a way to go before the concept of a wholly unified House of Commons Service as envisaged in the Bottomley Report is realised, with all that is thereby implied. The achievement is that a new start was made between 1975 and 1978. The important thing now is to build on the progress of the last two years and to maintain the impetus for change, and to do so at a pace which recognises the consensus view of all members of the House of Commons Service, not charging ahead with change for change's sake but, equally important, not dragging one's feet from a misplaced regard for the opinions of those to whom change of any sort is anathema.

Whatever the course of events the Bottomley Report and its long-continuing aftermath will be a landmark in the history of Parliamentary administration at Westminster.

ADMINISTRATIVE ORGANISATION OF THE HOUSE OF COMMONS, AND SERVICES TO MEMBERS

Speaker — HOUSE OF COMMONS COMMISSION — Services Committee

Private Office

HOUSE OF COMMONS COMMISSION
Appointed by statute

Membership
Speaker, ex officio
Leader of the House, ex officio
Official Opposition nominee
3 backbench Members appointed by the House

Services Committee
(advisory to the Commission in matters affecting Members)

Accommodation and Administration Sub-Co
Catering Sub-Co
Library Sub-Co
Ad hoc Sub-Cos e.g., Broadcasting, computers, etc.,

Responsibilities (statutory)
Employment of staff.
Pay, etc., and conditions of service of staff.
Appointment of Accounting Officer.
Estimates for House services.
Variation in number and functions of Departments.
Refreshment services.

Responsibilities (general)
Planning and development of services for the House.
Overall accommodation needs.
Modern techniques, e.g., computers.
Appointment of senior staff.

Procedural advice

Advice from Board

Advice from Board

Advice from individual Departments

Board of Management
Appointed by the Commission

Membership
Clerk of the House
Serjeant at Arms
Librarian
Head of the Administration Department
Editor of the Official Report
General Manager of the Refreshment Department

Responsibilities
Co-ordination of administrative policy and functions.
Corporate authority over Departments.
Planning of new services for the House.
Staff training.
Preparation of Estimates.

Clerk's Department	Serjeant's Department	Library	Administration Department	Department of the Official Report
Procedural services	Housekeeping Security	Library services Vote Office	Financial services Personnel management	

Administration Department:

Fees Office
Payments to Members
Payments to staff
Estimates
All House finance

Establishments Office
All establishments matters
Recruitment
Superannuation, etc.
Relations with Unions

Refreshment Department
Refreshment services

VIII. DETERMINATION OF PARLIAMENTARY SALARIES AND ALLOWANCES – THE OPERATIONS OF THE AUSTRALIAN REMUNERATION TRIBUNAL

BY D. M. BLAKE

Deputy Clerk of the House of Representatives

Until the 1970's, Australian federal Parliamentary salaries and allowances were adjusted by legislation, on occasion becoming the subject of political manoeuvre, usually attracting unfavourable media comment, and almost always too infrequently to establish any real salary justice. However, in 1973 an independent Remuneration Tribunal was established to conduct regular reviews of salaries and allowances in this area.

Brief history and operation of the Tribunal

In 1971 (then) Mr Justice Kerr conducted an inquiry into salaries and allowances of Members of the Parliament of the Commonwealth of Australia. The report,[1] tabled in the House on 8th December 1971, included a recommendation for a Salaries Tribunal to make recommendations to Parliament. A Bill was introduced to establish a Parliamentary Allowances Tribunal generally along the lines proposed in the report but it lapsed with the dissolution of the House prior to the 1972 general elections.

At the general elections, the government changed hands and the new Government introduced at the end of 1973 a Bill flowing from the 1971 Kerr Report,[2] establishing the Remuneration Tribunal and it is under the *Remuneration Tribunals Act* 1973 that the Tribunal operates today. Under the Act, the Tribunal consists of 3 members, appointed by the Governor-General on a part-time basis for 5 years but eligible for re-appointment. A member of the Tribunal may not be (or have been during the immediately preceding 7 years) a Member of Parliament, an officer or temporary employee of the Australian Public Service, a holder of a public office, or a Justice or Judge of a federal court or of the Supreme Court of a Territory or a person of the same status as such a Justice or Judge. The Tribunal is empowered *inter alia* to determine allowances to be paid to Ministers and to Members and Office Holders of the Parliament, and to determine the remuneration of the Permanent Heads of Departments established under the Public Service Act, including the Clerks of both Houses and the heads of other Parliamentary Departments. The Tribunal is also empowered to report on salaries of Ministers of State. Its functions in respect of Ministers' salaries are thus advisory; legislation is required to give effect to recommended salary increases for Judges, or salary increases for Ministers that would exceed the total annual sums payable under the Ministers of State Act.

Determinations have effect from a date usually specified in the determination. A copy of every determination is furnished to the responsible Minister, and the Minister causes the copy to be laid before each House within 15 sitting days of receipt. Either House may, within 15 sitting days of the copy of the determination having been tabled, pass a resolution disapproving the determination. Following a resolution of disapproval, a determination whether it has come into operation or not has no force or effect on or after the resolution of disapproval is passed.

Salaries and allowances of Ministers, Office Holders, Members

Before surveying the work of the Tribunal since its first report and determinations in 1974, it would be appropriate to mention briefly the system of wage fixation applicable in Australia at the moment. Wages and salaries are currently adjusted twice yearly following the hearing of the National Wage Case before the Australian Conciliation and Arbitration Commission. The Commission, after considering the increase in the Consumer Price Index and hearing argument from employer (including the Federal Government) and employee groups, decides on a percentage by which wages and salaries are to be adjusted. The salaries and allowances of Members of Parliament and, until recently, First Division Officers, are not automatically affected by National Wage Case decisions.

Generally, the Tribunal has operated in a prevailing atmosphere of wage restraint. The first reports and determinations, presented to both Houses in July 1974, were disapproved by the Senate (the Government, which did not command a majority in the Senate, voted against the disapproval).[3] In March 1975 reports and determinations similar to those disapproved the previous July were presented to both Houses. A disapproval motion in the Senate was overwhelmingly defeated.[4]

In August 1975 the Tribunal took a major step, departing from previous practice in this area of salary fixation, in providing that all salaries within its jurisdiction be increased by a percentage equivalent to the increase in the Consumer Price Index for the first 3 months of 1975 and to the corresponding National Wage Case adjustment. The Tribunal indicated that future adjustment would be considered in relation to National Wage Case decisions (which at that time occurred quarterly), general salary movements and Government policy.[5] However, the determinations were disapproved.[6] In moving for disapproval, the responsible Minister informed the Senate that the Government believed that adjustments should occur only once per annum.[7]

Since then, the Tribunal has undertaken an annual review. During the winter adjournment of Parliament the Tribunal's reports and determinations are usually furnished to the responsible Minister (and often a summary released to the media) and presented to both Houses early in the budget sittings in the spring. Normally the Tribunal has applied National Wage Case increases in assessing salaries and allowances within its jurisdiction (apart from 1976 when it recommended increases of only 6.25%;

full application of National Wage Case decisions would have resulted in increases of just over 15%).

The determinations concerning allowances payable to Members by reason of their membership of the Parliament have as a general rule not been subsequently disapproved. However, in 1978 the House disapproved of those determinations covering increases to certain allowances payable to Ministers, and to Office Holders of the Parliament.[8] Also, the Tribunal's recommended increases to ministerial salaries were not given effect. The responsible Minister informed the House that the Government felt strongly that it should set an example of restraint to the community.[9]

The Tribunal's 1979 review entered on to new ground when it determined that the basic salary of a Senator or Member be automatically adjusted in accordance with future National Wage Case decisions. However, the Government introduced 2 Bills to modify salaries and allowances determined and recommended by the Tribunal. In addition, the automatic application of National Wage Case decisions was removed.

The second reading speech for one of these Bills by the responsible Minister reflected what has been a constant theme in recent submissions to the Tribunal by the Commonwealth Government: that the Parliament should set an example of restraint to the community.[10] However, the Tribunal has consistently maintained that it should not, of its own initiative, deny to those within its jurisdiction the salary adjustments enjoyed by the great majority of wage and salary earners in Australia. While the Tribunal has expressed sympathy with the Government's broad objectives, and particularly with wage restraint at the higher salary levels, it has expressed the belief that recent National Wage Case adjustments (which it has sought to apply) reflect a considerable degree of restraint and that those within the Tribunal's jurisdiction have contributed even more to restraint by considerable lags in their salaries.[11] Moreover, the Tribunal has accepted that, while it is unlikely that there would be significant industrial effects if groups within its jurisdiction did not have passed on to them National Wage Case increases, there was no justification for the Tribunal to single them out, more or less arbitrarily, to provide a lead.[12]

Members' entitlements

Prior to 1976, administration of entitlements available to Members fell within the responsibility of various Ministers. However, in March 1976 the Minister administratively responsible for the Remuneration Tribunal informed the House that the Government felt that the independence and integrity of individual Senators and Members could be compromised by this arrangement. The Remuneration Tribunal was asked to make determinations, disallowable by either House of Parliament, concerning entitlements of Senators and Members such as domestic and overseas travel facilities for Members, their spouses and children, life gold travel passes, telephone facilities, postal allowance and certain aspects of superannuation and retiring allowances.[13] The Tribunal's 1976 reports

and determinations included a comprehensive determination of Members' entitlements (including a review of personal staff entitlements). Annual reviews thereafter have included examinations of existing and proposed additional entitlements.

Salaries and allowances of Clerks, heads of other Parliamentary Departments

The salaries of the Permanent Heads of Departments established under the Public Service Act (including the Clerks of both Houses and the Permanent Heads of the other Parliamentary Departments) were not within the jurisdiction of the Conciliation and Arbitration Commission. Consequently the salaries of these officers did not reflect National Wage Case decisions and, in some cases, salary anomaly situations arose. When the salaries of these officers were brought within the Tribunal's jurisdiction, initially a rate was determined in each review. These determinations were on occasion disapproved along with those applying to Members and Ministers. However, in the 1976 review the Tribunal determined a direct alignment of the salaries of certain public office holders (including the Clerks of both Houses and the heads of other Parliamentary Departments) to specified levels of the 2nd Division of the Australian Public Service, according these officers the 1974 community salary movements, although not in full, as well as the National Wage Case adjustments of 1975, 1976[14] and future adjustments. (The 1977 review provided for the automatic flow of future national wage increases for all Permanent Heads).

Work of the Tribunal

In summary, the recommendations and determinations of the Remuneration Tribunal have, as a general rule, approximated National Wage Case adjustments. While it may be felt that complete salary justice has not been given by the Tribunal's reports and determinations, it has achieved a system of independent monitoring of the remuneration for Members and Senators as compared with wage and salary earners of the nation. Salary justice is much more equitable under the Remuneration Tribunal than might otherwise have applied. Levels of remuneration are at least assessed annually, and the Parliament has the final say in the level of remuneration of those groups within the Tribunal's jurisdiction.

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1. Parliamentary Paper No. 284 of 1971
2. *Hans.* Vol. H of R. 87, pp. 4596–7
3. Journals 1975–76 pp. 78–80
4. *Ibid* pp. 587–9
5. Parliamentary Paper No. 212 of 1975, pp. 6–7
6. Journals 1974–75, p. 908
7. *Hans.* Vol. S65, p. 618
8. Votes and Proceedings 1978–79–80, p. 350
9. *Hans.* Vol. H. of R. 110, pp. 461–2
10. *Hans.* H. of R. 23 August 1979, p. 575
11. Parliamentary Paper No. 169 of 1977, p. 12
12. Parliamentary Paper No. 195 of 1979, p. 14
13. *Hans.* Vol. H. of R. 98, pp. 589–90
14. Parliamentary Paper No. 219 of 1976, p. 45

IX. DEVOLUTION WITHIN THE UNITED KINGDOM

BY G. CUBIE

A Deputy Principal Clerk in the House of Commons

Referendums are rare events in the United Kingdom: the referendum has never become an established part of British political life. Before 1979 the only referendums to have been held were those in 1973, confined to the electorate in Northern Ireland, on the issue of the border between Northern Ireland and the Republic of Ireland, and in 1975 when the electorate of the whole United Kingdom voted by more or less two to one for continued membership of the European Economic Community. The result of these referendums posed no particular problems for the then governments. The referendums held on 1st March 1979 on the implementation of the Scotland and Wales Acts which had received the Royal Assent in July 1978 were the culmination of decades of argument in Scotland and Wales and of countless hours of parliamentary debate in the mid-1970s. Their results precipitated the coming together of the opposition parties in the House of Commons in support of a motion of no confidence. As history will record that motion was carried by the narrowest of margins, 311 votes to 310, on Wednesday 28th March 1979, and in the ensuing general election on 3rd May 1979 the Conservative party won a substantial overall majority of seats in the House of Commons.

It was a remarkable feature of the 1979 general election campaign that devolution, the setting up of Assemblies in Scotland and Wales, was not a prominent issue. Yet constitutional change had been in the air for more than ten years. What follows is a brief chronological account of the development of constitutional proposals to the point at which Parliament had enacted that there should be set up, subject to advisory referendums, Assemblies in Scotland and in Wales.

The rise in the fortunes of the nationalist parties in Scotland and Wales in the late 1960s provided a stimulus for constitutional change. The Welsh Nationalists (Plaid Cymru) in 1966 and the Scottish National Party (SNP) in 1967 were both successful in securing the election of one member to the House of Commons. In Scotland the SNP also began to win a number of seats in local authority elections at the same time. At a time when proposals for reform of local government were being discussed, when parliamentary reform was also a live issue, the setting up of a Royal Commission on the Constitution (announced in December 1968) could be seen not only as a response to the nationalists but also as part of a wider reform of British political institutions.

In the period following the appointment of the Royal Commission there was no massive increase in the fortunes of the nationalist parties. Only one nationalist member was returned at the general election in June 1970. The Royal Commission did not eventually report until 1973 (Cmnd.

5460). Its report rejected federalism and separatism and identified three forms of devolution: administrative devolution, similar to the existing administration of Scotland and Wales; executive devolution, under which Assemblies would implement the details of legislation passed at Westminster; and legislative devolution. The Commission, by a majority, favoured legislative devolution for Scotland whereby administrative and legislative powers would be devolved to a Scottish executive and legislature. A smaller number of members favoured legislative devolution to Wales. Two members of the Commission produced a minority report in which they argued for a uniform system of devolution to regions throughout Britain. This "English Dimension" was later to be the subject of a consultative document issued by the Government in 1976. The reaction to it was muted and no further action was taken: what follows therefore concentrates on the devolution proposals for Scotland and Wales.

The publication of the Royal Commission's Report coincided with the oil crisis precipitated by the war in the Middle East in autumn 1973. It came at a time when the then Government was facing a number of difficulties on the industrial front. There had been no detailed response to the Kilbrandon Report, as the Royal Commission's Report came to be known, after Lord Kilbrandon, the Scottish Law Lord who had presided over the Commission after the death of its first Chairman, Lord Crowther, before the general election in February 1974. At that election the SNP in particular made a substantial impact, winning seven seats in the House of Commons.

The minority Labour Government formed in March 1974 initiated discussions on the response to the Kilbrandon Report by publishing a Consultative Document "Devolution within the United Kingdom – Some Alternatives for Discussion" in June 1974.

These discussions had reached no detailed conclusions when Parliament was again dissolved in the autumn of 1974 although in September the Government had published their White Paper "Democracy and Devolution Proposals for Scotland and Wales" (Cmnd. 5732), which set out some important issues of principle. In it the Government announced its intention to legislate for the establishment of directly elected Scottish and Welsh Assemblies as soon as possible. The Scottish Assembly alone would have a legislative role; the Assemblies would assume some executive functions of the Scottish and Welsh Offices; they would be financed by a block grant voted by the United Kingdom Parliament; the existing number of Members of Parliament for Scotland and Wales would be retained and there should continue to be Secretaries of State for Scotland and Wales. Much detailed work remained to be done: Parliament, which up till then had barely considered devolution, had still to face up to the issue. And although the people of Scotland and Wales were later to have their say, it was Parliament's decisions which determined the eventual outcome of the greatest constitutional debate since the unsuccessful attempt to reform the House of Lords in the Parliament (No. 2) Bill

which had foundered in a welter of debate in the Commons in 1969.

The new House of Commons elected in October 1974 included three Plaid Cymru members and eleven SNP members. In Scotland the total share of the popular vote won by the SNP was 30%, only 6% less than the figure secured by the Labour party which had nevertheless won 41 out of the 71 Scottish seats. It was later to be suggested by some commentators that it was these figures which persuaded the Labour Government to put forward their devolution proposals, but it was notable that all four parties, Conservative, Labour, Liberal and SNP, had favoured some form of devolution to Scotland.

The Government's detailed proposals were contained in the White Paper "Our Changing Democracy – Devolution to Scotland and Wales" (Cmnd. 6348) published in November 1975. Its main features were that within the devolved fields – notably local government, certain legal functions, health, social work, education, housing, physical planning, the environment, roads and traffic, crofting, most aspects of forestry and many aspects of transport – the Scottish Assembly would pass laws and the Scottish Executive would control administration. Organisation and policies in these fields would be matters for them. To finance what they wanted to do, they would have a block grant from United Kingdom taxation which they could allocate as they wished. They would be able, if they chose, to levy a surcharge on local government revenue. The White Paper also proposed the creation of an elected Welsh Assembly. While the Assembly would not be able to pass primary legislation, there would be a major devolution of policy-making and executive powers covering a great range of subjects now controlled by the Government. The devolved matters for Wales would become the responsibility of the Assembly working through specialised committees in which all members could take a constructive part. The Scottish Assembly, in other words, was to be a recognisably parliamentary body, while the Welsh Assembly was to be more akin to a local government body writ large.

The Government argued that these proposals were designed to strike a careful balance – in particular, between the desirability of allowing the maximum local freedom and initiative and the need to safeguard the unity of the United Kingdom; and between maximising local democratic control over the allocation of expenditure on the public services and the continuing responsibility of the Government for managing the economy. And more specifically, the Government stressed that the United Kingdom economy would continue to be managed as one unit, with all contributing through the tax system according to their means and for the benefit of all.

That White Paper formed the starting point for the Scotland and Wales Bill introduced in the autumn of the following year. The Bill received a second reading by 292 votes to 247 on 16th December 1976. As a constitutional measure of the first importance there was no doubt that the Bill would be debated on the floor of the House at its Committee stage. Progress in Committee of the Whole House was slow and by mid-February

1977 only a very small part of the Bill had been disposed of. Opposition to the Bill had come from many different parts of the House. Some argued that the unity of the UK was threatened, others that the Bill did not give a sufficient range of powers, specifically economic powers, to the proposed Scottish Assembly, while others argued that some form of proportional representation should be used, and others that the division of power between the United Kingdom Government and the new Assemblies was over-complex and would lead to endless friction. Other criticisms centred on the financial arrangements, and on the emotive point that while Scots Assemblymen could vote, for instance, on Scottish housing, and Scots Members at Westminster could vote on English housing, neither Scots nor English Members at Westminster would be able to vote on Scottish housing matters once these were devolved. This last argument was to earn the title of the "West Lothian question" because it was posed so forcefully by the Government backbencher for the Scottish constituency of West Lothian. His vigorous opposition, along with that of other backbench members from many parts of the House, meant that the Government felt obliged to apply an Allocation of Time order, or guillotine, to the further proceedings on the Bill, but their motion to do so was defeated by 312 votes to 283 on 22nd February 1977.

It was clear that in the light of the failure to carry the guillotine the Bill could not be enacted in that session of Parliament. As a result of discussions, the Government announced in July their intention to take account of some of the main criticisms made of the Bill and to introduce separate bills for Scotland and Wales early in the new session of Parliament.

So it was that in November 1977 the Scotland Bill was introduced and secured a second reading by 307 votes to 263 on 14th November. The following day the Wales Bill secured a second reading by a slightly smaller margin and a day later guillotine motions on both bills were approved by 313 votes to 287 in the case of the Scotland Bill and by 314 votes to 287 in the case of the Wales Bill.

The Bills contained much that was similar to the earlier Scotland and Wales Bill. Financing of devolved services was to be by block grant with no surcharge, as the earlier White Paper had proposed, on the rates, and with no use of the revenue from what had been described in the nationalist slogan of the time as "Scotland's oil". The Assemblies were, however, to be less fettered by the legislation in such matters as the drawing up of standing orders: the Scottish Assembly, for instance, was to be able to make provisions simply "for the appointment of committees" while the earlier Bill had spent a page dealing with the matter. But other issues remained: the size of the Assemblies, approximately 150 members for the Scottish Assembly, and approximately 80 for the Welsh; and the basic provisions for "override" or political review of legislation passed by the Scottish Assembly. Fundamentally, however, the concept of devolution remained – a process whereby power was to be partially handed down to subordinate bodies. The complexity of the form of devolution remained,

spelt out in full in lengthy schedules setting out groups of devolved matters, lists of matters not included in the groups and a further list detailing whether and to what extent well over one hundred previous Acts were covered by these groups.

When, after many weeks of debate in both Houses, the Scotland Act and the Wales Act were enacted in July 1978 it was only after one important amendment had been carried against the Government's wishes. The original White Paper made no reference to consulting the electorate through referendums, but the point was conceded during debate on the Scotland and Wales Bill. During debate in the Commons in early 1978 the referendum clauses in both bills were amended against the Government's wishes to provide for the laying of an Order repealing the Acts "if it appears to the Secretary of State that less than 40 per cent of the persons entitled to vote in the referendum have voted Yes . . . or that a majority of the answers given in the referendum have been No". The impact of this 40% rule was to receive almost more attention than any other single issue in the subsequent referendum campaigns. Vexed issues were the precise impact of an abstention, and the way in which the total number of electors was calculated. In the event the results of the referendum meant that the precise arithmetic which led to the determination of the 40% figure no longer mattered. In Wales the figures were "Yes" votes 243,048, "No" votes 956,330, while in Scotland: "Yes" votes 1,230,937, and "No" votes 1,153,502; or, as a percentage of those entitled to vote "Yes" votes 11.9% in Wales, and 32.85% in Scotland.

Attention turned once more to Westminster, which had insisted not only on the 40% rule but also on the holding of referendums. Within a month the SNP joined with the other opposition parties and sealed the Government's fate on 28th March.

As a postscript: the inter-party talks on the Government of Scotland promised by the Conservative Government on their election have yet (in June 1980) to bear fruit. A press notice in March 1980 announced that these talks would cover such matters as the composition and functions of the Scottish Grand and Scottish Standing Committees of the House of Commons, and their place of meeting. Meanwhile the building in Edinburgh which had been prepared for the Scottish Assembly – the former Royal High School on Calton Hill – has received in its West Lobby the House of Commons Select Committee on Scottish Affairs and also the Agriculture Committee, two of the fourteen new departmental select committees. But these committees (which also include among their number a Select Committee on Welsh Affairs) need an article of their own . . . It is, however, a curious irony that the original Scotland and Wales Bill contained provisions that would have given the new Assemblies committee systems more comprehensive and influential than anything then envisaged or even now in being at Westminster. Whatever the political consequences of the failure of devolution to Scotland and Wales, its procedural consequences cannot now be properly assessed.

X. DIVISIONS AND THE CASE OF THE UNSEEN MEMBER

BY JOHN H. CAMPBELL

Clerk of the Legislative Assembly, Victoria

Following the General Election of May 1979 the Government of Victoria was returned with the barest possible majority in the Legislative Assembly. (Forty-one seats in a House of eighty-one). After providing a Speaker from its ranks, the Government party numbers equated to those of the two non-Government parties. Under these circumstances, of course, every vote may be of vital importance in a Division.

We have no Division lobbies as has the Commons. Divisions in each case are conducted by Members seating themselves to the right or left of the Chair, according to whether they wish to vote "Aye" or "No" respectively. After the bells have rung as required, the Speaker directs that the doors be locked and tellers are appointed, two to each side. With the assistance of the Chamber officers the tellers record the Divisions on tally sheets. Any Member present when the doors are locked must be recorded; years ago the House was reminded of this requirement when a Member, of large proportions, forgot that he was paired and then when the doors were locked endeavoured to hide himself, which proved to be impossible (both procedurally and anatomically).

This then provides the background to the incident of the 27th June, 1979. During the course of a late sitting at about 3 o'clock in the morning, a Division was taken on the question (proposed by a non-Government Member) that the Second Reading debate on a controversial Bill be adjourned. Mr. Speaker announced the result of the Division as thirty-eight "Ayes" and thirty-seven "Noes" as a result of which the debate was adjourned against the wishes of the Government. The House then proceeded to debate the motion that the House adjourn. There was some consternation on the part of the Government, Division lists were assiduously scrutinized, following which a Government back-bencher rose on a point of order claiming that he had been present during the earlier Division but was apparently missed by the tellers. Mr. Speaker undertook to investigate the matter with the tellers concerned.

Mr. Speaker's investigation left no doubt that only thirty-seven Members for the "Noes" had in fact been seen by the tellers. Inquiries made through unofficial channels indicated that the Member, apparently exhausted, was resting in a recumbent position on a back-bench where he was effectively but unintentionally obscured from view.

What should be done under such circumstances under the appropriate Standing order? It was a matter for the House itself in the final analysis

to order the record to be corrected if it saw fit. To recognize the additional vote *ex post facto* would lead to a tied vote, involving the Speaker's casting vote, and the decision of the House which was arrived at in the Division had already been acted upon. Whatever the House might choose to do next day the debate had, in fact, been adjourned. Under such circumstances, how could the decision be undone; would it be nonsense to attempt to do so?

At the commencement of business next day the Speaker (the Hon. S. J. Plowman) made an announcement in the following terms:

> "Order! In the early hours of this morning the honorable member for . . . advised the House that his name was omitted from a division which had occurred some little time earlier and that he was present in the House when it resolved to adjourn the debate on the Business Franchise (Petroleum Products) Bill. A case such as this is governed by Standing Order No. 185 and 'May', pages 399–400.
>
> An investigation of the circumstances surrounding this apparent error has been made. The tellers involved, together with the Serjeant-at-Arms and the Housekeeper who also counted the 'Noes' are certain that they saw 37 members only on the side of the 'Noes' and not 38 as would have been expected had the honorable member for . . . been seen.
>
> I do not disbelieve the statement of the honorable member for . . . but have formed the opinion that his presence was not noticed because of the position which he took up in the Chamber.
>
> In all of the circumstances of this case, I advise the House against amending the official recording of the vote, that is, that the division remains in the Votes and Proceedings as 'Ayes' 38, 'Noes' 37.
>
> I point out to honorable members, however, that it is their responsibility to ensure that during the conduct of a division they are clearly visible to the tellers."

In the circumstances, Mr. Speaker's advice to the House was followed and no attempt was made to amend the official record. His statement established that the individual Member has a responsibility to be seen during a Division – an important principle in view of our Chamber seating arrangements, where Members can be obscured by the backrest of the seat in the preceding row.

It is an interesting coincidence that the Member, whose action (or inaction) led to the difficulty on this occasion, happens to represent the same electorate as that represented years ago by the Member who tried to hide himself during a Division. He was able to achieve unintentionally what his predecessor had failed to do with the best of intentions, because of his much more modest stature.

XI. TOPICS FOR THE TROPICS

BY F. G. ALLEN

Clerk of the Journals, House of Commons

I had the good fortune to be appointed by the Clerk of the House to attend two somewhat similar conferences in six months during 1979, the first in Jamaica and the second in Ghana. Each was planned by Members for Members. It was both encouraging and rewarding to participate in events which demonstrated the concern of parliamentarians themselves to expand their own understanding of parliamentary procedure and, in the process, to "take it" from un-elected functionaries, such as myself. In Jamaica, the main objective, amongst a variety of subjects on the agenda, seemed to be the consideration of the appropriateness of the Westminster "model" in the economic and political circumstances of the island. In Ghana, on the other hand, a new Parliament was beginning under a new Constitution which reflected a decision already taken to incorporate procedures other than those followed in the United Kingdom. The main purpose of this conference was to assist 140 newly elected Members, most of them for the first time, to operate the machinery of Parliament.

The arrangements and agenda of each of these conferences were as follows:

(i) JAMAICA, 19th–21st JULY, 1979

This conference, described as a "Seminar for Parliamentarians" took place, at the end of a week during the Session, at Ocho Rios, on the north coast, well away from the pressurised environment of the House and the capital city. It was sponsored by the Commonwealth Parliamentary Association and chaired by the Hon. Ripton S. Macpherson, as Speaker of the House of Representatives and Chairman of the Jamaica Branch of the Association.

Administration

The first subject for discussion was the Administration of Parliament. The Clerk of the House described in detail the facts of parliamentary life, in terms of accommodation and services to Members, within the constraints of an inadequate Parliament House. The questions of committee rooms, Members' secretaries, car parking, remuneration and travelling allowances, offices for staff and Hansard, catering – familiar topics in most Parliaments – were all given an airing and sparked off a lot of heartfelt criticisms from Members.

The Speaker then described the constitutional provisions for the appointment of the Clerk, the duties laid upon him and the means by which these are carried out in respect of meetings of a new Parliament and the arrangement of matters of procedure, legislation and accounting.

Constitution

The academic and intellectual level of the Seminar was later raised to a peak by a masterly exposition by the Hon. Carl Rattray, Minister of Justice and Attorney General, on the "Legal Framework of Parliament". He dealt in detail with many of the Articles of the Jamaica Constitution and drew particular attention to the peculiar nature of the Constitution itself as not having the force of an Act of Parliament. He also contrasted the situation of any Parliament which exists under a written Constitution (which is finally interpreted by the Courts) with that of the Westminster Parliament, where there is no written constitution and therefore no basis for a judicial verdict on the propriety or otherwise of certain aspects of Parliamentary government.

Parliamentary Models

The bulk of the second day of the Seminar was devoted to the consideration of parliamentary "models". It fell to me to present to Members a general survey of the Westminster model, with particular emphasis on those aspects of the system, such as the office of Speaker, the House of Lords, the work of Committees, opportunities for back-bench Members, arrangement of business, the functions of the Clerk of the House, which seemed to be the main features of the model.

It had been expected that the next session would be similarly led by a representative of the U.S. Congress, but in his absence, a very clear account of the distinctive features of the United States model was given by Dr. Edwin Jones of the Department of Government of the University of the West Indies. Members were reminded of the federal basis of government in America, of the powers of the President, the vital functions of congressional committees, and the comparatively reduced significance of party allegiances in Congress.

Dr. Jones followed his exposition on the United States model by a discourse on the type and functions of a parliament in a Third World situation (in which he included Jamaica). He pointed out that the importing of any "Western model" into such a situation meant the importing of assumptions about constitutional stability and processes of government which were applicable to western states but which might not be appropriate to emerging nations. He took as an example the way in which Tanzania had developed its parliamentary institutions to the requirements of a one-party state, and suggested that Jamaica needed to consider what style of parliamentary government was best suited to its political and economic condition. At the time, I felt that Members were disinclined to consider much change in their present system.

Procedure

The remainder of the day and the whole of the third day were devoted to consideration of practical aspects of parliamentary activity in Jamaica. The assembled Members, many of whom were comparatively new to

Parliament, were given some very frank opinions and advice from two panels of prominent Jamaicans, including senior Members, a Judge, and an Ambassador. The subjects chosen were "The Role of M.P.s" and "Improving the Image of Parliament". The impression I received was that the panel members thought that their colleagues did not always rate attendance and assiduity in Parliament as highly as they should. On the other hand, some more recently elected Members appeared to feel that the demands of their constituents for local appearances took priority over sitting in their seats in the House giving mute support to Government business.

An address by a former Clerk, now a Judge, on "The Order Paper" extended itself into a lively discussion of the scope and effect of the whole range of procedures on the floor of the House, including Questions, Statements, Resolutions, Back-Bench Legislation, Adjournment Motions and so forth.

The Seminar undoubtedly went a long way towards enabling Members to appreciate their role as individuals in a legislative and deliberative assembly, as distinct from that of delegates of party organisations. The desirability of further such conferences was considered and has, I understand, resulted in a second one-day "workshop" held at Kingston.

(ii) GHANA, 26th–30th NOVEMBER, 1979

The "First Seminar on Parliamentary Practice and Procedure" for Members of Parliament was held at Accra, following the elections under the new Constitution of Ghana. With 140 newly-elected Members, most of whom had no previous experience in Parliament, it was decided to take the opportunity, while business was still relatively slack, to organise a conference at which the bits and pieces of parliamentary procedure could be examined and discussed. Since the new Constitution combined features of both the British and American models, the Ghana Parliament had invited a representative from the UK (myself) and one from Washington (Dr. Walter Oleszek of the Congressional Reference Service) to be present and to introduce all the subjects on the agenda.

The Chairmanship of the conference was shared by the Speaker (Hon. Mr. Justice J. H. Griffiths-Randolph) and his two deputies. The proceedings were conducted partly in the Parliament House and partly at the conference centre at State House. At each session Dr. Oleszek and I made an opening and a supplementary statement, intended to focus Members' attention within the limits of particular subjects. Thereafter we answered questions, of which there were plenty. The list of subjects was comprehensive and included: the role of the Speaker; the legislative process; financial procedure; standing orders; motions and debates; the committee system; parties and whips; privilege; and Questions.

We felt that legislation and the committee system were the most important matters for Ghanaian Members to consider, as it appeared that the Constitution and Standing Orders provided for a combination of the

Westminster and Washington procedures. Thus, although Ministers are not Members of the House, there is provision for them to attend and take part in debates on legislation. At the same time, a system of committees is envisaged, in the congressional style, where Members can consider legislation and take evidence from Ministers and others. It seemed to us that this could entail a very heavy demand on the time of both Members and Ministers, especially if the latter were to take part in Question Time as well. Such committees are additional to the normal Westminster-style select committees.

Our verbal accounts of parliamentary activities were supplemented by two films, made by the United States Information Office, which illustrated graphically the amount of work done by Congressmen in the process of legislation and in dealing with the volume of representations made to them by constituents and specialist groups. It was obvious that neither the Ghana Parliament, or any other, could expect to afford the levels of research staff and office accommodation which are provided on Capitol Hill.

A further event during this particular week, which was nothing to do with the seminar, but of great interest to me as a visitor, was the formal Address by the President, Dr. Hilla Limann, to Parliament. This was an occasion for plenty of well-organised ceremonial and was attended by a capacity crowd of V.I.P.'s and the general public. It could have been a considerable ordeal for Dr. Limann, I felt, and he was not helped by the perverse behaviour of the amplifying equipment in the Chamber. However, he delivered a two-hour speech which held everyone's attention and made the most of one or two technical hitches to introduce some unscripted asides which were received with applause by a good-tempered and colourfully-attired House.

I found both these conferences enjoyable and rewarding. I learned something about other Parliaments which will certainly be helpful in future when responding, as Clerks at Westminster often do, to requests from overseas for procedural advice. And I was spendidly looked after by my colleagues in both countries, as well as receiving much kindness and hospitality from others with whom I came into contact.

XII. PARLIAMENT IN THE PUBLIC EYE

BY L. A. HOFT

Clerk Assistant and Usher of the Black Rod, Legislative Council.
Western Australia

"For my part, I believe in making a country's Houses of Parliament, as convenient, as beautiful, and even as splendid as possible, so that those who enter them may regard them as something like sacred ground, and be impressed with a certain amount of reverence for their surroundings, and so behave themselves."

(Hon. Sir John Forrest, Premier of Western Australia, 1894)

In recent times concern has been felt in many quarters at the decline in the respect that the public at large has for Members of Parliament and the Parliamentary institution generally.

No doubt this situation can be attributed to a variety of factors – from the emergence of an "anti authority" feeling among a section of the community; the automatic levelling of blame by the public on the Government of the day, and by association, the Parliament, for any grievances, real or imaginary, which might exist; and indeed to a degree by the actions and behaviour of some Members of Parliament themselves.

It is impossible to pinpoint the decline in favour to any one of the many possible causes. However, the fact remains that the problem exists and will not disappear overnight of its own accord, therefore it is encumbent on the Parliaments to endeavour to recover the lost ground.

In common with most Parliaments, Western Australia provides the facilities for groups of tourists, organisations and school children, to be conducted over the Parliament House, and these, in total, amount to many thousands each year, but the public at large, with no access through these groups, has never been able to freely move through the Houses of Parliament; indeed a large percentage would probably be unaware of the location of Parliament House.

In an endeavour to encourage the public to become more aware, the Western Australian Parliament last year declared an "Open Day" as part of its contribution to the State's 150th Anniversary Celebrations.

The "Open Day", which was held on a Sunday last September, received considerable Press publicity, and an estimated 1500 people attended. As several counter attractions were being held in the city on the same day, the numbers were considered to be encouraging.

The proceedings commenced with the unveiling, by the Joint House Committee, of a plaque commemorating the State's 150th Birthday. Immediately following this ceremony, the public were invited into the House where Officers and other House staff moved with groups to predetermined points in the building to commence the tour. As further groups arrived they too were organised in similar fashion to the first.

Both the President of the Legislative Council and the Speaker of the

Legislative Assembly addressed the groups in their respective Chambers, and further information was provided by the Clerks of the Houses.

A twenty minute film of the Opening of State Parliament was shown; the visitors were able to wander through the corridors to view the many paintings on display, and finally were provided with afternoon tea.

Printed material on the History and Procedure of Parliament, and the Parliamentary brochure, were also available free of charge to interested persons.

There has been considerable feedback since the event, and the response from those who attended was such that it is anticipated that the 'Open Day' will be repeated from time to time during the ensuing years.

It is not expected that a visit to Parliament House will result in the instant conversion of Parliamentary "knockers", but if nothing else, it will leave them with a clearer understanding of the history and function of Parliament.

It is considered that the public are entitled to the belief that the Parliamentary institution is, like Caesar's wife, "beyond reproach". Sadly, most Parliaments fall a long way short of this ideal, and it is therefore beholden on all those associated with the Parliament to re-establish it in the eyes of the people.

We believe that by opening the Parliament House to the people, we are moving one step closer to achieving this goal.

XIII. PRESENTATION OF A CLOCK TO THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS AND OF GAVELS TO THE HOUSES OF ASSEMBLY OF TUVALU AND KIRIBATI

BY J. H. WILLCOX

Clerk of Private Bills, House of Commons

On 30th January 1980 the House of Commons agreed to an Address to the Queen asking her to give directions for the presentation, on behalf of the House, of a clock to the National Parliament of the Solomon Islands and of gavels to the Houses of Assembly of Tuvalu and Kiribati, and assuring her that the Commons "would make good the expenses attending the same". On 13th February she signified her agreement, and on 21st February the House agreed to a motion giving Mr. Philip Holland (Conservative, Carlton) and Mr. John Roper (Labour and Cooperative, Farnworth) leave to present the gifts on behalf of the House.

Because of the Members' other duties the three presentations had to be accomplished in the two weeks between 14th and 30th March. With the help of our High Commission in Fiji, we drew up an itinerary enabling us to spend two nights in Solomon Islands and a night and day each in Tuvalu and Kiribati, with intermediate stop-overs in Nauru and Fiji.

We arrived in Suva on 18th March, and were met by representatives of the High Commission and by Lavinia Ah Koy, Clerk to the Parliament. On the following day the Speaker and other members of the CPA branch entertained us to dinner. The High Commissioner, Lord Dunrossil, and Lady Dunrossil also entertained us both formally and informally throughout our stay. We were extremely grateful for the warmth of the welcome and the unstinting hospitality which we received in Fiji.

On 20th March we left Fiji for Funafuti, the capital of Tuvalu, accompanied by Lord Dunrossil, who is High Commissioner there as well as in Fiji. Trouble with one of the aircraft's engines delayed the flight by six hours, but in spite of the long wait a welcoming party were still at the airfield to greet the delegation: not only Mr. Speaker Elia Tavita and the Clerk, Mr. Langitupu Tuilimu, but also a beautifully costumed group of lovely girls who danced and sang in welcome, and crowned their guests with wreaths of frangipani flowers.

Tuvalu extends over half a million square miles of ocean but the total land area of its nine atolls is only ten square miles. The population is about 9,000. The islands of the Pacific fulfil every expectation of beauty, with the blue of the ocean, the white of the surf, the jade of the lagoons, the cream of the coral and the green of the coconut palms. But the beauty of the scene and the spiritual richness of the people is not matched by

material wealth. There is a simple economy based on fish and coconuts, with a subsidiary income from transfers from Tuvaluans working in the phosphate industry in Nauru and as seamen on foreign vessels.

The Assembly was not formally in Session during our visit, and five Members were away at a conference when we arrived and for the presentation ceremony itself. However, we met the remaining seven Members (including Mr. Toalipi Lauti, the Prime Minister) at a reception soon after we arrived, and were honoured that many had come specially to attend the ceremony from distant islands in spite of the difficulties of inter-island travel. Later that evening the people of Funafuti entertained us to traditional Feast in their Maneapa or assembly hall and enthralled us with a magnificent display of dancing by teams of girls and young men.

On the following morning the presentation of the Commons' gift took place in the Maneapa used by the Assembly. The delegation, accompanied by Lord Dunrossil, took their places at a table on the Speaker's right, facing the Members, who sat on the Speaker's left. The Minister of Works opened the sitting with prayers, Mr. Speaker and the Prime Minister made speeches of welcome, and Mr. Holland then presented the gavel. In his speech he emphasised that the gift was a symbol of friendship and goodwill felt by the Commons towards the Parliament of Tuvalu as a democratic legislature of a free and independent member of the Commonwealth. He stressed the value of membership of the Commonwealth and of continuing contacts through the CPA.

Mr. Roper associated himself with Mr. Holland's remarks and pointed out that this symbolic gift was the unanimous wish of the House of Commons. The meeting symbolised the link between the traditions of the islands and the traditions of the Westminster Parliament.

Mr. Speaker Elia Tavita wound up the proceedings by thanking the delegation for the gift.

After the ceremony we called on the Governor General, Sir Penitala Fiatau Teo, and were entertained to lunch by the Speaker and Members. At lunch we heard that our plane to Fiji would be delayed, involving us in another night in Funafuti. Our hosts immediately arranged an expedition across the lagoon for us and in the evening the Prime Minister gave a dinner at which we met those Members and Ministers who had been abroad during the presentation ceremony, but who had now returned.

The following morning, after more delays caused by the faulty engine which had troubled us since Suva, we bade farewell to Mr. Speaker and to the Members who came to the airport to see us off. It had been a wonderful experience, and the Tuvaluan hospitality was unforgettable.

The remainder of 22nd March was spent quietly in Fiji. On Sunday 23rd we left Suva for Honiara, in the Solomon Islands, via Port Vila in the New Hebrides. We were due to arrive at Honiara at 11 a.m. and had a full programme that day before the presentation ceremony on Monday morning. However, at Port Vila the engine (of a different aircraft) broke down and we had to spend the rest of that day and the night in Port Vila

while a mechanic flown in from Suva repaired the engine. All that we could do was to telephone Honiara, express our regret for upsetting their arrangements and ask for the presentation ceremony to be delayed.

So on Monday, 24th March at 7.30 a.m. twenty hours late, we arrived in Honiara. Mr. Slater, British High Commissioner, and Mrs. Slater met us at the airport, drove us to our hotel and made sure that we were comfortably installed before taking us on a tour of Honiara and to call on Sir Baddeley Devesi, the Governor General. We were assured that our delayed arrival had been accepted uncomplainingly by our hosts.The Prime Minister's department had used the radio to inform all concerned of the changes in programme.

The Solomon Islands have a total land area of 11,500 square miles in ten island groups. The islands are mostly mountainous, covered with rain forest. Agriculture, copra production, forestry and fisheries are the main occupations of a population of 200,000. It was our misfortune that we only had time to see a few square miles of a single island, and that in pouring rain which gave a suitably sombre aspect to the battlefields of Guadalcanal.

After lunch we went to the Parliament House, met Mr. Speaker Maepeza Gina and the Clerk, Mrs. Lily Poznanski, and briefly rehearsed the presentation before formally taking our places for the ceremony.

The National Parliament of 38 Members meets in the Chief Justice's Court, and at the special sitting arranged for the presentation the delegation sat on the dais on either side of the Speaker, who was accompanied by the Chief Justice.

After a short speech of welcome from Mr. Speaker, Mr. Holland presented the Clock on behalf of the House of Commons, explaining that it was a token of the ties which bound the two Parliaments in friendship. Both Parliaments shared a responsibility to fight to preserve and improve Parliamentary democracy in a changing world. They stood shoulder to shoulder as they had in the War.

The Speaker, the Prime Minister (Mr. Peter Kenilorea), the Leader of the Opposition (Mr. B. Ulufaalu), and the Leader of the Independent Group (Mr. W. Betu), made speeches of thanks (with suitable allusions to the passage of time). Mr. Roper wound up, thanking Members for the warmth of their welcome, apologising for the inconvenience caused by our delayed arrival, and emphasising that all Parties in the House of Commons were unanimous in supporting the presentation of this gift. He looked forward to a continuing exchange of ideas through the CPA.

The sitting was then suspended and the delegation took their places in the distinguished strangers gallery and listened with much pleasure to a series of witty and amusing speeches in which the Prime Minister, supported by Mr. Ulufaalu and Mr. Betu, moved a motion of thanks to the Commons which was agreed to unanimously. The Speaker adjourned the House in order to enable Members to meet the delegation before resuming normal business.

In the evening the Prime Minister gave a party at which Mr. Kenilorea presented Mr. Holland with a carved Nusu-Nusu head of the sort once used as a figurehead in canoes and on head-hunting expeditions. Mr. Holland remarked that he would find this splendid gift invaluable in headhunting on behalf of the Committee of Selection (of which he is Chairman) at Westminster.

With much regret that our visit had been so curtailed but deeply grateful to our hosts in the Solomon Islands for their forbearance and hospitality, we left on the following morning for Kiribati. In order to get there, we had to stop overnight in Nauru.

Unexpectedly and to our great pleasure we were royally entertained in Nauru by Mr. D. P. Gadaroa, Speaker of the Parliament and other members of the local CPA branch. We were also sedulously looked after by the Clerk, Mr. Cook, and his Assistant, Mr. Cain.

We arrived in Tarawa, Kiribati, on the morning of 26th March, to be met by Mr. Matita Taneira, Clerk of the House of Assembly, and by Mr. Rose, British High Commissioner, who with Mrs. Rose took great pains to look after us and entertain us during our stay.

Kiribati is much larger than Tuvalu, extending over 2,000,000 square miles of ocean. In this vast area are 33 islands with a total land area of about 264 square miles and a population of some 56,000. Apart from this difference in size, there seem to a visitor to be many similarities with Tuvalu, particularly the beauty of the scenery, the friendliness of the people and the simple economy.

After checking in at our hotel, which was, like those in Funafuti and Honiara, beautifully situated among coconut palms on the edge of the lagoon, we called on the Vice President, Mr. Teatao Teannaki, and on the Speaker, Mr. Rota Onorio, with whom we rehearsed the form of the presentation ceremony.

We had a restful day, and were refreshed and ready to enjoy a reception given in the evening by the Vice-President and the Speaker. We were splendidly entertained by a choir singing traditional songs on a veranda within a few feet of the lagoon. To our delight some of the young ladies left their places in the choir to invite us to join in an energetic dance.

On the morning of 27th March we went to the Maneaba ni Maungatabu (House of Assembly) to make the last of our three presentations. As in Tuvalu, the House was not formally in Session. Nevertheless it appeared that most of the membership of 35 attended the ceremony. We were honoured that so many had travelled so far from their homes in distant islands in order to be present.

For the presentation ceremony, Mr. Holland and Mr. Roper sat on either side of the Speaker on the dais, while the Clerk was invited to sit at the Table with his Kiribati colleague.

Mr. Speaker Onorio welcomed the delegation, emphasising the Commonwealth and parliamentary links between Kiribati and the United Kingdom. Mr. Holland then presented the gavel, asking the Speaker to

accept the gift as a symbol of order and peace, marking the affection and goodwill felt by the House of Commons towards the Parliament of Kiribati as a new member of the Commonwealth. He stressed the value to both nations of Parliamentary Govenment as a bulwark against tyranny. The Vice-President replied on behalf of the Assembly, expressing their gratitude for the affection of the House of Commons symbolised by this gift and mentioning the reassurance which membership of the Commonwealth organisation brought to its smaller members.

Mr. Roper wound up, drawing attention to some of the other links between the two countries, such as the Christian Churches and the Cooperative movement. He thanked the Assembly and the people of Kiribati for their hospitality and kindness.

The Speaker, Members and guests then adjourned to the Clerk's Office for coffee and conversation. Thus ended the last of our three presentations. The delegation made their way back to London by various routes. It had been a wonderful experience which none of us would ever forget.

XIV. PUBLIC PETITIONS

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

(i) How many petitions are presented each Session?
(ii) Is the presentation of petitions governed by any rules?
(iii) Can more than one petition on a subject be presented in each Session?
(iv) Can petitions be presented to both Houses?
(v) What is the procedure for presenting petitions? Are they debatable?
(vi) Is there a Committee on Public Petitions?
(vii) What happens to petitions once they have been presented? e.g., is any government action required?
(viii) Is leave of your House required if reference is to be made in Court to Hansard or Committee reports? Is such leave sought by petition?

House of Lords

There have been only thirteen public petitions in the century; the last was in 1973.

The relevant Standing Orders are as follows:

(1) No Petition other than a Petition relating to Judicial or Private Business, shall be received, unless it is presented by a Lord and bears his signature.
(2) A Lord may present a Petition in person to the House, or may deposit it with the Clerk of the Parliament, or may hand it in at the Table of the House.
(3) In presenting a Petition in person to the House, a Lord may only read out the Prayer of the Petition and state the number of Petitioners who have signed it.
(4) A Petition to which this Standing Order applies shall not be printed, unless a Lord gives notice of a Motion relating to it for a particular day.

More than one Petition on the same subject may be presented in a Session. Petitions as such are not debatable but a motion relating to the same subject could be moved and debated in the House.

There is no Committee on Public Petitions but in 1935 a Petition seeking the withdrawal of Western Australia from the Commonwealth was referred to a Joint Committee, and in 1965 a Petition relating to the rights of Irish Peers to sit in the House was referred to the Committee for Privileges. Such a reference is made as a result of a Motion in the House.

No government action is required but steps as already described may be taken.

Entries in the Lords Journals concerning Petitions are admitted in

Court as evidence without proof. There is no need to give leave for the quotation of records, therefore the question of petitioning does not arise.

House of Commons

The practice of petitioning the House of Commons is almost certainly as old as the House itself, but in modern times has shewn a significant decline in popularity as a means of seeking redress for grievances. Since 1945 there has been an average of about twenty petitions presented to the House in each Session, although in that time numbers presented in any one Session have varied between three and over thirty. The decline in petitioning is in part due to the gradual introduction of various rules concerning public petitions, of which there are at present eighteen. These rules govern the form, nature and content of a petition and any petition not conforming to them is rejected by the Clerk of Public Petitions. There is no rule, however, against more than one petition on a subject being presented in one Session.

Petitions may be presented to either House, but in practice, since most petitioners seek to address the government of the day, all public petitions are now presented to the Commons. When a petition is presented formally the presenting Member should confine his speech to a brief statement of the aims of the petition and of the nature and number of the petitioners, He then reads, or asks the Clerk to read, the prayer of the petition, and proceeds behind the Speaker's Chair, where a bag is kept for the receipt of petitions. The petition is then communicated to a Government Department by the Clerk of Public Petitions and in due course a Secretary of State will present his observations in writing (although he is under no obligation to do so). A Member may also present a petition informally simply by dropping it in the bag at any time the House is sitting. All properly presented petitions are recorded in the daily Votes and Proceedings and are printed by order of the House. Petitions are not debatable unless they fall under the provisions of Standing Order No. 101, or unless they relate to a question of privilege. Standing Order No. 101 covers petitions relating to a present personal grievance, and has not been invoked successfully for some twenty years.

The Committee on Public Petitions was discontinued in April 1974 and now there is no attempt made to count or verify the signatures to a petition. However, the Clerk of Public Petitions is responsible for scrutinizing and approving all petitions, and for advising Members and the public on the drafting and presentation of petitions.

Petitions are still required for leave to refer to House records in Court. These are printed in extenso in the Votes and Proceedings and are not sent to the Government for comment. The practice of petitioning for leave to refer is at present under review.

Isle of Man

Public petitions (which may be presented to Tynwald Court and to

both of the Branches) are very rare. In the case of petitions to Tynwald and to the House of Keys, Standing Orders require that they:

(a) contain no erasure or interlineation unless the same is specially referred to at the end of the petition and before any signatures thereto;
(b) carry at least twelve signatures;
(c) be signed by petitioners on the same sheet on which the petition is printed or typewritten;
(d) set out the addresses of petitioners;
(e) be presented by a member (but no member may present a petition from himself).

Upon receiving a petition, the Clerk of Tynwald or the Secretary of the House, as the case may be, convenes his Standing Orders Committee, and lays the pettion before it. The Committee considers and determines whether this petition is in conformity with the Standing Orders, and reports its decision verbally. If the decision is in the negative the petition cannot be presented.

A member presenting a public petition must confine himself to a statement of the persons from whom it comes and of the number of signatures which are attached to it and to the reading of the petition and the prayer thereof. No debate upon the petition is allowed, and no member is permitted to speak upon or in relation thereto, except that in the case of a public petition complaining of some present personal grievance, for which there may be an urgent necessity for providing an immediate remedy, the matter contained in such petition may, by leave of Tynwald, be brought into discussion on the presentation thereof.

On the presentation of a public petition a motion may be made that it be printed with the minutes; and a question thereupon is put without any amendment or debate being allowed.

In the case of the Legislative Council, a public petition may be presented through a member. The member presenting the petition must confine himself to a statement of the persons from whom it comes, of the number of signatures attached to it and to the reading of the petition.

Every petition must be signed by the persons whose names are appended thereto by their names or marks, and in the case of a corporation aggregate under its common seal.

No leave is required for reference to Hansard or Committee reports in the Courts.

Jersey

On average, one public petition is presented to the States each Session. Standing Orders govern the presentation of any such petitions. More than one petition on a subject can be presented in each Session.

The Member presenting a petition to the House presents at the same time a Proposition inviting the House to grant the prayer of the petition.

The petition is immediately referred to the appropriate Committee of the States for report and when that report is ultimately presented the debate takes place on the Proposition attached to the petition.

Leave of the House is not required for reference to be made in Court to any Committee reports.

Canada: Senate

The last public petition presented was in 1944 but the Standing Orders provide for them. It is permissible to present more than one petition on the same subject in each session. A Senator, in presenting a petition, may briefly explain its purport but other members may not discuss its content. Petitions, when presented, are laid on the Table and deposited in the Journals Branch. On the day following presentation, the petition is read and received under "Reading of Petitions".

Canada: House of Commons

Since 1945 there have been less than three public petitions presented per session. Standing Orders 67(1) to (6) govern the presentation of petitions, and do not prohibit more than one petition being presented on the same subject in each session.

Petitions may be presented to the House by a Member in two ways: (1) by filing them with the Clerk at any time during the sitting; or (2) by rising in his place and presenting them orally during Routine Proceedings and before the Introduction of Bills. They are not debatable at this time, unless they complain of some present personal grievance requiring an immediate remedy. They may, however, be read by the Clerk if required. Members are always free to give notice of a private Member's motion regarding a petition which may be debated when it is called pursuant to precedence on the Order Paper.

There is no Committee on Public Petitions. After being presented, petitions are examined by the Clerk of Petitions for form. The following day the Clerk makes a report to the House, which is printed in the Votes and Proceedings. If the petition is in proper form, does not contain matter in breach of the privileges of the House, and which according to the Standing Orders or practice of the House can be received, it is then deemed to be read and received. No further action is required either by the House or by the Government.

If the Courts wish to refer to Hansard or Committee reports, it is likely that the practice at Westminster would apply, as per Erskine May, 19th Edition, pp. 88–9, and 816–7. However, the situation has not arisen recently.

Alberta

Three to five petitions are presented each session, under the appropriate Standing Orders. They can be on the same subject. Petitions must be presented by a Member of the Assembly on a sitting day and a motion

for Reading and Reception of a Petition must be made on any subsequent sitting day.

There is no Committee on Public Petitions and no government action is required. Petitions are filed.

Northwest Territories

In the life of the 8th Assembly, whose term of office expired in the early part of 1979, an average of one petition was presented in each of the thirteen sessions held for a total of fourteen petitions in all.

To date in the life of the present 9th Assembly there have been two sessions. In the first, no petitions were presented. In the second, seven petitions were presented.

Rule 41 of the Rules of the Legislative Assembly, which is divided into Sub Rules 1 to 9 inclusive, deals with the presentation of petitions. This Rule however, is silent on the matter of whether more than one petition on the same subject may be presented in each session. Such a case has not arisen and it is uncertain in that event what the decision might be. The question concerning the presentation of petitions to both Houses does not arise, in that the N.W.T. Assembly is a uni-cameral House.

A member wishing to present a petition to the House rises during the appropriate time during daily routine proceedings, makes a statement of the parties to the petition, the number of signatures and the material allegations it contains and tables it. If required by a member a petition may be brought into immediate discussion although this is something that has, as far as known, never occurred. The more normal procedure is for a petition to be referred to the appropriate minister who shall refer the petition to his department and report to the Assembly at a subsequent session.

One instance only has occurred when a court wished to make reference to Committee reports and to the proceedings of a Committee of this Assembly. In that instance the Assembly was not at the time in session and leave for such access was granted to the Court by the Speaker.

Ontario

Public petitioning of the Legislature has undergone a marked resurgence in recent years. To a certain degree, this reflects the introduction, several years ago, of more straightforward procedures for public petitions.

Standing Order 29 provides:

29 (a) A petition to the House may be presented at any time during the Session by a Member filing it with the Clerk of the House or in the manner set out in clause (b).

(b) A Member may present a petition from his place in the House during the routine proceedings under the proceeding "Petitions". He shall endorse his name thereon and confine himself to a statement of the petitioners, the number of signatures and the material allegations.

(c) Petitions may be either written or printed and only the original,

properly signed, and addressed to the Lieutenant Governor and the Legislative Assembly may be presented.

(d) Petitions must not be signed by a solicitor as such, unless he is acting for a petitioner unable to sign due to absence from the Province or illness, and only then if the solicitor holds a Power of Attorney to be produced to the Clerk of the House if required.

(e) Members presenting petitions are answerable that they do not contain any improper matter.

(f) No petition shall be received that prays for any expenditure, grant or change on the public revenue, whether payable out of the Consolidated Revenue Fund, or out of moneys to be provided by the House.

(g) Every petition that is in order shall be brought to the Table and read by the Clerk if required.

(h) No debate shall be allowed on the presentation of a petition, unless it complains of some urgent personal grievance requiring immediate remedy, in which case it may be taken into consideration immediately.

(i) The Ministry shall provide a response to a petition within two weeks of its presentation.

Until 1975, petitions were vetted by the Table officers, prior to presentation in the House. A great many petitions were rejected at this stage for incorrect form or for requesting specific allocation of funds. The current practice is for the Member to rise (without notice) during routine proceedings, read the petition verbatim, indicate the number of signators, perhaps make a very brief statement of the petition's significance, and send the petition to the Table. If the petition is clearly out of order (usually for a transgression of the financial restrictions of the Standing Order) the Speaker will so rule at this point, and likely direct the petition to the appropriate Minister. Since it may be difficult for the Speaker to render an off-the-cuff ruling on certain petitions, a ruling is sometimes handed down later in the day.

The government response required under the Standing Order is typically brief, sometimes indicating simply that the government is giving serious consideration to the matters raised in the petition. No further follow-up procedure exists and the Ontario Legislature has no petitions committee. Although provision is made for immediate consideration of petitions complaining "of some urgent personal grievance requiring immediate remedy", this has not occurred for some years.

In the Third Session of the Thirty-first Parliament (1979), 20 petitions were presented; in the preceding session, the number was 24. Generally, petitions are of two types: (a) those which draw to the Government's attention public dissatisfaction with particular policies as they affect certain groups; typically, these are matters of essentially local concern, for example, the unfairness of the exclusion of a particular community from the region which enjoys lower automobile licence fees, or local environmental hazards; (b) those concerned with major political issues of the day, such as the alleged deterioration of the province's health care

system. Petitions calling for redress of individual grievances are extremely rare; if such grievances are raised in the House, they will be brought up in Question Period or during Estimates debates.

Any number of petitions may be received on a given topic during a session.

The Courts have not recently requested leave to refer to Hansard or Committee reports; if such reference is being made without permission of the House, the House is not aware of it. In any event, the issue has not arisen for many years.

Quebec

Very few petitions are presented each session, for instance only two petitions were presented during the 1979 session. The presentation of petitions is governed by Article 180 of the Standing Orders. It reads as follows:

" 1. When documents are being tabled, a person or an association of persons may, through a member, table a petition in the House for the redress of a public grievance.
2. The petition must contain, firstly, a designation of the petitioners, then a clear, concise, accurate and moderate worded statement of the facts for which the intervention of the Assembly is requested, and finally, the signature of all the petitioners.
3. A petition, on being tabled, is received and copies thereof are distributed to the Members of the Assembly. The tabling of the petition is entered in the Votes and Proceedings."

Saskatchewan

The Legislative Assembly receives approximately 5–8 petitions each year praying that the Legislative Assembly may pass a Private Bill. There are usually one or two petitions presented each year which are not related to Private Bills and are expressing a particular grievance.

The procedure set out below applies to public petitions which are not seeking Private Bills. There are no rules against the presentation of more than one petition on a subject in the same Session.

There is no Committee on Public Petitions and no debate is allowed on the petitions. Once the petition has been presented, a Member may introduce a resolution relating to the subject matter of the petition and may have a debate on that matter on Private Members' day (every Tuesday). No Government action is required under the Rules.

There is no precedent of leave having been requested for reference in court to Hansard or committee reports.

Yukon

Three petitions were presented in 1979, during the Second Session of the 24th Legislature. The presentation of petitions is governed by Standing Orders. These allow more than one on the same subject in the same session – indeed, all three petitions in 1979 dealt with the same subject matter. Petitions are not debatable but the member presenting the petition may speak for five minutes on the material allegations it contains.

There is no Committee on Public Petitions.

The Government is under no obligation to act on a petition presented. Unless the subject matter is of an extremely politically-sensitive nature, it would likely just die. If it is politically-sensitive, it is likely that the Government would make a statement on the possible, or proposed, action it might take.

There is nothing in the Standing Orders requiring leave of the House if reference is to be made to Hansard or Committee reports in Court.

Australia: Senate

Sessions of the Australian Parliament have varied over the last ten years from 3 months to 3 years in duration. In the years 1978 and 1979, 748 and 742 petitions were presented, respectively.

Senate Standing Orders Nos. 76 to 97 inclusive and a Sessional Order agreed to on 22nd February, 1978 govern the presentation of petitions, which may be on the same subject as a previous one in the same session.

Petitions are called on by the President following Prayers. Under the Sessional Order a Senator may present a petition in one of the following ways:

(a) present a petition and ask that the full text be read by the Clerk (provided that the petition does not exceed 250 words in length),

(b) present the petition; or

(c) lodge it with the Clerk for presentation to the Senate.

Under the Sessional Order the terms of the petition are recorded in Hansard.

The subject matter of a petition is not debatable at the time of presentation but may be referred to in the course of subsequent relevant debates. Pursuant to Standing Order No. 36AA the Senate may refer a petition to the relevant Legislative and General Purpose Standing Committees for inquiry and report. Following their presentation, petitions are retained as Tabled Papers. Action by the Government is not mandatory.

In general terms, the leave of the Senate is required for reference to be made in Court to Hansard etc. The Committee of Privileges of the House of Representatives is, however, examining the question of whether leave of the House is required in all cases. Leave would normally be sought by petition.

Australia: House of Representatives

Numbers of petitions presented to the House are recorded on an annual rather than a sessional, basis. (The Commonwealth Parliament does not meet with consistency for regular *annual* sessions).

The statistics show a steady increase in recent years. Until the 1970's, the record year was 1901 (the year in which the Commonwealth Parliament first met), when 226 petitions were presented. In 1970, 496 were presented (see *The Table* Vol. XL p. 162), and a new record was established

on several occasions during the 1970's, as indicated in the following table:

Year	*No. of Petitions*	*Year*	*No. of Petitions*
1970	496	1975	2043
1971	723	1976	1987
1972	1130	1977	1420
1973	1677	1978	1340
1974	883	1979	2366

The 1979 number, the greatest since Federation, represents an average of 35 petitions per sitting day in that year.

Twenty-one Standing Orders (Nos 112–132) specifically govern the presentation of petitions.

More than one petition on the same subject may be presented each sitting day. Petitions in identical terms may be lodged on the same day by different Members. Provided the petition is appropriately addressed (either to the Speaker and Members of the House *or* to the President and Members of the Senate), petitions in otherwise identical terms may be presented to both Houses.

The current procedure provides for petitions to be lodged with the Clerk of the House at least 3 hours prior to the sitting of the House. The Clerk, after Prayers, then announces to the House the subject matter of the petitions lodged and identifies the petitioners (i.e. "citizens of Australia" or "electors of the Division of . . .") and the Member who lodged the petition. This procedure has been in operation since 1972. The superseded procedure (and a more detailed explanation of current procedures) was discussed in *The Table* Vol. XLI, pp. 95–6. The timing and nature of the Clerk's announcement concerning petitions lodged was the subject of a Standing Orders Committee Report in 1979. To date the report has not been considered by the House. Every petition presented is deemed to have been received by the House unless a motion, moved forthwith, that a particular petition be not received, is agreed to. The only other motions which may be moved on presentation of a petition are, "That a particular petition be printed", or "That a particular petition be referred to the select committee on . . ." (in the case of a petition respecting any subject then under the consideration of a select committee), but no Member may move that a petition be printed unless he intends to take some action upon it and informs the House accordingly. No discussion upon the subject matter of a petition is allowed.

There is no Committee on Public Petitions.

A copy of the petition (without signatures) is referred to the Minister responsible for the administration of the matter which is the subject of the petition. There is no Parliamentary follow-up action.

In summary, the leave of the House is required if reference is to be made in Court to Hansard etc. (See page 121).

New South Wales: Legislative Council

Since Session 1973–74 781 public petitions have been presented but 770 of these were presented in one session (1976–7–8) against the legalising of casinos.

Standing Orders of the Legislative Council Nos. 33 to 47A govern the preparation and presentation of Public Petitions.

Similar Public Petitions may be presented to both Houses provided that they are separately addressed to each House and comply with the Standing Orders.

Standing Order No. 47 sets out the mode of presentation of Petitions; there is no debate.

"The only Questions which shall be entertained by the House on the presentation of any Petition, shall be 'That the Petition be received', and 'That the Petition shall be read by the Clerk', which Questions shall be decided without amendment or debate".

There is no Committee on Public Petitions. As stated in Standing Order No. 48 the only action that follows the presentation of a Public Petition is that an Abstract of every Petition is prepared by the Clerk which shall be printed and distributed among the Members.

Leave of the House is not required if reference is to be made in Court to Hansard or Committee reports. The Parliamentary Papers (Supplementary Provisions) Act, 1975, No. 49, and sections 24 and 25 of the Defamation Act, 1974, No. 18, relate to publication and reference to official and public documents and records.

New South Wales: Legislative Assembly

Literally hundreds of petitions, embracing subjects seemingly without limit as to public interest and private grievance, are presented to the Legislative Assembly each Session.

The presentation of petitions is governed by Standing Orders 81–99, and permit more than one petition on a subject to be presented in each Session. Every petition presented is deemed to be received by the House unless a motion, moved forthwith that a particular petition be not received, is agreed to. Only on very rare occasions has the House refused to receive a petition. There is no Committee on Public Petitions. A copy of every petition received by the House is referred by the Clerk to the Minister responsible for the administration of the subject matter of the petition. Any action thereafter is at the Minister's discretion.

No leave of the House is required if reference is to be made in Court to Hansard or Committee reports. The procedure for obtaining reports in Court is by way of subpoena for production. No Committee reports have been subpoenaed and Hansard reports have been subpoenaed only once in the last fifty years. In that case, the Prothonotary of the Supreme Court of New South Wales and the Clerk of the House consulted over the production of the reports and the formal service of the subpoena. The

Second Clerk-Assistant attended the Court on the set day and produced the subpoenaed papers before the presiding judge.

Northern Territory

Nineteen petitions were received and read in 1979. Standing Orders 83–86 were adopted in 1978 with the idea of making petitions more effective, particularly by ensuring that their terms be brought to the notice of the Minister responsible for the area complained of. No debate is allowed but Petitions may be referred to a Select Committee. There have been no recent instances of this and there appears to be no need for a Committee on Public Petitions. Section 25 of the *Legislative Assembly (Powers and Privileges) Act* provides that "upon any inquiry touching the powers, privileges or immunities of the Assembly or of a member, a copy of any document printed or purporting to have been printed by the Government Printer, or by the authority of the Clerk or otherwise by or under the authority of the Assembly, shall be received in all courts and places as evidence of the proceedings."

However, section 26 goes on to say that "Except with the leave of the Speaker, an officer, employee or member of the Assembly shall not disclose to any court or tribunal or to any person charged with a duty to inquire into or investigate any matter the contents of –

(a) any evidence given before the Assembly or a committee;
(b) a report of the debates and proceedings of the Assembly which has not been published with the authority of the Assembly; or
(c) a manuscript or document laid before the Assembly or a committee which has not been published with the authority of the Assembly."

Queensland

During the decade 1965–1975 Public Petitions were presented to Parliament on an average of five per Session. But the late 1970's has seen a phenomenal increase in the number presented. During the 1978–79 Session, 74 were presented.

The presentation of Petitions is governed by Standing Orders Nos. 219–238.

These rules were varied by a Sessional Order on 11th March, 1980, to provide that Petitions must be handed to the Clerk not less than one hour before the sitting begins.

The procedure followed for many years is as follows:

The Speaker calls "Is there any other business", after formal announcements and after Ministers have given Notices of Motion and the Tabling of Papers.

The Member rises and when called says – "Mr. Speaker I present a Petition from . . . electors praying that the Parliament of Queensland will . . . and I move, That the Petition be read."

When this Question is agreed to, the Member comes to the Table and hands the Petition to the Clerk, who rises and reads the Petition.

The Member then moves "That the Petition be received."

Petitions are not debatable. Presentation of Petitions is listed in the Votes and Proceedings and the Petition is registered as a record of the House.

South Australia: Legislative Council

The number of petitions varies from session to session, but the average over the last 3 sessions is 13.

The Standing Orders Nos. 79–97 of the Legislative Council govern the presentation of Petitions, and allow for more than one to be presented on the same subject in a Session. Petitions must be lodged with the Clerk two hours before the Council meets and must be certified by the Clerk as in conformity with the Standing Orders. They are presented at the beginning of business.

Once Petitions are presented they become part of the records for the Session and are kept with all other Papers tabled. No Government action is normally required.

As far as the question of reference being made in Court to Hansard etc., Standing Order No. 31 states that "The custody of all documents and Papers belonging to the Council shall be in the Clerk, who shall not permit any to be removed from the offices or produced in evidence without the express leave or order of the President or Council."

South Australia: House of Assembly

About 600 petitions have been presented each Session in recent years. This is a marked increase since the early '70's but seems to have now reached a peak.

Presentation of petitions is governed by the Standing Orders of the House and the relevant rules may be summarised as follows:

(a) A petition must be lodged with the Clerk two hours before the sitting of the House.

(b) The Clerk shall make an announcement to the House as to the petitions lodged with him for presentation to the House (except a petition for a Private Bill or relating to a Private Bill before the House), indicating in the case of each petition, the Member who lodged it, the identity of the petitioners and the subject matter of the petition. No discussion on the subject matter of a petition shall be allowed and every petition so presented shall be deemed to have been received by the House.

There is no limit on the number of petitions on a subject, but separate petitions must be presented to each House. A petitioner may therefore petition both Houses at the same time.

The House has no Committee on public petitions.

Once petitions have been presented no further action is taken by the House. If the Member presenting the petition wants to pursue the matter, then he makes representations to the Government privately or by way of substantive motion.

No leave is required for reference in Court to Hansard or Committee reports. Leave of the House would be required for their production in Court although the Wrongs Act provides that a certificate stating that the matter in question has been published by order or under the authority of either House would bring an end to any criminal proceedings.

Tasmania: House of Assembly

The procedure for petitions is laid down by Standing Orders 53–73. Usually about ten are presented each year, though there is no limit on numbers. Any number of petitions on a subject may be presented in each session. A petition may only be presented to one House, though a separate similar petition may be presented to the other. A petition is formally presented by a Member at the commencement of the day's sitting. They are not debatable and there is no further procedure. They are not considered by any committee nor does the Government have to take any action.

Victoria: Legislative Assembly

In session 1978–79, 83 petitions relating to 51 separate subjects were tabled. Standing Orders Nos. 238–248 lay down requirements for form, content and procedures for presentation.

No restrictions apply to the presentation of more than one petition relating to the same subject. It is common practice for members of different districts to present the same subject matter petition signed by constituents of their district.

Petitions must be addressed to the specific House. It is open to petitioners to petition each House on the same matter but these must be individually directed to the respective House.

Standing Orders 245–248 govern the procedure for presentation of Petitions. It is open to a member to set down a motion for the purposes of having a petition debated in the House. Only in cases of urgency may a petition be debated on presentation.

By informal arrangement, a copy of the text of a petition presented is forwarded by the Clerk of the House to the relevant Minister for information. There is no obligation on the Minister or the Department to make any response.

This question of whether the leave of the House is required if reference is to be made in Court to *Hansard* or Committee reports has not arisen in recent times. If the attendance of a member or officer is required to give evidence concerning proceedings in the House, following such a request, the House decides by resolution whether leave to attend should be granted.

Western Australia: Legislative Council

During 1979 14 Petitions were presented to the Legislative Council. This number was considerably higher than usual. Standing Orders 121–141 govern the presentation of petitions.

During 1979 13 Petitions dealing with the same subject were presented by Members representing various Provinces.

Except for the proviso to Standing Order 139, no debate is allowed.

There is no Committee on Public Petitions.

Until two years ago Petitions presented were received by the House and filed in the House Records with no positive action being taken.

A system now exists whereby an advice of all Petitions presented is forwarded to the Parliamentary Secretary to the Cabinet whose responsibility it is to initiate the necessary action for a proper examination of the Petition.

No authority is required for any Parliamentary publication to be produced in Court. The Parliamentary Papers Act 1891, section 4, is relevant.

Western Australia: Legislative Assembly

The number of petitions received has been increasing in recent years. In 1973 four were received. By 1976 the figure had increased to 23, in 1978 124 were presented and 136 in 1979.

The rules governing the presentation of petitions are set out in Standing Orders. In addition, Speakers have ruled –

(a) that a petition containing fictitious signatures is disorderly;
(b) that the responsibility for the orderliness of a petition rests with the member presenting it, and
(c) that, if the petition is lengthy, the member shall not read the whole of the text but simply give a summary of it.

Any number of petitions on the same subject may be presented in each Session. Similar petitions can be, and are, presented in both Houses. However, they must be properly addressed to the House in which they are being presented.

The Member presenting a Petition rises on the Speaker's call and says (to the effect) that –

> I have a petition from . . . persons praying that . . . (here follows a summary of the petition).
>
> The petition conforms with the Standing Orders of this House and I have certified accordingly.

Mr. Speaker then directs the petition be brought to the Table of the House. No further action or debate is permitted without the moving of a motion.

There is no Committee on Petitions, but following presentation a copy of the petition is provided by the Clerk to the Minister concerned, through the office of the Parliamentary Secretary to the Cabinet.

There is no precedent for obtaining leave of the House by way of petition for the production of *Hansard* or Committee reports in the Courts.

New Zealand

Over recent years the number of petitions presented each session has varied considerably. The lowest, in 1978, was 34; the highest, in 1970, was 115. In 1979, 76 petitions were presented but in the years 1975–77 the numbers were in the mid-thirties and forties. One reason for this wide variation is given below; but there has been a noticeable decline in numbers over the past 20 years.

Petitions may be presented on any subject at all, providing they comply with the formal requirements of Standing Orders: they must be legible, contain a prayer, be signed by the parties, etc.; and not contravene S.O. 412, which provides

(i) that all legal remedies must be exhausted and recourse be had to the Ombudsman if the matter is one within his competency (and there is, in addition to this standing order, provision in the Ombudsman Act 1975 for a petition to be referred to him by a Committee of the House), and

(ii) that a petition on the same subject matter as an earlier petition that has been dealt with by the House will not be considered unless "substantial and material new evidence is available that was not available when the earlier petition was considered". (In this context, "finally dealt with" means the tabling in the House of the report of the committee to which the petition was referred: until that time, petitions of identical or similar wording may be presented as separate petitions. This results in some distortion of the numbers presented and is one reason for the variations mentioned above.)

In New Zealand's unicameral legislature opportunity for the presentation of petitions is given at the start of every day as formal business. Their presentation is not debatable. Once presented, the petition is referred by the Clerk of the House to the most appropriate of the select committees of the House. There is a Petitions Committee which deals with those petitions which may not be suitably dealt with by the other select committees: the decision on which committee to refer a petition to does not take into account subject matter alone but, where necessary, the propriety from a formal or procedural point of view of referring a petition to a particular select committee – for example where the petition deals with a matter already considered by a select committee it may not be appropriate to refer it to the same committee for consideration. The committees invariably request further evidence from the petitioner, which may be written or given in person, and reports from other bodies or government agencies which may be of assistance; deliberate; and report to the House. The report may be referred to the Government by the House for further action. Debate on the report may take place only if no recommendation so to refer the report is made by the committee. The Government is not required to take any action on the substance of the report although a Cabinet committee does review the matter and the Government must,

under Standing Orders, report back to the House within 28 days of the commencement of each session what action, if any, has been taken in respect of reports referred to it in the previous session.

Leave of the House is required if reference is to be made in court to *Hansard* reports: this was sought for the first time in 1979 and the procedure was by way of petition, which was referred to the Privileges Committee.

India: Lok Sabha

On an average 3–4 petitions are presented in each Session. The presentation of Petitions is governed by Rules 160–68 of the Rules of Procedure and Conduct of Business in Lok Sabha (Sixth Edition).

No Petitions received subsequently on an identical subject on which petitions have already been presented to the House are placed before the Committee on Petitions for their consideration without being presented to the House.

There is no bar in the Rules of Procedure and Conduct of Business in Lok Sabha against the presentation of a Petition identical to a Petition already presented in the Rajya Sabha.

Under Rule 168 of the Rules of Procedure and Conduct of Business in Lok Sabha, a member presenting a Petition should confine himself to a statement in the following form:

"Sir, I beg to present a petition signed by . . . petitioner(s) regarding . . ."

No debate is permitted in the House on this statement at the time of presentation.

Rule 306 of the Rules of Procedure provides for the constitution of a Committee on Petitions.

Under Rule 169, every Petition after presentation stands referred to the Committee on Petitions. Under Rule 307, the Committee examines every Petition referred to it and if it complies with the Rules, the Committee may direct that it be circulated. It is also the duty of the Committee to report to the House on specific complaints, made in the Petition referred to it after taking such evidence as it deems fit.

The Committee suggests remedial measures either in a concrete form applicable to the case under review or to prevent such cases in future.

The Ministry or Department of the Government concerned with the subject matter of the Petition is asked, in the first instance, to furnish a factual note on the matter for the consideration of the Committee on Petitions. In many cases the petitioner's grievances are redressed by the Ministry or Department when the matter is referred to them for a factual note.

According to the First Report of the Committee of Privileges (Second Lok Sabha), adopted by Lok Sabha on 13th September, 1957, "no member or officer of the House should give evidence in a Court of Law in respect of any proceedings of the House or any Committee of the House or any other document connected with the proceedings of the House or in

the custody of the Secretary of the House without the leave of the House being first obtained". Further, "whenever any document relating to the proceedings of the House or any Committees thereof is required to be produced in a Court of Law, the Court or the parties to the legal proceedings should request the House stating precisely the documents required. It should also be specifically stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before a Court of Law."

It may, however, be mentioned that the Parliamentary Debates, and Reports of Committees which have been presented to the House, are published documents and are available on sale. Under Section 78(2) of the Indian Evidence Act, 1872, the proceedings of a Legislature can be proved by the production of the authorised Parliamentary publications and it is not necessary to produce the original or authenticated copy of the relevant proceedings of the House or the Report of a Committee thereof.

Gujarat

Under the Rules of Procedure, petitions can be presented or submitted to the House with the consent of the Speaker on a bill which has been introduced in the House or on any matter connected with the business pending before the House or on any matter of general public interest, provided that it is not one

(a) which falls within the cognizance of a Court of Law, or

(b) which relates to a matter which is not within the cognizance of the State Government, or

(c) which can be raised on a substantive motion or substantive resolution, or

(d) for which remedy is available under the Law, including Subordinate Legislation.

A Petition is required to be submitted in a prescribed form and must be addressed to the Assembly. It must be in respectful and temperate language, must not contain any offensive or defamatory expression, must be signed by the petitioner(s), must conclude with a prayer reciting the definite object of the Petition and must be countersigned by the Member desiring to present it. No documents are to be attached to a Petition. A Member desiring to present a Petition is required to show it to the Speaker and obtain his consent to its presentation. After the Speaker's consent is obtained, the Member presents it on any day, after questions and before the other business for the day is entered upon. No debate is permitted on such presentation. Every Petition after presentation stands referred to the Committee on Petitions.

After the commencement of the first session of the Assembly each year, a Committee on Petitions is constituted by the Speaker. The Committee consists of the Deputy Speaker who is the Chairman and not more than seven other members nominated by the Speaker.

The Committee on Petitions examines every Petition referred to it and reports to the Assembly the subject matter of the Petition, the number of persons by whom it is signed and whether it is in conformity with the Rules. If the Petition complies with the Rules, the Committee may, in its discretion, direct that it be circulated amongst the members. The Committee is required to state in its report whether the circulation has or has not been directed and when the circulation has not been directed, the Speaker may, in his discretion, direct that the Petition be circulated. Such circulation may be in extenso or in a summary form as the Committee or the Speaker, as the case may be, directs.

No action on the part of Government is called for on the report after its presentation to the Assembly. After presentation of the report, any member may make use of it in any parliamentary device available to him under the Rules of Procedure.

In the Gujarat Legislative Assembly very few Petitions are received.

Haryana

There is no provision in the Rules for entertaining Petitions or for the constitution of a Committee on Public Petitions. Under Rule 283 of the Rules of Procedure however, Petitions relating to Bills, which have been published or which have been introduced, may be presented to the House.

Malta

The presenting of Petitions in the House is very rare indeed. The last Petition presented in the House was in 1950. In 1978 the Leader of the Opposition deposited a Petition with the Clerk of the House, but it did not receive the Speaker's approval, as the Chair "did not have the means to ascertain that the petition in question does not contain 'matter in breach of the privileges of the House' (Standing Order 149)", and thus the Speaker could not approve that the Petition be presented in the House, in the way it was presented to the Chair.

Parliament of course has other ways of bringing a particular grievance to the knowledge of the House.

On the assumption that "*Ubi lex voluit, dixit*", as Standing Order 25 and Standing Order 107 (incidentally both suppressed by motion of the House for the duration of the present legislature) refer to a motion and to a bill respectively which cannot be reconsidered again, during a current session of the House, once Parliament has already decided upon them, there would appear to be nothing in the Standing Orders which would prevent the presentation of more than one Petition on the same subject, during the same session of the House. Indeed Standing Order 150 seems to confirm this when it states that a Member of Parliament may request in writing that his Petition to be referred "to a particular Select Committee which may have been already appointed to deal with matter similar or cognate to that contained in the petition".

No debate is allowed on Petitions in the House – Standing Order 149

refers; but of course, if the Petition goes to a Select Committee of the House, as provided in Standing Order 150, the report of such Select Committee "shall be brought by the Chairman and may be ordered to be laid on The Table, or may be otherwise dealt with, as the House may direct" (Standing Order 136).

There has never been a Committee on Public Petitions since the first Self-Government Constitution in 1921.

When Petitions are once presented in the House, Government takes what action it thinks fit (if any): it is in no way tied by the Standing Orders.

Reference may be made in the Courts both to *Hansard* and Committee Reports which have been tabled in the House – but the production of originals by officers of the House of Representatives requires leave of House as per Standing Order 172, on motion of a Minister – usually the Leader of the House (this is very rare).

Kenya

Presentation of public petitions is governed by Part XX of the Standing Orders, that is Standing Orders Numbers 164–168. For ease of reference, the Standing Orders referred to say:

164. Every Member offering to present a petition to the House, not being a petition for a private Bill, shall confine himself to a statement of the parties from whom it comes, the number of signatures attached to it, and the material allegations contained in it, and to reading the prayer of such petition.
165. Every such petition shall be brought to the Table of the House, by the direction of Mr. Speaker who shall not allow debate, or any Member to speak upon, or in relation to such petition; but it may be read by the Clerk if required.
166. Every Member presenting a petition shall take care that the same is in conformity with the usual practice of the House of Commons of Great Britain and Northern Ireland.
167. A Member presenting a petition may, after notice given, move that it be printed.
168. The House shall reject any petition which is not properly and respectfully worded or does not conform to the rules or usual practice of the House.

However, there has not been any public petition presented before the House since 1963 and therefore experience on this issue is very limited indeed. Any public petition being presented will be dealt with in accordance with the past practices in the House of Commons and also the approach analysed in Erskine May's *Parliamentary Practice.*

Bahamas

The number of Petitions presented each session varies. The Rules provide that the House will not entertain any Petition or similar application from a Public Officer for increasing the salary of or otherwise remunerating a Public Officer. Similarly, the House will not entertain any Petition or similar application from a Public Officer for a special pension until such Public Officer has retired, unless such Petition or application is recommended by the Governor-General signified by a Minister.

Every year from the earliest records of the House, Petitions for money have been received from individuals or bodies. They were usually referred to the Finance Committee, or some other committee, for report and, if the report thereon was favourable, they were, together with such report, again considered by a Committee of the whole House and, if approved of by such committee, appeared as items in the Appropriation Bill.

As from the adoption of the new Constitution (since the right or demand for supply must rest with the Cabinet) the procedure is that in the estimates there are two items, one, an amount of money for matters usually covered in petitions from the public and the second one an item for refund of customs duties which is usually petitioned for by individuals. In this manner the Cabinet retains the right of demand and at the same time the individual petitioner is not precluded from petitioning the House. The House will not entertain any motion for granting of money except upon the recommendation of the Governor-General signified by a Minister.

Before the House can debate a Petition the Minister for Finance must signify the approval of the Governor-General for proceeding.

The Petition will then be debated in a resolution resolving that it is the opinion of the House that the Petition be forwarded to the Minister of Finance requesting that it be considered for inclusion in the Appropriation Bill.

All Petitions praying for Legislative action, other than Petitions for grants of money, and any documents in explanation thereof, or upon which it is intended to base legislation, must be laid before the Senate and the House of Assembly.

Barbados

Very few Petitions are presented each session but these are governed by the Standing Orders. More than one petition on the same subject can be presented in a session. The procedure for presentation is the same as at Westminster.

There is no Committee on Public Petitions. After presentation, most Petitions are followed by Private Bills but other steps can be taken. As far as reference to *Hansard* etc. in the Courts is concerned, leave is usually sought by letter to the Presiding Officer.

Bermuda

Public Petitions seldom come before the Legislature and there is no Committee on Public Petitions. The last Petition was presented in 1978 and was protesting against the proposed 60% price increase on a private car licence. Most grievances are taken by groups of individuals to the Minister concerned or are aired in either House through parliamentary questions.

The presentation of Petitions in the Lower House is governed by Rule 9 of the House of Assembly Rules which provides, briefly, that the Petition shall be in English, properly addressed, temperate in language and shall

bear the signature, name and address of the petitioner or the seal of a corporation. It may be typewritten, printed or lithographed. Rule 9 also stipulates that a Petition may be presented to the House only by a Member and that that Member may not be a signatory. Petitions "complaining of some personal grievance for which there may be an urgent necessity for providing immediate relief" are debatable. Other Petitions lie on the Table and are generally referred to a select committee or joint select committee.

The presentation of Petitions in the Upper House is governed by Rules 56 and 57 of the Legislative Council Rules which are much briefer than the Lower House Rule and require that a Petition shall be presented by a Member, couched in proper language and that it shall not be read but given a brief explanation by its presenter.

There is as yet no *Hansard*. The Attorney-General's Chambers are not aware of any need to obtain the consent of either House to a mere reference being made in any Bermudian Court to a Committee report of either House.

Fiji: House of Representatives

The Standing Orders on the presentation of Petitions are as follows:

1. A petition may be presented to the House after two days' notice by any Member who shall be responsible for endorsing upon it a certificate signed by him stating that in his opinion the petition is perfectly respectful and deserving of presentation.
2. Every petition shall be in the English, Fijian or Hindustani language provided that if they are in Fijian or Hindustani they shall be accompanied by an English translation.
3. Every petition shall be scrutinised by the Speaker to ensure that it conforms with the rules and practice of the House and, in particular, that it is seeking action which lies within the power of the House to take.
4. A Member presenting a Petition to the House shall confine himself to a brief statement of the person from whom the Petition comes, the number of signatures attached thereto and the purport of the prayer of the Petition. On conclusion he shall lay the Petition upon the Table.
5. On the presentation of a Petition no debate thereon or relating thereto shall be allowed but any Member may move without debate that the Petition be read by the Clerk. If such a motion is seconded, again without debate, and agreed, the Clerk shall read the Petition or the translation thereof.
6. Any Member may move without debate that a Petition which has been read in the House shall be referred to a Select Committee, and the question thereon shall be put without amendment or debate.

Guyana

The presentation of Petitions to the National Assembly is governed by Standing Orders. A Petition has to be presented to the Assembly by a Member thereof and will not be accepted for presentation unless it is endorsed by the Clerk as being in accordance with the rules regarding Petitions. Every Petition must conclude with a Prayer setting forth the general object of the Petition. The Assembly will not receive any Petition which is not addressed to the Assembly and which is not properly and respectfully worded, and which does not have at least one signature on the sheet on which the Prayer of the Petition appears. The Member presenting a Petition may state concisely the purport of the Petition. All Petitions presented to the Assembly shall be ordered to lie upon the Table without question put unless a Member when presenting a Petition moves for it to be read, printed or referred to a Select Committee and any such motion shall be determined without amendment or debate.

Cayman Islands

No Petition has been presented to the Cayman Islands Legislative Assembly for the past three or four Sessions. Between the years 1959 and 1964 16 Petitions were presented.

The presentation of Petitions are governed by Standing Orders 15–17 of the Cayman Islands Legislative Assembly Standing Orders, 1976. While there is no specific Rule about the number of Petitions which can be presented in any one Session on the same subject, Standing Order 24(8) would be used which provides that –

> "No motion may be proposed which is the same in substance as any motion which during the previous six months has been resolved."

Petitions are debatable on a motion following the presentation thereof. This refers to Petitions complaining of a present personal grievance for which there may be a need for immediate remedy. Other Petitions are ordered to lie upon the Table, unless a Member moves for them to be referred to a select committee.

Normally, in the past, it has been customary for Petitions to be referred to Select Committees, but there is no Committee on Public Petitions. When Petitions are referred to Select Committees, the report thereof is submitted to the House and would normally contain recommendations for action to be taken. If the Report is adopted by the House, then the appropriate department is sent a copy of the report and action taken accordingly.

Leave of the Legislative Assembly is not necessary if reference is to be made in Court to *Hansard* or Committee reports. However, permission has to be granted by the President for such evidence to be given. Such permission referred to may be given during a recess or adjournment by the President. Requests are normally made through the Attorney-General to

the Clerk. The above provision is provided by the Legislative Assembly (Immunities, Powers and Privileges) Law (Revised), section 11 (1) and (2).

Hong Kong

Quite a number of ordinances provide for Petitions to be considered by the Governor in Executive Council, and the public are free to forward Petitions to the Governor direct for administrative arbitration. Although there are provisions in the Standing Orders of the Legislative Council for Members to present Petitions to the Council and to request them to be referred to a select committee, such procedures have not been resorted to over the last 30 years.

XV. APPLICATIONS OF PRIVILEGE

Australia: House of Representatives

Production of Hansard in Court.—On 4th April 1975 the Hon. T. Uren, M.P., commenced action for damages for defamation in the Supreme Court of New South Wales against John Fairfax and Sons Limited, publishers of the *Sydney Morning Herald*, in respect of an editorial appearing in that newspaper of 3rd April 1975. On 28th August 1979 a petition was presented to the House of Representatives from John Fairfax and Sons Limited, praying that the House "will grant leave to your Petitioner and its legal representatives – (1) to issue and serve subpoenas for the production of the relevant official records of the proceedings of this House as described in the second schedule (to the petition); (2) further to issue and serve subpoenas for the attendance in Court of those persons who took the record of such proceedings, and (3) further to adduce in evidence and to make reference to and otherwise to use in its defence of the said action in Court the full and official records of the proceedings and the proceedings themselves of this House set out in the second schedule hereto". The petitioner stated that use of the records was necessary for its defence in which it would rely, *inter alia*, upon a defence of comment upon matters of public interest based upon (or to an extent upon) proper material for comment as provided by the Defamation Act, 1974 (N.S.W.). The records requested to be produced constituted certain pages of *Hansard* (from 1965 to 1973) which contained speeches or parts of speeches made by Mr. Uren and others.

On 30th August 1979 the Leader of the House moved:

> "That, in response to the petition of John Fairfax & Sons Limited presented to the House on 28 August 1979, this House grants leave –
>
> 1. to the Petitioner and its legal representatives to issue and serve subpoenas for the production of the relevant official records of the proceedings of the House as described in the second schedule of the petition,
> 2. to the Petitioner and its legal representatives to adduce the said official records of the proceedings as evidence of what was in fact said in the House, and
> 3. to an appropriate officer of the House to attend in Court and to produce the said official records of proceedings and to give evidence in relation to the recording of proceedings provided that the officer shall not be required to attend at any time which would prevent the performance of his duties in the Parliament."

Before and during the course of the Minister's speech it was apparent that a number of Members were opposed to the production of the records in the Court. Concern was expressed at the use to which the records might be put in Court and the implications therein for the privileges of the House and its Members. After a series of points of order and other interruptions, the Minister sought leave to continue his remarks and the debate was adjourned (in fact not to be resumed but subsequently discharged).

Judging the mood of the House and acting on a suggestion made earlier, the Minister later the same day moved the following motion which was agreed to by the House:

"That the petition of John Fairfax & Sons Limited presented to the House on 28 August 1979 be referred to the Committee of Privileges for consideration and advice as to whether the petition in whole or in part or any matter raised by it can be acceded to without derogation of the privileges of the Parliament or the Members of the Parliament and if so, the form in which it might be so acceded to."

However, on 11th September 1979, before the Committee could report, Mr. Speaker received advice from the petitioner's solicitors that the case had been settled out of court and that no further steps with regard to the petition needed to be taken. The House consequently rescinded its resolution referring the petition to the Committee of Privileges.

However, that was not the end of the matter. Later the same day Mr. L. K. Johnson, M.P., raised as a matter of privilege an order of Mr. Justice Beggs, dated 23rd August 1979, issued by the Supreme Court of New South Wales in the case of *Uren v. John Fairfax & Sons Limited* to permit the use in court for a limited purpose of certain records of proceedings of the House. His Honour had given his extempore judgment in interlocutory proceedings in which the defendant had sought an order that the plaintiff answer and verify certain interrogatories which asked the plaintiff to agree that he and two other persons made certain speeches in Parliament (as set forth in photostat copies of *Hansard*). Counsel for the plaintiff opposed the making of the order on the ground that such question should not be asked because that would involve a breach of Parliamentary privilege. In making his order His Honour said, *inter alia*:

"In my judgment one might pause to question whether the privilege of Parliament in relation to the mere proof of Hansard in a court in Australia has not been entirely waived by Parliament in this country. It is a well known fact that proceedings in the Parliament are broadcast on radio to all the world and copies of Hansard are freely sold for fifty cents a copy at the Commonwealth Publications Sales Department in this city. And insofar as it falls to me to decide the question, I would hold that waiver by Parliament to this extent is clearly established. (Of course I am not dealing with any question of copyright in the publication).

"Mr. Levine (for the defendant) has submitted that what the defendant is here seeking to do does not infringe the privilege of a House of Parliament in relation to the proceedings before it, but merely to prove as a matter of fact that the plaintiff and others had made certain speeches in the House – not in any way to criticise them nor to call them in question in these proceedings, but to prove them as facts upon which the defendants allege comments were made in the publication now sued upon by the plaintiff.

"I accept this submission and rule that this use of the fact of what was said in Parliament would not be a breach of the privilege of Parliament.

. . . .

"The question that arises frankly and starkly here for decision is whether or not the use of something that was said by a Member of Parliament can be proved as a fact, not to support a cause of action, not to call it in question in any way but merely to use it as a fact upon which the individual right of freedom of speech in this community – that is to comment upon the public acts of people – can be properly based. In my judgement it can be."

On the same day, the House agreed to the following motion:

"That the following matter be referred to the Committee of Privileges: The extent to which the House might facilitate the administration of justice with respect to the use of or reference to the records of proceedings of the House in the Courts without derogation from the Privileges of the House, or of its Members."

At the conclusion of the 1979 sittings on 22nd November the Committee had not made its report to the House.

Australia: Senate

Imprisonment of a Senator.—On 30th August 1979 the Senate accepted a motion by Senator Georges to refer the following matters to the Committee of Privileges:

(a) the failure of any appropriate authority in Queensland to advise the President of the Senate of the arrest and imprisonment of Senator George Georges;

(b) whether the matter leading to the arrest and imprisonment of Senator Georges was of a civil or criminal nature; and

(c) whether, if the Committee determines that the matter was of a civil nature, the arrest and imprisonment of Senator Georges constituted a breach of the privileges of the Senate.

In December 1978 and July 1979, Senator Georges was arrested on charges relating to protest marches in the streets of Brisbane. On both occasions he pleaded guilty to the charges, and was fined for the offences. Senator Georges refused to pay the fines, and was subsequently imprisoned. On both occasions the President of the Senate was not formally notified by the court of the imprisonment of Senator Georges.

The Committee considered the matters referred to it, and concluded:

(a) The Committee considered that it is desirable that the practice of notification of the Presiding Officers of the imprisonment of members of the Parliament should be followed in Australia. It would be premature for the Senate to treat the failure to give notification of the imprisonment of one of its members as a contempt, until steps have been taken to make the attitude of the Senate known to the courts and to secure their co-operation.

(b) With reference to whether the matter leading to the arrest and imprisonment was of a civil or criminal nature, the Committee determined that it was clearly not civil in character. The term "quasi-criminal" is sometimes attached to such matters. It must be regarded as well-established that the privilege is not available in relation to such matters.

(c) The Committee having determined that the matter was not of a civil nature there was no consideration of this matter.

The Committee recommended that the Senate pass the following Resolutions:

(1) It is the right of the Senate to receive notification of the detention of its members.

(2) Should a Senator for any reason be held in custody pursuant to the order or judgment of any court, other than a court martial, the court ought to notify the President of the Senate, in writing, of the fact and the cause of the Senator's being placed in custody.

(3) Should a Senator be ordered to be held in custody by any court martial or officer of the Defence Force, the President of the Senate ought to be notified by His Excellency the Governor-General of the fact and the cause of the Senator's being placed in custody.

The Committee further recommended that, should the Senate agree to these Resolutions, the Commonwealth and State Presiding Officers and the Commonwealth and State Attorneys-General ought to confer upon action to be taken to secure compliance with the practice of notification, as stated in the resolutions, in the various jurisdictions of Australia.

Ontario

Scope and Implications of Parliamentary Privilege.—The Ontario Legislature recently had before it a major privilege case, which raised a number of fundamental questions pertaining to the scope and implications of parliamentary privilege.

In mid March of 1978, Mr. John Riddell, the Member for Huron-Middlesex, a Member of the Opposition, visited the site of a singularly bitter and highly politicized labour dispute in his riding. While there, Mr. Riddell publicly expressed views sharply critical of the union involved. These comments were reported in the press, and Mr. Riddell repeated them in substantially the same form in a subsequent radio broadcast. The union officials took strong exception to Mr. Riddell's statements and instructed their solicitor to take action. Accordingly, on 16th March 1978, a notice of action pursuant to the *Libel and Slander Act* was served on Mr. Riddell, through his secretary, at his office in the Legislative Building. The person who served the notice neither sought nor received consent to enter the legislative building or Mr. Riddell's office. A few days later notice of application for consent to prosecute under the *Labour Relations Act* was mailed to Mr. Riddell's Queen's Park office. The Legislature was in session while these events were in train.

Following consultation with counsel, on 4th April, Mr. Riddell raised the matter in the House as an alleged breach of his privileges as a Member and as a contravention of the *Legislative Assembly Act*, section 38 of which provides:

> Except for a contravention of this Act, a member of the Assembly is not liable to arrest, detention or molestation for any cause or matter whatever of a civil nature during a session of the Legislature or during the twenty days preceding or the twenty days following a session.

At the next sitting, Mr. Speaker Stokes informed the House that in his view "there appears to be at least a presumption that several offences against the provisions of section 38 of the *Legislative Assembly Act* may have been committed, not only by the service of these documents during the prohibited period, but by the service of these documents in the precincts of the House without the permission of the House or the Speaker".[1] The Speaker then reminded the House that he had no authority to take further action, whereupon the matter was referred to the Standing Procedural Affairs Committee.[2] The Committee engaged counsel and over the next three months held ten meetings.

The case occasioned consideration of a host of thorny issues, most of which had never before been confronted by the Ontario Legislature. Several of the key points at issue were complex in the extreme, and were subject to intricate argument. Hence, this review can only highlight some of the central themes informing the Committee's enquiry.

A good deal of the Committee's deliberations were devoted to the interpretation of two words, "molestation" and "civil", in the pertinent section of *The Legislative Assembly Act.*

The expression "molestation" dates from the original version of the Act, which was passed in 1876. No official *Hansard* existed at that time, but the newspaper accounts of the debate are relatively complete. From them, it would appear that some concern was expressed over this word, but, although no definition was proffered, Members were assured that no "ridiculous interpretation" would be conferred upon it. A number of weighty tomes on drafting and interpretation of statutes were pressed into service so as to divine the meaning of "molestation", but no clear consensus ever emerged.

Shorn of peripheral niceties, the conflict reduced to two views. First, quite simply, service of documents did indeed constitute molestation of a Member. The second opinion was, as the Committee counsel expressed it, that should molestation be equated with the service of documents, "then all types of civil actions would be prohibited during this period of time, including actions arising from automobile accidents, breaches of contract, a division of property or divorce. Aside from any other hardship, such a prohibition might cause a delay beyond the limitation period for the action, eliminating any possibility of action".[3] Now in many jurisdictions, the extension of the latter point of view would be that such sweeping immunity lay well beyond the bounds of parliamentary privilege. However, owing to the uncertainty suffusing privilege in Ontario, to be discussed presently, such a conclusion did not necessarily follow in this instance. For those who did incline towards the second view, the implication was that molestation must be taken to mean actual interference with the person of the Member.

The word "civil" became a focus of deliberation, since the view was expressed that proceedings before the Labour Relations Board were of a "quasi-criminal" nature. Acceptance of this contention would of course

call into question the applicability of the *Legislative Assembly Act*. The Committee obtained from its counsel the opinion that the "quasi-criminal" reading of the Board's functions was warranted, together with the caveat that the question had never been decided by the courts.[4] Some Committee Members felt that inasmuch as the *British North America Act*, Canada's principal constitutional document, explicitly granted jurisdiction over criminal matters to the Parliament of Canada while reserving civil law for the Provinces, talk of matters "quasi-criminal" – or to turn it about, "quasi-civil" – was a red herring. A recurring side issue, which was never resolved or for that matter fully articulated, was whether the peculiar Canada connotations of the terms "criminal" and "civil", coloured as they are with nuances of federal-provincial jurisdiction, were entirely compatible with the meaning of those words in British texts.

A uniquely Canadian twist to the affair brought to the fore what were at once the most fundamental and the most tortuously entangled aspect of privilege in Ontario. The central point at issue was whether the provincial legislature had conferred upon its Members more extensive privileges than those enjoyed at Ottawa and at Westminster.

Under the provisions of section 18 of the *British North America Act* federal legislators were clearly limited to the privileges of their British counterparts, and since the *Parliamentary Privileges Act* of 1770 these have not included a blanket immunity from civil proceedings. Section 18 does not make mention of members of provincial assemblies, but the common assumption has been that it did apply to them. The real difficulty stems from the power, given to the provinces in section 92 of the Act, to determine their own constitutions.

One approach was founded on a fact and a premise. First, it was a matter of record that the 1876 Ontario Act had explicitly included a section conferring immunity, from "arrest, detention or molestation" for any civil cause. Secondly, it could be presumed that everyone was well aware at the time that the protection afforded by section 18 of the *British North America Act* held good for provincial members, without any necessity for action by the Ontario House. The conclusion, therefore, was that the intent of the Ontario Act was to go beyond the privileges of federal legislators, and indeed to establish in Ontario the privileges foresaken in Britain in 1770. Were this not so, why had the Ontario House seen fit to legislate as it had? The ultimate implication, then, was that protection against molestation was to be interpreted in the pre-1770 sense, that is, in the broadest possible way.

The opposing point of view held that the Ontario Assembly never had any intention of resurrecting privileges defunct for over a century. Instead, the aim of the 1876 Act was simply to clarify the scope of privilege, lest there be any doubt, as there had been in the colonial assemblies prior to Confederation, that the standard – i.e. Westminster, 1867 – privileges obtained. Cited in support of this view was the fact that the newspaper

accounts of the debates gave no indication that such a signal change as reversion to pre-1770 privilege was contemplated. The argument that, by definition, a provincial House did not have authority to lay claim to greater privileges than those exercised at the Dominion and Imperial Parliaments surfaced briefly, but as might be surmised from the setting, was not pursued with any vigour.

Two further, interrelated issues recurred frequently during the Committee's deliberations. If they were perhaps of less than immediate relevance to the precise questions before the Committee, they are central to the definition and scope of privilege in Ontario. The first may simply be rendered as "when is a Member not a Member?" That is, how can a firm demarcation be established between a Member's activities of a private nature and his actions relating to his public duties? Extreme cases may not be difficult to categorize, but the middle ground is fuzzy at best. This conundrum assumes some importance insofar as civil action arising out of his private or public activities may hamper the Member in the execution of his duties. Indeed, the second recurring theme was the amount of time Mr. Riddell was forced to devote to the proceedings against him, and the unhappy effect this had on the conduct of his responsibilities as an M.P.P.

Legal and definitional technicalities abounded in this case, and need not be mentioned here, save two points which bear directly on the final outcome. First, the Committee's order of reference specified enquiry only into apparent contraventions of section 38 of the Legislative Assembly Act, thereby precluding discussion of possible breaches of privilege falling under other sections of the Act. Some members felt this restriction to be unduly confining of both the case at hand and the consideration of the more general question as to the scope of privilege. Secondly, it came to light that by virtue of an apparent oversight, Mr. Riddell's office was not at the time within "the precincts of the House". Not all of the Legislative Building is under the Speaker's jurisdiction, only the Chamber and those parts designated by Order-in-Council. *The Legislative Assembly Act* requires that the Order-in-Council be tabled in the House, but this was not done until several months after the service of the documents on Mr. Riddell.

In the end, by a vote of four to three, the Committee concluded that the privileges of the Member for Huron-Middlesex had been breached, but recommended against any action by the Legislature.[5] The vote did not entirely follow party lines, as indeed the proceedings had for the most part been conducted with little overt partisanship. Sharply worded dissenting opinions were submitted by one Government Member and by the two Members of the New Democratic Party. In his dissent, Mr. Norman Sterling accepted the judgment of the Committee counsel that privilege had not violated, and decried the implication of the Committee's decision, "the ridiculous conclusion that the spouse of a Member of the Legislature could not seek an interim maintenance order during a continuous period of approximately 300 days of each year".[6] The dissenting opinion of the

NDP Members deplored the Committee's reversion "to the mediaeval concept of privilege."

Unfortunately, the Committee did not see fit to specify in which particulars it felt Mr. Riddell's privileges were breached. In consequence, the entire matter of privilege in the Ontario Legislature remains very much up in the air.

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1. Legislative Assembly of Ontario, *Debates*, April 6, 1978, p. 1238.
2. Reflecting the prevailing condition of minority government, the Committee was composed of three Government Members, two Members of the Liberal Party (the Official Opposition), two Members of the New Democratic Party and a non-voting NDP Chairman.
3. Burton H. Kellock, "Memorandum of Law to the Standing Procedural Affairs Committee", June 27, 1978 p. 22.
4. *Ibid.*, p. 25.
5. The Committee report was never considered in the House; hence no action was taken.
6. The dissenting opinions are included in the *Report of the Standing Procedural Affairs Committee on the Matter of Privilege in the Service of Documents Pursuant to the Libel and Slander Act and the Labour Relations Act on the Member or Huron-Middlesex*, October, 1978.

(Contributed by Graham White, Assistant Clerk of the Legislative Assembly)

India: Lok Sabha

Many of the cases raised as matters of privilege during 1979 were not held by the Speaker to be cases in which it would be appropriate to take action under Rule 222. An example of one such case, in which the Speaker was required to rule on a remark which he himself was alleged to have made, is given below. In other cases complaints of breaches of privilege were referred to the Committee of Privileges. In no case, however, did the Committee recommend the House to take further action.

Alleged derogatory remarks about members and the House made by the Speaker while delivering a speech on the "Role of Legislature under the Constitution".—On the 16th May 1979, the Speaker (Shri K. S. Hegde) informed[1] the House as follows:

"Hon. Member, Shri P. M. Sayeed, has given notice under Rule 222 against me in respect of a speech delivered by me on the 12th of this month under the auspices of Vasant Vyakhyanmala at Pune. Shri Mohd. Shafi Qureshi, has also written a letter to me in that connection. The subject of my lecture was 'The role of Legislatures under our Constitution.' The basis of the notice is the report of the speech which appeared in *Times of India* dated May 14th 1979.

It is embarrassing to be a Judge in one's own cause. But an analysis of the rules and the examination of the precedents leave me with no other alternative.

Under the existing rules it does not appear to be possible to move a motion under Rule 222 against a Speaker. It is well established parliamentary practice that the conduct and action of the Speaker 'cannot be criticised incidentally in debate or upon any form of proceedings except on substantive motion.'

But all the same, I would like to place before the House the correct facts to remove any misunderstanding that might have been created by the report in the *Times of India*. My speech lasted for more than one hour. It covered a large area. The paper reporting is sketchy. Ideas have been picked up at random by the reporter and he has used his own words for conveying my ideas. This has given room for certain misunderstanding.

Shri Vithalrao Gadgil, Member of Rajya Sabha, presided over the meeting. In his

introductory remarks, he formulated certain issues and invited me to deal with them. Two of the issues formulated by him were:

(i) The existing legislative process and the changes required;

(ii) Does the Parliament effectively oversee the work of the executive?

I detailed the legislative fields falling within the purview of the Parliament and the corresponding executive functions. I expressed my opinion that the legislative burden of the Parliament should be reduced, if the Parliament is to work effectively and the Members are to oversee the work of the Executive carefully. I suggested that subjects which are primarily within the responsibility of the State Legislatures must be discussed in the State Legislatures themselves. I explained that law and order is primarily a State subject. The responsibility of the Centre is only secondary and when that subject is discussed in the Parliament, the Central Government generally present the viewpoint of the State Government. That being so, the law and order issues, however grave they may be, are desirable to be discussed in the State Legislatures. This has always been my view and I have discussed this problem with the Leaders of the Parties/Groups at the meetings held. Some Members might take a different view. But an expression of my view would not amount to a breach of privilege of the House or any of its Members. In all these matters difference of opinion is bound to be there.

Thereafter, I took up the question of the procedure adopted in the matter of legislation. I expressed my dissatisfaction with the existing procedures and I commended the Committee system. In the course of my lecture, I told the audience that legislations are conceived and Bills prepared by the concerned Ministries. The policy underlying a legislation is discussed by the cabinet but it is likely that the Cabinet would not go into details of the legislation which sometimes are as important as the policy itself. I also criticised the procedure of having three Readings in the House.

Coming to the debate on the legislations, I mentioned that Members, by and large, are interested in some subjects and not in all subjects. In the very nature of things it is not possible for the Members to know about every subject. Hence, large sections of the House would not take special interest in most of the legislations. This is so in all countrie having the parliamentary form of Government. I even gave the example of Britain. Thi: state of things facilitates the Government to push through its legislation without difficulty. If, on the other hand, every Bill is sent to a House Committee consisting of Members interested in the legislation or who have specialised in that subject, then there will be a thorough and searching examination of the measures and the Government will have to justify not merely the policy underlying the Bill but also various other aspects. I did not use the words 'at present the Members of Parliament did not understand the implications of legislations brought before them by the Government' reported in the *Times of India*. On the other hand, I mentioned that some Members take interest in questions, some in Committees, yet others in various subjects. My criticism was not of the Parliament or of its Members but of the existing system prevailing not only in this country but in several other countries including Great Britain. I, therefore, referred to those countries also. I decline to accord my consent to the motion."

Alleged threat to murder a member.—On the 28th February 1979, Shri Mani Ram Bagri, a member, gave notice of a question of privilege under rule 222 of the Rules of Procedure and Conduct of Business in Lok Sabha, stating that Shri Raj Narain, another member, had received a letter[2] dated the 23rd February 1979, containing a threat to murder him, which read, *inter alia*, as follows:

"Now I want to warn you through this letter that whatever propaganda you might have done so far against the R.S.S. let it be there. But if you dare open your mouth against the R.S.S. from now onwards, your voice will be stopped for ever . . .

I had come to Delhi. I went to your Kothi, but unfortunately you were not there . . . I did not have much time, otherwise, I could have settled the scores with you there and then."

On the 1st March 1979, when Shri Mani Ram Bagri sought[3] to raise the matter in the House, the Speaker (Shri K. S. Hedge) ruled as follows:

"... Mr. Bagri brought to my notice a letter said to have been written by one Mr. Mittal to Mr. Raj Narain, saying that, because he was carrying on a campaign against R.S.S., his mouth would be shut ... That is a very serious matter. I have found a *prima facie* case, and I have refered the matter to the Privileges Committee ..."

Shri Ajay Kumar Mittal, in letter[4] dated the 4th March 1979, addressed to the Speaker disowned the authorship of the impugned letter and stated, *inter alia*, as follows:

"I have come to know that the said letter was written in my name. I want to inform you that I have nothing to do with the letter and I did not write this letter. I feel that a person having enmity with me has played this mischief just to harass me. I humbly submit that this matter may be looked into and the person found guilty be punished ..."

Findings and recommendation of the Committee of Privileges

The Committee, after examining Sarvashri Raj Narain and Mani Ram Bagri, members, Shri Ajay Kumar Mittal, alleged author of the impugned letter and Shri S. L. Mkhi, hand-writing expert, in their Fifth Report, presented to the Speaker on the 31st May 1979, and laid on the Table of the House on the 9th July 1979, reported, *inter alia*, as follows:

" (i) The Committee considered the written opinion of the handwriting expert a copy of which was furnished by the Ministry of Home Affairs, on the question whether the handwriting and the signature of the impugned letter tallied with specimen handwriting and the specimen signatures of Shri Ajay Kumar Mittal. In the opinion of the handwriting expert, while the signature of Shri Ajay Kumar Mittal on the cyclostyled letter dated the 4th March, 1979, addressed by him to the Speaker, Lok Sabha, tallied with his specimen signatures, the handwriting and signature in the letter dated the 23rd February 1979, alleged to have been written by Shri Ajay Kumar Mittal to Shri Raj Narain, M.P., did not tally with his specimen handwriting and specimen signatures.

(ii) The Ministry of Home Affairs have also informed the Committee that as for the investigations made with regard to the threatening letter alleged to have been written by Shri Ajay Kumar Mittal to Shri Raj Narain, the inquiries made in the matter did not confirm that Shri Mittal had sent any such letter to Shri Raj Narain.

(iii) After careful consideration of all the facts and circumstances, the Committee have reached the conclusion that as the handwriting and signature in the letter dated the 23rd February 1979, alleged to have been written by Shri Ajay Kumar Mittal to Shri Raj Narain, M.P. do not tally with his specimen handwriting and specimen signatures, the impugned letter dated the 23rd February 1979, addressed to Shri Raj Narain, M.P., was *not* written by Shri Ajay Kumar Mittal, 96-Khandak, Meerut (U.P.).

(iv) In view of the above, the Committee are of the opinion that the matter calls for no further action and so it may be dropped.

(v) The Committee recommend that no further action be taken by the House in the matter."

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1. L. S. Deb., dt. 16.5. 1979, cc. 237–40.
2. Original in Hindi.
3. L. S. Deb., dated 1-3-1979 cc. 215–16.
4. Original in Hindi.

Malta

House of Representatives (Privileges and Powers) Ordinance - Chapter 179 of the Laws of Malta.—On 14th February 1979, an Opposition Member raised as a breach of privilege, the words and actions of two Government Members, during the previous sitting; and Mr. Speaker ruled on the 19th February 1979, that, as per Standing Order 36, this case should not have been raised at the sitting of the 14th February, but at that of the 13th February 1979, when it had occurred.

On the 14th February 1979, an Opposition Member raised as a breach of privilege the adjectives used by a Government Member in reference to an Opposition Member; and on the 20th February 1979, Mr. Speaker ruled that there was no prima facie breach of privilege.

On 3rd April 1979, an Opposition Member raised as a breach of privilege the actions of a Government Member against him. On the following day Mr. Speaker said that the Chair had been informed that agreement had been reached between the two parties concerned and that therefore there was no need for a ruling from him.

On the 12th November 1979, the Leader of the Opposition raised as a breach of privilege, the issue of a directive on the 10th November 1979, by the Secretary of the Division concerned, of the General Workers' Union, to its employees in "Xandir Malta" (i.e. the Broadcasting Media) ordering a boycott in regard to an Hon. Member of Parliament because of what he had said about them in the House on the 7th November 1979.

On the 13th November 1979, Mr. Speaker ruled that this matter did not fall within the Privileges Ordinance; and that therefore there could be no prima facie case of breach of privilege; and this, without prejudice to any other action that might be taken by the Leader of the Opposition or the Hon. Member concerned.

On the 18th December 1979, the Leader of the Opposition said that he was informed, as he had not been in the House at that time, that an Hon. Member had just been attacked by a stranger who had been sitting in the Advisers' Seats behind the Speaker's dais. On the 19th December 1979, Mr. Speaker asked that in the following days he be given the details of the stranger concerned in this case, so that Mr. Speaker could give his ruling at a future sitting, and the necessary procedures could be put into operation.

New Zealand

Petition seeking leave for a Member to give evidence in Court about a Parliamentary debate.—In the 1979 session for the first time in the history of the House of Representatives a petition was presented to the House seeking its leave for a member of Parliament to give evidence in a Court action about words spoken in a debate in the House. The Court action followed allegations made in a television programme which

was not broadcast, but of which a member of Parliament read a transcript to the House. The petition sought leave to call this member to testify in the action.

The petition was presented formally in the normal way and then, pursuant to the standing orders, referred to the Clerk of the House for classification and distribution by him to a select committee. In the case of this petition it was thought appropriate that it should be considered by the Privileges Committee and it was referred to that Committee accordingly. The Privileges Committee met to consider the petition and reported to the House recommending that leave be given for the member to give evidence in the proceedings. Following the report the Leader of the House moved a motion in these terms which was agreed to without debate.

The House of Representatives enjoys the privileges, immunities and powers held, enjoyed and exercised by the House of Commons on the first day of January 1865 (section 242 of the Legislature Act 1908) and there has been a revival of interest in parliamentary privilege in New Zealand as it affects the courts and other quasi-judicial bodies, such as the Press Council. This particular petition while being the first of its kind does not imply that there have not been earlier situations in which reference has been made to parliamentary debates during Court proceedings. However as has been confirmed in a recent Australian case (Finnane v. Australian Consolidated Press Ltd. and Others (1978) 2 N.S.W.L.R. 435) even though Parliament does not complain at such use, does not alter the fact that parliamentary privilege applies in such a situation. Now that attention has been drawn to the application of privilege in the tendering of parliamentary debates in evidence in court, other petitions of this nature can be expected in the future.

XVI. MISCELLANEOUS NOTES

1. Constitutional

Saskatchewan (Members' interests).—A Conflict of Interests Act was passed in 1979 to prevent a member of the Legislative Assembly participating in government contracts, or transacting business on behalf of the Crown for financial gain. This prevention is subject to a number of exceptions. The Act also provides for the disclosure of any financial interests enjoyed by members by means of a report to the Clerk of the Assembly by each member. Some problems have arisen with this Act and the Government have given notice that they will introduce some amendments of clarification shortly but the main principle of the Act will remain intact.

Northern Territory (Self-determination).—An initial transfer of responsibilities from the Commonwealth Parliament to the Legislative Assembly for the Northern Territory of Australia which took place in 1976 was reported in The Table Vol. XLV, pp. 114–116. A further constitutional change was made in 1978 with the conferring of self-government on the Northern Territory. This represented the restoration of political rights lost by citizens when South Australia handed over its control of the Territory to the Commonwealth in 1910. The ultimate aim of those who in the intervening 68 years persistently sought the right to manage their own affairs through a democratically elected legislature was the achievement of statehood and the events of 1978 make this possible of attainment in the next 2 or 3 years.

The legislation which conferred self-government on the Territory was the Northern Territory (Self-Government) Act 1978 of the Commonwealth, the preamble of which stated its intention in these terms:

> ". . . AND WHEREAS the Parliament considers it desirable, by reason of the political and economic development of the Northern Territory, to confer self-government on the Territory, and for that purpose to provide, among other things, for the establishment of separate political, representative and administrative institutions in the Territory and to give the Territory control over its own Treasury —".

The new Act, which for the most part commenced on 1 July 1978, retained many of the provisions of the former Northern Territory (Administration Act) including the powers of the Governor-General to disallow any laws within 6 months of their receiving the Administrator's assent. The Administrator still has the duty of administering the government of the Northern Territory. However, there are significant differences. The legislature is now known as the Legislative Assembly of the Northern Territory of Australia.

For the first time the Northern Territory is established as a distinct

political entity under the Crown. The Assembly now passes "proposed laws" which, upon receiving assent, become "Acts".

The Administrator shall either assent to or withold his assent to any proposed law dealing with matters in respect of which the Northern Territory has executive authority. The range of such matters is specified in regulations under the Act and in regard to these the Administrator acts on the advice of his Northern Territory Ministers, formerly Executive Members under the old Act. In the case of proposed laws dealing with matters for which the Commonwealth retains executive authority, the Administrator has the option of reserving them for the Governor-General's pleasure or otherwise acting on the advice of a Commonwealth Minister, currently the Minister for Home Affairs.

Specific exclusions from the executive authority of the Territory are matters relating to (a) the mining of uranium or other prescribed substances; and (b) Aboriginal land rights.

The power of the Assembly to make laws declaring the powers (other than legislative powers), privileges and immunities of the Legislative Assembly is now related directly to those "for the time being of the House of Representatives" instead of those of "the House of Commons of the Parliament of the United Kingdom . . . at the establishment of the Commonwealth". A link with the Commons is retained, however, through the Standing Orders of the Assembly and the House of Representatives.

Standing Order 1 provides for questions of procedure to be decided according to the practice of the House of Representatives but, as that House has a similar order providing for questions of procedure to be decided according to the practice of the House of Commons the whole body of precedent from parliamentary practice in the United Kingdom is available when necessary.

The Assembly has the authority to determine its own size and, subject to the qualifications of electors and candidates for election together with the method of establishing the quota of electors for each electoral division laid down in the Act, it can control its own electoral procedures. The maximum term of an Assembly has been extended from 3 years to 4 years from the date the Assembly first meets after each general election.

Ministers appointed by the Administrator of the Northern Territory now make up the Executive Council. They were formerly called Executive Members.

The Territory has set up its own Treasury and exercises control over its own finances under the provisions of the Self-Government Act of the Commonwealth and its own Financial and Audit and Appropriation Acts.

Prior to self-government, guarantees were given by the Commonwealth of continued adequate financial support, and an assurance was given that, subject to the Territory undertaking responsibility for raising local revenue to a reasonable level, the citizens of the Territory would not have to shoulder a higher tax burden than their counterparts elsewhere in Australia. The Territory has the right to borrow from the Commonwealth or on its

own account as part of the Commonwealth's semi-governmental loan programme. All these matters are contained in a Memorandum of Understanding signed by the Prime Minister of Australia and the Majority Leader, now styled Chief Minister.

The transfer of the package of state-type powers from the Commonwealth to the Territory was completed with the transfer of executive responsibility for Education and Health on 1 July 1979 and the transfer of the Supreme Court on 1 October 1979.

The granting of self-government occasioned initially the passage of 14 amending bills in the Commonwealth Parliament and an upsurge of legislative activity in the Assembly. In 1978 the Administrator assented to 138 proposed laws and to 162 in 1979.

The Standing Orders of the Assembly were amended to cater for the new financial powers which devolved on it but they were adopted as "Provisional Standing Orders" pending examination of their operation in practice and further consideration by the Standing Orders Committee.

The imbalance in party representation in the first fully elected Legislative Assembly of 1974–77 when the membership of 19 was divided between 17 Country Liberal Party and 2 Independent members was corrected somewhat in the elections of August 1977. Twelve Country Liberal Party members, 6 Australian Labor Party and 1 Independent were elected. Thus there was an effective Opposition in the Assembly when self-government became a reality and the work of the Territory's first government has received proper scrutiny. The results of that scrutiny will be reflected in the judgement of the citizens of the Northern Territory to be exercised at the 1980 general election.

(*Contributed by F. K. M. Thompson, Clerk of the Legislative Assembly*).

India (Length of term of the Lok Sabha).—The duration of the House of the People was changed from 5 years to 6 years in 1977 by the Constitution (Forty-second Amendment) Act, 1976. The Constitution (Forty-fourth Amendment) Act, 1978 restored the term of the House of the People to 5 years. This reduced term was also applicable to the House of the People then in existence.

India (Privileges of Parliament).—The Constitution (Forty-fourth Amendment) Act, 1978 provides that the powers, privileges and imunities of each House of Parliament and of Members and Committees shall be those of that House and its Members and Committees immediately before the coming into force of section 15 of the Act. Section 15 came into force on 20th June 1979. Before this amendment was made, the powers, privileges and immunities of each House of Parliament, and of the Members and the Committees of each House were those of the House of Commons of the Parliament of the United Kingdom, and of its Members and Committees at the commencement of the Constitution.

Bermuda (Members' and candidates' interests).—The Bermuda Constitution (Amendment) (No. 2) Order makes it mandatory for candidates for election to the House of Assembly or for appointment to the Legislative Council to disclose within seven days any interest they may have in a Government contract. Sitting members are required to disclose their existing interests within seven days and any newly acquired interests within seven days of acquisition.

Guyana (Length of Parliament).—Under the Constitution, the life of Parliament is five years. However, in 1978, the life of the present Parliament was extended to six years and three months to enable the Parliament to prepare, through a Constituent Assembly, a new Constitution for Guyana. As the exercise was not completed by the end of that extended time, the life of the Parliament was in 1979 extended by a further period of one year from 26th October. During 1979 the Constituent Assembly which was appointed by the National Assembly continued with itstask of preparing a new Constitution for the Co-operative Republic of Guyana.

2. Electoral

Quebec (Electoral law revision).—An Election Act was passed in 1979 to revise the Election Act, while retaining certain provisions regarding electoral lists, and replace that Act respecting provincial controverted elections. Its main objects were:

(1) to establish the conditions required to be an elector;
(2) to provide that any elector, except certain persons whom it identifies, may be elected to the Assemblée nationale du Québec;
(3) to prescribe the methods to be followed for the various stages of the election and for the exercise of the right to vote;
(4) to determine the procedure of recount and of contestation of an election;
(5) to define the functions and powers of the director general and the election officers;
(6) to entrust the director general with the responsibility of framing the regulations provided for by this bill, subject to their approval by the Standing Committee on the Assemblée nationale du Québec.

Quebec (Electoral Commission).—An Act was also passed during 1979 to establish the Commission de la representation. Consisting of three members, the Commission is charged with determining, periodically the boundaries of electoral divisions, taking into account the principle that the vote of each elector is of equal weight; the Commission also establishes the boundaries of electoral precincts.

The Act provides a certain number of criteria to be used by the Commission in establishing boundaries and provides for prior consultation of the

population. The Act repealed legislation respecting the Standing Commission on Reform of the Electoral Districts and provides transitional measures in view of the new boundaries of the electoral divisions.

Northwest Territories (Electoral redistribution and changes in electoral law).—Probably the most important of these was the amendment to the Northwest Territories Act (Canada) whereby the Legislative Assembly was empowered to establish the number of members between a minimum of fifteen and a maximum of twenty-five. Previously the number of members was set by the Federal Parliament by provision of the Northwest Territories Act (Canada).

In anticipation of this amendment an electoral boundaries commission was established in the Territories and acting upon its recommendations legislation was introduced and enacted by the Assembly establishing twenty-two electoral districts at the October session 1978. This legislation, however, was not brought into force until the spring of 1979 consequent on the Federal amendments.

Also brought into force in the spring of 1979 although enacted by the Legislative Assembly in the fall of 1978 was an N.W.T. Elections Ordinance. Prior to the 1979 General Election the election of members to the assembly was conducted under the provisions of the Canada Elections Act. The present Ordinance is based on the Canada Elections Act but adapted and modified in a variety of ways to meet the special conditions existing in the Northwest Territories. The administration of this Ordinance is the responsibility of the Chief Electoral Officer of Canada under the terms of an agreement with the Commissioner of the Northwest Territories.

New South Wales (Changes in electoral practices).—The Constitution (Amendment) Act, 1979, assented to on 30th April, 1979 stipulated that electoral distributions in New South Wales would be based upon the drawing of boundaries requiring all electorates to have an equal number of voters, subject to a maximum 10 per cent variation – higher or lower – from this uniform quota. The 10 per cent tolerance allows for due recognition by independent Electoral Districts Commissioners of the physical, economic and social characteristics of particular areas.

A new section 7B was inserted in the Principal Act (Constitution Act, 1902) and was designed to entrench the new provisions relating to compulsory voting, single-member electorates, the distribution of the State into electoral districts, the times when distributions shall be effected, the implementation of optional preferential voting for Legislative Assembly elections, and the manner of counting of votes in an Assembly election, so that thay cannot be altered in future without a referendum. The provisions relating to the number of Members of the Assembly were not entrenched in this new section. The existing section 7A, which is similar to the new section 7B, was introduced into the Constitution Act in 1929 and provided that the Legislative Council shall not be abolished or

dissolved, nor its powers altered, unless any Bill for that purpose is first approved by the electors at a referendum.

Another provision in this Act is that at a poll for an Assembly election a voter shall be required to record his vote for one candidate only but shall be permitted to record his vote for as many more candidates as he pleases.

(Contributed by the Clerk of the Legislative Council).

Tasmania (Invalid elections).—Following the election for the House of Assembly in July 1979, a number of petitions were taken out against Members on the grounds that they had exceeded the limit of $1,500 on election expenses. As a result of the petitions it seemed likely that the election of a large number of Members of the House of Assembly would be declared invalid. Under the Electoral Act 1907, vacancies are filled by recounting the votes of the preceding election, not by a by-election. Had this procedure been followed, the Members whose elections had been declared invalid would have been unable to stand for re-election until the next general election.

After great controversy in the community and in the Parliament the Electoral Bill 1979 was introduced into Parliament and passed. The Act provides that where the election of more than one person in any particular electorate is declared invalid, there shall be a by-election for all seven seats in that electorate. However, the Members whose elections are declared to be invalid are paid until the time of the by-election, although they are technically no longer Members. Ministers whose elections are declared invalid cease to occupy their positions, but are still entitled to the salary of a backbencher.

No Member's election was declared invalid by a Court before the passing of this Electoral Act, and so there was no recount of votes. However, after the passing of the Act, three Government Members in the division of Denison pleaded guilty to having exceeded the limit on expenses and their elections were declared invalid. Accordingly, there was a by-election for all seven seats in Denison, although four Members still legally held their seats. The Electoral Act 1979 was designed only to overcome the problems of the 1979 elections, as most of its provisions expire on 30 December 1980. Thereafter, the old provisions for a recount of votes will again apply.

Parliament did not meet between the date on which the three Members' elections were declared invalid and the time of the by-election, and so there was no question of the Government being defeated on the floor of the House.

(Contributed by the Clerk of the Legislative Council).

New Zealand (Electoral irregularities).—Following the General Election held in November 1978 the results of the elections held in two

electoral districts were challenged by way of election petitions. In the trail of the first of these petitions, that complaining against the result in the Hunua Electoral District which acted as a test case, the Supreme Court held that a number of persons who had cast votes in the election were not qualified to vote in that particular electoral district, in most cases because they were persons of Maori descent previously enrolled in one of the four Maori electoral districts who had not validly exercised the option to transfer to a general electoral district such as Hunua. The Court further held that there were a number of irregularities in the way in which some of the ballot papers had been marked, for example by putting a tick or cross beside a candidate's name or striking through the party affiliation of a candidate, and that these votes were invalid as not complying with the prescribed method of striking through the names of all candidates except the one for whom the voter wishes to vote. Following this judgement the second election petition was withdrawn.

The Court appointed a Special Referee to recount the votes in Hunua in accordance with its judgement. In the result the candidate who brought the petition emerged ahead of the candidate previously declared elected. By the time of the Court's judgement the House of Representatives had met following the election, and the certificate of the Court as to the result of the election and a Special Report which it saw fit to make were laid on the Table by Mr. Speaker. The provisions of the Electoral Act require that the House on being informed of the certificate shall order it to be entered in the Journals of the House, and give the necessary directions for confirming or altering the return as the case may be (a similar provision to that contained in s.124(5) of the Representation of the People Act 1949 (U.K.)). The certificate and report were consequently ordered to be entered in the Journals, and the Clerk of the Writs ordered to attend the House forthwith with the return for the purpose of amending it. Following a division on this latter motion the Serjeant-at-Arms was instructed by Mr Speaker to bring the Clerk of the Writs to the Table. That gentleman (or rather his deputy – the Clerk of the Writs being overseas at the time and missing out on the execution of a task last performed by one of his predecessors in office 100 years before) then came forward and on the instruction of Mr Speaker amended the return accordingly. Meanwhile the member whose election had been overturned retired from the House, and a short while later the new member appeared and was sworn (see NZPD Vo.l 422, pp. 145–154).

Subsequently the House referred the Special Report to a Committee of Inquiry which was set up to examine the administration of the Electoral Act. This Committee reported in August 1979 with a number of recommendations for changes to the electoral law and administration. Its report is at present being examined by a select committee of the House. It is hoped that this committee will report in the 1980 session following which amendments to the Electoral Act will be prepared for adoption prior to the next general election due in November 1981.

3. Standing Orders

House of Commons (Friday sittings).—Standing Order No. 5 was amended in 1979 to provide that Friday sittings should begin at 9.30 a.m. instead of at 11.00 a.m. The moment of interruption was similarly brought forward to 2.30 p.m. from 4.00 p.m.

Isle of Man (Changes in Standing Orders).—The Standing Orders of the House of Keys were amended on 23rd January 1979 so that—

(*a*) the sittings of the House should commence at 10.30 a.m. and not 11.00 a.m.;
(*b*) prayers should be held in public;
(*c*) procedures for the election of committees should be simplified;
(*d*) the House should be enabled to order the introduction of Bills following acceptance of the recommendations of Select Committees of the House or of Tynwald;
(*e*) the House should be empowered to amend a Bill after receiving suggestions from H.M. Government.

On the same date the House adopted Temporary Standing Orders to permit the institution of an experimental Question Time in addition to that in Tynwald Court.

Canada: Senate (Senator may voluntarily appear before a Commons Committee).—On 22nd November 1979, the Committee on Standing Rules and Orders recommended that Rule 104 of the Rules of the Senate be amended by adding the following subsection:

> "(4) In the absence of a Message referred to in subsection (1), a senator who so desires may voluntarily appear before any Committee of the House of Commons".

The Report of the Committee was adopted by the Senate on 4th December 1979.

Ontario (Standing Orders revision).—The Assembly's Standing Orders were substantially revised in late December, 1978, but for all practical purposes did not come into effect until 1979. These Orders do not, however, represent a break from the past. Rather, the new Standing Orders are a consolidation and refinement of the previous Standing Orders and the Provisional Orders originally adopted in December 1976. Despite extensive changes in drafting and in numerical order, only a few of the new Standing Orders mark significant changes; among these are

- a more precisely defined *sub judice* rule prohibiting debate only when "it is shown to the satisfaction of the Speaker that further reference would create a real and substantial danger of prejudice to the proceeding" (S.O. 19(d)7)
- an extension of the authority of the Serjeant at Arms (S.O. 6, 103)

- provision of a formal mechanism for Committee Chairman to move adoption of substantive Committee reports (S.O. 30(c))
- simplification of the procedures relating to Private Bills (S.O. 65–80)
- formal recognition of the right of Committee to appoint sub-committees (S.O. 92)
- removal of requirement to adjourn the House at 10.30 p.m. (S.O. 3(a))
- provision for up to 3 strangers on the floor of the House to assist a Minister or Parliamentary Assistant during Committee stage of a Bill (S.O. 8(b))

In addition, the Standing Procedural Affairs Committee produced a substantial report on the privileges and protections afforded witnesses before committees. This has been an area of great uncertainty, owing in large measure to the constitutionally ill-fated privileges of provincial Legislatures.

Northwest Territories (Changes in the Rules).—The procedural rules of the Assembly were amended on 30th March 1979 to accomplish a variety of purposes including the following:

(*a*) the authority granted by the Assembly to the Commissioner to sit and participate on the same basis as a member of the assembly was restricted to those periods when the assembly is sitting in Committee of the Whole. It should be explained that prior to 1975 although not a member the Commissioner was the presiding officer of the Assembly. During the period 1975 – 1979 the Commissioner and the Deputy Commissioner (until 1975 a member of the Assembly appointed by the Governor in Council) were seated in the Assembly as members and were entitled to answer questions and to participate in debate on the same basis as members but were not entitled to vote. A further factor in the restriction in the Commissioner's ability to participate was the inclusion in 1975 of two elected members in the Executive Committee which the Commissioner chairs, the expansion of this figure to three in 1976 and to not more than seven in 1979. A number of consequential amendments to The Rules flowed from the change mentioned.

(*b*) The restrictions on oral questions were relaxed to some extent so that a member might ask an oral question on important matters but not necessarily only those of "urgent and pressing public importance".

(*c*) To extend the notice on motions from one day to forty-eight hours. This was done primarily to provide adequate translation time recognizing that all proceedings in the Assembly are conducted in English and Inuktitut (Eastern Arctic Eskimo).

(*d*) To repeal provisions relating to motions for the production of papers which were seldom, if ever, used.

(*e*) To replace the provisions relating to bills at third reading which permitted amendment but did not permit referral back to Committee with provisions which would in future disallow amendment at third reading but permit referral back to Committee.

(*f*) To establish the maximum size of Standing and Special Committees at seven and five members respectively.

(*g*) To make provision for the removal from a Standing or Special Committee of a member who without cause is absent from meetings of such committees.

Australia: Senate (Regulations and Ordinances Committee).—Paragraph (4) of Standing Order 36A provided that all regulations and

ordinances laid on the table of the Senate, with the exception of those of the Northern Territory, stand referred to the Regulations and Ordinances Committee for consideration and, if necessary, report thereon.

The paragraph was amended to provide that not only regulations and ordinances, but other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate and which are of a legislative character stand referred to the Committee.

This amendment was made to formalise the working of the Committee in undertaking scrutiny of by-laws, and other instruments made under certain Acts of the Parliament, which could not properly be called "regulations". The Committee had been scrutinising these instruments because of their legislative nature, but had no formal powers to examine them.

Australia: Senate (Notices of disallowance, etc).—Under the Acts Interpretation Act 1901 and other relevant Acts, a notice of motion to disallow, disapprove, or declare void and of no effect any instrument made under the authority of any Act which provides for the instrument to be disallowed, etc. by either House of the Parliament, must be given within a specified period (usually fifteen sitting days) after the instrument has been tabled.

A Senator may withdraw a notice of motion without leave and it is competent for any Senator to give a fresh notice of motion in similar terms to the one withdrawn. However, in the case of a motion to disallow an instrument, the withdrawal of the notice could take place after the expiry of the time limit, and this would prevent any other Senator from giving an effective fresh notice.

In the past, this problem has been overcome by leave of the Senate being given to transfer a notice of motion for disallowance from the name of the Senator wishing to withdraw the notice to the name of the Senator wishing to proceed with it.

The Senate adopted a proposed new Standing Order 109A to operate as a Sessional Order. This regularises the right of a Senator, in all circumstances, to take over a notice of motion for disallowance, etc., where a Senator who gave the notice wishes to withdraw it.

By the proposed new Standing Order, should a Senator wish to withdraw such a notice, he would give a notice of intention to withdraw at the normal time for giving notices of motion. The notice of intention to withdraw must indicate the stage in the routine of business of the Senate at which it is intended to withdraw the notice of motion. Subsequently, if any Senator indicates to the Senate, prior to the intended withdrawal, that he does not wish the notice of motion to be withdrawn, his name is placed on the notice of motion in the place of the Senator wishing to withdraw it and the notice shall not be withdrawn.

Victoria: Legislative Assembly (Omission of Committee stage).—Standing Order 136 was amended on 11th September 1979 to read as follows:—

"A Bill having been read a second time may be ordered to be committed to the Committee of the whole House or to a Select Committee, unless the House grants leave for the question 'That the Bill be now read a third time' to be proposed forthwith."

Under the old Standing Order Bills which were read a second time were automatically committed to the Committee of the Whole House. Statistics indicated that less than 50 per cent of Bills committed were debated. The amendment, by allowing the Committee stage to be omitted by leave, saves the time of the House.

Victoria: Legislative Assembly (Member's dissent recorded).—Standing Order 180 was amended on 11th September 1979 by the addition of the following proviso:—

"Provided that if one Member only calls for a division, that Member may inform the Speaker that he wishes his dissent to be recorded in the Votes and Proceedings and his dissent shall thereupon be so recorded."

The former Standing Order provided that no division was allowed if there were not two Tellers and, accordingly, a single Member could not have his dissent recorded in the Votes and Proceedings. The proviso overcomes this disability.

Kenya (Sittings of the House).—Standing Order No. 17 was amended to provide that the House would sit during the afternoons of Tuesday, Wednesday and Thursday and also in the morning of Wednesday. The House used to sit on Friday mornings, but there were problems created by the failure of the House to muster a Quorum.

4. Procedure

Australia: Senate (Reference of Bills to Legislative and General Purposes Committees).—In 1978 a Sessional Order concerning the consideration of Bills by Standing Committees was adopted.

In the view of the Standing Orders Committee, the established procedure of referring selected Bills to Legislative and General Purpose Standing Committees had operated most successfully. As part of its continuing review of Senate procedure, however, the Standing Orders Committee decided to examine the possibility of greater use of committees in the consideration of legislation. The Committee noted a proposal by the Joint Committee on the Parliamentary Committee System in 1976 that legislation committees should be established to deal with the Committee of the Whole stage of Bills – their purpose, in effect, being to substitute

standing committee consideration of a Bill for Committee of the Whole proceedings.

In its Second Report, presented on 3rd May 1978, the Standing Orders Committee recommended the adoption, on a trial basis, of a Sessional Order specifying the procedure for reference of Bills to Legislative and General Purpose Standing Committees. The Committee emphasized, however, that gradualism should be the keynote in introducing such a procedure; the proposals included provisions to ensure that the rights of Senators were in no way abridged; and it was recommended that in the early stages the references of Bills to standing committees, for clause consideration, should be moderate in number. The new procedure was adopted by the Senate as a Sessional Order for 1978 on 16th August, but no use was made of the Sessional Order before it lapsed, at the end of 1978. As no use had been made of the procedure and thus it could not be evaluated, the Senate renewed the Sessional Order in 1979. (*Note:* This procedure has been used once in 1980.)

Australia: House of Representatives (The sub judice rule).—In November 1979 the House gave lengthy consideration to the sub judice rule in connection with prosecutions in what was known as "the Greek Conspiracy Case". (The case consisted of a series of committal proceedings in Sydney's Court of Petty Sessions and concerned an alleged conspiracy by certain members of an ethnic community to defraud the Department of Social Security in connection with sickness benefits and invalid pensions. As at March 1980, the hearings are continuing).

On 13th November 1979 the Deputy Leader of the Opposition moved for the suspension of standing orders to enable a motion to be moved to appoint a judical inquiry into the obtaining of evidence in the case, with particular reference to (a) circumstances relating to the alleged use by Commonwealth Police of listening devices and telephonic interception, (b) the propriety of those who authorised their alleged use and (c) moneys that were paid for evidence and information and those who were consulted in the process of making the offer. The Deputy Leader of the Opposition who was speaking to his motion, did not further proceed with the matter, at the Speaker's request, so that consideration could be given as to whether the motion infringed the sub judice rule.

Later that day the Speaker made the following statement to the House relating to the application of the sub judice rule:

"The House has a fundamental right and duty to consider any matter if it is thought to be in the public interest. Howevet, in the case of a matter awaiting or under adjudication in a court of law, the House imposes a restriction upon itself to avoid setting itself up as an alternative forum to the court and to ensure that its proceedings are not permitted to interfere with the course of justice. . . . .

The rule is clear that the application of the *sub judice* rule is subject always to the discretion of the Chair and the right of the House to legislate on any matter. In relation to the matters awaiting or under adjudication in all courts excercising criminal jurisdiction the rule requires that these matters shall not be referred to in motions, debate or questions

from the moment a charge is made. In relation to issues of national importance such as the national economy, public order or the essentials of life before, for example, the Conciliation and Abirtration Commission, the rule is that these matters may be referred to unless such references would constitute a real and substantial danger of prejudice to the proceedings.

In exercising the discretion I have referred to, the Chair must make a decision which takes into account the inherent right of the House to inquire into and debate a matter of public importance which is within the responsibility of Ministers and also the need to ensure that proceedings before a court are not prejudiced by comment in the House which might influence a jury or prejudice the position of parties and witnesses. As an example of the exercise of this discretion, I have ruled as not sub judice a matter before a court of appeal where I was of the opinion that the judges would not be influenced by any debate occuring in the House, ...

In this present matter, however, a different situation exists. As I am informed, the prosecutions are proceeding before the police magistrate who will determine the question of whether the defendants, or some of them, will be committed for trial before a judge and jury. In this situation I must be very careful that the House does not unwittingly risk injustice by comments it makes which might influence the jury. Therefore, I must in these circumstances apply a more stringent test. . . . . "

The motion of the Deputy Leader of the Opposition contained

"three particular items of inquiry. The obtaining of the evidence in relation to the prosecution in the Greek conspiracy case is the prime inquiry and pervades each of the items of particular inquiry. In relation to items (b) and (c) of the proposed motion, I have no doubt that debate on these matters would lead to risk of injustice. In relation to item (a) I was very concerned not to prevent debate on an issue of national importance such as the use by the Commonwealth Police of listening devices and the interception of telephone conversations. However, as that item is also directly covered by the introductory words and main thrust of the proposed motion, namely 'the Greek Consipracy Case', I have no alternative but to rule that a debate on that item would also lead to risk of injustice and it therefore falls within the *sub judice* rule of this House".

The motion could not therefore proceed any further. House of Representatives standing order No. 160 provides that a motion not seconded may not be further discussed and no entry thereof shall be made in the *Votes and Proceedings*. As Mr Speaker indicated before the motion was seconded, that the motion could not proceed, his ruling ended the matter and no entry was made in the *Votes and Proceedings*, the official record of the House, concerning the terms of the motion.

Still later in the day's proceedings, Mr Speaker granted the Deputy Leader of the Opposition indulgence to address the House on the matter. The Deputy Leader of the Opposition stated that in his view his motion could not in any way prejudice or embarrass pending proceedings. A judicial inquiry proposed in the lapsed motion would determine if the proceedings were proper. If the inquiry found the proceedings to be proper there would be no embarrassment. If they were improper, the Parliament should take the necessary action and not worry about a magistrate's court. Mr Speaker reiterated his earlier ruling that the proposed motion infringed the *sub judice* rule and the Deputy Leader of the Opposition moved dissent. The motion of dissent was negatived by the House on division.

One interesting development occurred in relation to the case in the court where the case was being heard. The stipendiary magistrate was reported to have said that he was concerned about media coverage of the case and by comments made by people in authority outside the court. He was reported to have warned that while he would not close the court in view of public interest in the case he might prohibit media publication of the proceedings if the proceedings were reported inaccurately and if what he considered as infringements upon the *sub judice* rule continued.

Australia: House of Representatives (Introduction of Estimates Committees).—Reference was made in the last edition of *The Table* (Vol. XLVII, pp. 164–5) to sessional orders introduced in 1978 providing for operation on a trial basis, of legislation committees. Between September and November 1978, 7 Bills were referred to a legislation committee. In 1979, 2 were referred and a motion to refer a third bill was negatived (one dissentient voice is sufficient to negative the referral).

The experiment continued but with some variations to the 1978 practice. By meeting during sittings of the House the most recent legislation committee on a Customs Amendment Bill spent a little over 5 hours in committee discussion and agreed to a series of amendments which in one particular instance corrected a serious error that had been detected in the legislation. After the successful trial of legislation committees, from whose operation Appropriation and Supply Bills were excluded, sessional orders were agreed to for the operation of estimates committees. These provided an alternative method of considering the proposed expenditures for departments and services contained in the main Appropriation Bills for a year.

The sessional orders provided for the referral to one of 2 estimates committees of the proposed expenditures in the schedule to the main Appropriation Bill after the response of the Leader of the Opposition to the Budget speech. Traditionally this speech is given a week after the Budget speech and generally occurs towards the end of August in each year. The 2 committees were termed Estimates Committee A and Estimates Committee B and several of their functions were similar to those applying to legislation committees. However, estimates committees were not empowered to vote on the proposed expenditures or to vary the amount. Rather, they were to examine and report upon the proposed expenditures. The report could contain, however, a resolution or expression of opinion of the committee.

In effect a separate committee was constituted for the proposed expenditure for each Department and the appropriate Minister or a Minister nominated by him, in each case attended as a member of the committee. Advisers to the Minister were permitted to be present during the entire committee consideration and, subject to the Minister's discretion, were able to be examined directly by the committee. Not less than 12, nor more than 18, Members in addition to the Minister were to be nominated as members of an estimates committee. (In effect, 10 Government and 5

Opposition Members were nominated for service on each committee in addition to the Minister). Nominations were to take into account the qualifications and interests of Members, and were notified in writing to the Speaker. No formal announcement of membership was made to the House; the nominations were recorded in the *Votes and Proceedings* and on the Notice Paper. Any changes to membership were similarly recorded.

The Chairman of an estimates committee was to be either the Chairman of Committees or a Deputy Chairman of Committees appointed by him. The Chairman was not actually a member of the Committee and was not included in the 12 to 18 members constituting the committee. The quorum of an estimates committee was 5.

The Committee's minutes were separately recorded by the Clerk to each committee. Procedures in the estimates committees were those normally followed in the committee of the whole House. The major exceptions were no speech time limits applied, there were no restrictions on the number of times each Member could speak to a question, and voting was to be taken by a show of hands.

Both committees reported to the House on 23 October. Two expressions of opinion in relation to the proposed expenditure for the Parliament were contained in the report of Estimates Committee A, and a resolution and an expression of opinion in relation to the proposed expenditures for 2 Government Departments were contained in the report of Estimates Committee B.

Consideration of the reports took place on 24 and 25 October and the proposed expenditures agreed to and expressions of opinion noted on 25 October. Separate questions were put immediately on the remainder of the Appropriation Bill and (by leave) on the third reading, and it was read a third time.

An examination of the debates in the House on the committees reports indicated a wide divergence of opinion among Members as to the value and effectiveness of their initial consideration of proposed expenditures under the new sessional orders. However, certainly the use of the new procedure provided more time for consideration of the proposed expenditures plus more time in the House for other business. Compared with 1978, Members spent approximately 27 more hours considering the proposed expenditures and debating time in the Chamber was increased by 23 hours.

Following the House's consideration of the reports of the committees, the Speaker (Sir Billy Snedden) circulated a number of suggestions to all Members for improving the working of the committees in the future. He suggested that:

- there would be advantage in having more committees of smaller and fixed membership – say 6;
- the committees should be appointed and members nominated in the week in which the Budget is presented;
- each committee should meet to consider a timetable of sitting and then start their sittings following the response to the Budget by the Leader of the Opposition;

* each committee should have a permanent chairman drawn from the panel of Deputy Chairmen;
* the committees should cover broad issues and consideration should extend to both Appropriation Bills (Nos. 1 and 2);
* further consideration should be given to the committees meeting outside the sitting times of the House;
* at least 2½ hours (that is, a total of 15 hours) should be provided for the report stage for each of the 6 committees.

Australia: House of Representatives (Subordinate legislation – Disallowance).–On 7th March 1979 a Government backbench Member gave notice of the following motion: That the amendment to By-law 139 of the Telecommunications (General By-laws, as contained in Amendment No. 20 made by the Australian Telecommunications Commission under the *Telecommunications Act* 1975,) be disallowed.

The Acts Interpretation Act provides, inter alia, for copies of regulations and ordinances to be laid before each House of Parliament and fixes a period of 15 sitting days during which a notice of motion may be given to disallow a regulation or ordinance. If the notice (or motion moved pursuant to the notice) of disallowance has not been withdrawn or disposed of within 15 sitting days, the regulation specified in the notice or motion of disallowance is deemed to have been disallowed. The Telecommunications Act, under which the by-law was made, provides that the disallowance provisions of the Acts Interpretation Act apply to by-laws in the same manner as regulations.

On this occasion the Member gave the notice 3 days after the tabling of the by-law in the House of Representatives. On Wednesday, 9th May 1979, 15 sitting days (the period alloted for dealing with the notice of motion) expired. The by-law was therefore deemed to have been disallowed by virtue of the provisions contained in the Acts Interpretation Act.

This was the first occasion on which a disallowance, following failure to call on or otherwise dispose of a notice, had occured in the Parliament of the Commonwealth of Australia. On the day following the expiry of time for consideration of the notice, letters were sent by the Clerk of the House to the Minister responsible for the by-law, and also to the Attorney-General notifying each of them that the by-law was deemed to have been disallowed. For information, letters were also sent to the Clerk of the Senate, as the by-law had also been tabled in the Senate, and to the Chairman of the Senate Standing Committee on Regulations and Ordinances, a committee whose responsibility is to scrutinise all subordinate legislation laid before the Senate. The Notice Paper of the House indicated, following the expiry of 15 sitting days, that the notice had not been withdrawn or disposed of within the period and that the amendment was deemed to have been disallowed.

The Acts Interpretation Act provides that where a regulation is disallowed or deemed to have been disallowed, no regulation the same in substance shall be made within 6 months after the date of disallowance,

unless the House in which the notice of motion to disallow was given, passes a resolution approving the making of a by-law the same in substance as that which was deemed to have been disallowed. Consequently, the Member in whose name the notice for disallowance stood, withdrew his notice from the Notice Paper at the end of May 1979.

(*Contributed by the Clerk of the House of Representatives*).

New South Wales: Legislative Assembly (Procedure on Public Bills).—A procedural change was effected on 29 November 1979, when the House agreed to the following resolution:

That unless otherwise ordered

(1) A public bill (unless sent from the Legislative Council), shall be initiated by notice of motion for leave to bring in the bill. The question that leave be given shall be decided without debate or amendment. On the presentation of a bill it shall be read a first time without any question being put.

(2) After the first reading, the bill shall be printed. The second reading of the bill may be moved forthwith or made an order of the day for a later time or future day. Immediately following the second reading speech, the debate thereon shall be adjourned until a future day which shall be at least two sitting days ahead.
Provided that if a Minister declares a bill to be an urgent bill and copies have been circulated among members, the question 'That the Bill be considered an urgent Bill' shall be put forthwith, no debate of amendment being allowed. On such question being agreed to, the second reading debate may be proceeded with forthwith or at any time during any sitting of the House.

(3) A Minister may, during or after his second reading speech, table for incorporation in the Parliamentary Debates additional detailed or explanatory information to assist members in their understanding of the bill.

(4) Except as provided in this resolution the procedure on bills shall be in accordance with Standing Orders.

The abolition of debate on the first reading and subsequent changes on the second reading being such a departure from the established practice of the Legislative Assembly, it was decided to approach the changes cautiously. Hence it was by resolution of the House rather than by amendment to the standing orders that the changes were introduced. Standing orders require the approval of the Governor and it was deemed to be advisable to experiment with the changes rather than to again amend standing orders if they proved not to be satisfactory. To date the new procedure is working most satisfactorily.

5. Accommodation

Australia (New and Permanent Parliament House).—Following the announcement by the Prime Minister in November 1978 that the Government had decided to provide funds for the design and construction of a new Parliament House (see *The Table* Vol. XLVII, pp. 175–6), the Joint Standing Committee on the New and Permanent Parliament House prepared a brief for the first stage of the design competition process.

In its Fourth Report (1979, No. 67) presented on 5th April 1979 the Committee set out the time-table for the competition which would commence in April 1979 and conclude in August 1980. The Committee indicated that competitors in the first stage of the competition would be issued with a document containing information relating to competition conditions, the Parliament, the site, instructions to conpetitors, design issues and the spatial requirements of the various users or elements in the building. Competitors would also receive maps and photographs of the site. The net floor area proposed for the building as set out in the document is 59,620m.

The invitation to register for the competition was issued on 7th April 1979 following a resolution of both Houses of Parliament on 5th April 1979 authorising commencement of work on the Design Competition. The registration period closed on 31st May 1979. A total of 961 registrations were received of which 247 were from outside Australia. Submissions for Stage 1 closed on 31st August 1979 by which time 329 entries had been recieved. The 5 member assessing panel, which includes a Senator and a Member of the House of Representatives, completed its adjudication, and an announcement of award winners and finalists' names was made in Parliament on 9th October 1979. Of the 10 prize winners (each of whom received $20,000) selected from Stage I, 5 finalists were chosen to proceed to Stage 2 of the competition. Designs of all prize winners will remain confidential until conclusion of the competition in August 1980.

The finalists were issued with a set of Stage 2 documents which are essentially an elaboration of the information contained in the first stage documents.

During Stage 2 a Competition Steering Committee is to represent the major groups involved in the process of building the Parliament House. The Committee consists of 4 representatives of the Parliament (including the President and Speaker), 2 representatives of the Executive Government and 2 representatives of the Parliament House Construction Authority. The Steering Committee will provide competitors with advice on functional aspects of the building and may also provide advice to the assessors in the same way as it provided by technical assistants.

The finalists were required to deliver their Second Stage submissions by 23rd May 1980.

(*Contributed by the Clerk of the House of Representatives*).

6. General

House of Lords (Photographic record of Peers and staff of the House).—The House agreed on 24th January 1979 to a recommendation from the Offices Committee (1st Report, 1978–79, H.L. 50) that a photographic record of peers and staff of the House should be compiled. The proposal is that the record should be available to consult in the Library of the House where it is hoped it will help both members and staff to identify

those with whom they may be in contact. Such a record may appear to be unnecessary to those clerks working for smaller legislatures. It should therefore be made clear that the total membership of the House of Lords is over 1100 persons, many of whom come to the House only rarely. Moreover, the membership is subject to continual change, as new peerages are conferred or, in the case of a hereditary peerage, as one peer succeeds another.

When the proposal for a photographic record was first made, there was some doubt as to whether the cost and effort involved would be justified by the use made of it. It was realised that, although a photographic record would have its uses, it could never provide a complete means of identification, both because photographs are often unrecognisable and because without a name it would not be possible to trace a face. However, it was agreed that advantage should be taken of the security authorities' decision to re-issue photographic passes to all peers and staff of the House, and to obtain at the same time a further photograph for the purposes described above. This would be inexpensive and, apart from providing a means of identification for the present, might in the longer term provide an interesting archival record of membership of the House and of its staff.

Australia (Additional security arrangements at Parliament House, Canberra).—In *The Table* of 1979 (Vol. XLVII, pp. 170–71), mention was made of the new security arrangements introduced for the protection of the Commonwealth Parliament and its occupants. The most noticeable aspect of these arrangements was the introduction of a security pass system for entry into the non-public areas of the building. Additional security arrangements have now been introduced which involve security checks on persons and goods entering the building.

On 21st January 1980 a new lower front door entrance security procedure was commenced, together with a new rear door goods entrance procedure. Situated at the new front entrance (under the steps of the former entrance to Kings Hall) there are installed 2 walkthrough doorway metal scanners, as well as an X-ray machine for baggage searches. The entrance is open 24 hours a day, 7 days a week and is manned by specially trained staff. All persons visiting the building other than Senators, Members and their staff and Parliamentary staff during standard office hours must pass through this new security procedure.

The rear goods entrance was constructed near the existing rear entrance. An X-ray machine for checking goods entering the premises was installed at this location and persons entering are now subject to a metal search by hand held detectors.

Entry by the Senate and House side entrances is limited to photographic pass holders only. This has allowed staff working in the building to enter without having to pass through the stringent front door checks. Security has however been increased at both of these side doors.

Once entry is gained to the public area, persons wishing to enter the non-public area may then be issued with either escorted or unescorted day passes. It is the responsibility of security staff and Australian Federal Police members located at various points within the building to ensure that persons moving about the non-public areas are wearing the correct passes. These passes are colour coded for easy identification.

These new arrangenents supplement the previously introduced measures. The exterior of the building remains under surveillance by members of the Australian Federal Police Force, outside doors which are not manned are deadlocked or fitted with alarm systems. and nightwatchmen still patrol the building.

It is believed that these increased security precautions are essential to deter any attempts to impair the dignity of the House and to ensure the safety of its occupants.

(*Contributed by the Clerk of the House of Representatives*).

Fiji (Yaqona Oasis of the Parliament).—During meetings of both the House of Representatives and the Senate, and their committees, "yaqona" is served without payment, to members who wish to partake of it. The Fiji Parliament does not operate a standard cocktail bar.

The drinking of yaqona (pronounced yanggona) is a ceremonial or common social custom in Fiji. Yaqona is mud-coloured made from the root of a kind of pepper plant known as *Piper methysticum*. Although not alcoholic, it causes a slight numbing of the tongue and lips if drunk in quantity.

Partaking of a bilo (bowl) of "grog" as it is commonly called, at odd hours of the day is as natural to a Fiji man as enjoying a cup of tea might be to an Australian or English housewife. It is over a bowl of grog that much of the grass roots political talk occurs in villages and rural areas. For the Fijian, gathering about the *tanoa* is like warming oneself at the hearth in colder climes. Politicians wishing to conduct meetings in the villages and rural areas are usually required to make a presentation of yaqona before they are heard.

In days gone by yaqona was prepared by young maidens of a village who chewed the pieces of root into a soft pulpy mass before the water was added. Today the root is pounded in a type of pestle and mortar or ground to powder by machine. It is usual to sun-dry the roots before powdering, but on occasions the green root is used. After the addition of the water, the gritty pieces of root are strained out by passing a bundle of vegetable fibre, usually the shredded bark of the Vau tree, through the liquid. More recently cheesecloth or fine cloth is used.

The tanoa is a large wooden bowl carved from a single piece of Vesi (hardwood) usually from the island of Kabara where the required wood is plentiful and where the skill of wood carving has been retained. Some tanoas are simple, round bowls supported by up to eight or ten legs and

sometimes as large as 36 inches in diameter. Some are carved in the shape of a turtle. Ceremonial tanoas can be much larger and are usually very old.

The ceremony is performed by hosts and yaqona, mixed in the presence of the guest of honour, is presented to the accompaniment of a complicated ritual. On such an occasion, the guest of honour is seated cross-legged in front of the tanoa from which protrudes a thick rope of coconut fibre embellished with white cowrie shells. This is known as the Tui-ni-buli and is pointed towards the guest of honour. During the ceremony no one on pain of death may cross the line. The person to perform the ceremony is seated cross-legged behind the tanoa and clustered behind him is usually a group of people who chant to the rhythm of small hollow wooden drums while the potion is being mixed. At the direction of the master of ceremonies, acting on behalf of the guest of honour, water is added to the pulped root in the tanoa. When satisfied that the mixture is right he indicates that the preparation may continue. The yaqona is strained by draining the shredded bark of the Vau tree through the liquid in the bowl. Finally when the grit has been removed and the potion is ready for drinking the cup-bearer comes forward bearing the bilo, and with much ceremony and respect, presents the guest of honour with first bowl. This he pours into the personal bowl of the guest who holds this before him with both hands. The bowl should not be removed from the lips until it is emptied. When he has drained the bowl in a single draught, there is a cry of 'maca' (pronounced maathaa, meaning 'it is drained') accompanied by the clapping of hands. The master of ceremonies representing the guest of honour is next to drink and then succeeding cups are handed to senior guests in order of rank, one of the host group drinking after each guest.

The Parliament Chamber is surrounded by an open verandah and a large tanoa is placed on a table just outside a side entrance to the Chamber. Both Opposition and Government members gather round the tanoa, even while a debate is in progress, to share a few *bilos* of this menthol-flavoured beverage; to quench their thirst especially on hot, humid days; to discuss points of debate and the affairs of Parliament generally; to patch up personal differences or for friendly chat; or, just to enjoy the sunshine and the fresh, balmy air while leaning over a balcony, on one side overlooking a small stretch of green lawn interspersed with colourful tropical shrubs separating the Judiciary from the Legislature block and, on the other verandah, a stone's throw away from the Executive block.

After heated exchanges in the Chamber, the tanoa serves as a welcome oasis where members of the different ethnic groups in each House meet, to differ without rancour, learning to appreciate each other's points of view; and, quite often, in a rather self-effacing way joke about their foibles. It is not unusual to see members who, only a short while before were bitterly exchanging caustic remarks across the floor of the House, enjoying a *bilo* together around the *tanoa*.

In comparison to what may be considered to be its western equivalent

– the cocktail bar – it would appear that as a Pacific social custom, the yaqona served in the tranditional *tanoa* and drunk from a common *bilo* could commend itself to many Legislatures to ensure more orderly proceedings.

(*Contributed by Mrs A. L. Ah Koy, Clerk of the Parliament*)

7. Emoluments

House of Lords (Peers' Expenses).—In their 12th Report the Top Salaries Review Body recommended certain changes in the Peers' daily expenses allowance. Instead of a two tier expenses allowance which allowed Peers who incurred costs for staying in London overnight to claim £16.50 as opposed to £13.50 for those who did not, the Review Body recommended three different categories of allowances, (a) overnight subsistence, £18.50, (b) day subsistence and incidental travel, £9.00, and (c) secretarial costs, postage etc. £18.50.

The Government accepted these new rates of expenses allowance.

Westminster (Ministers' and Members' remuneration).—On 21st June 1979 the Leader of the House of Commons announced (H.C. Deb. Vol. 968, cc. 1508–24) that the Top Salaries Review Body (12th Report, Cmnd 7598) had recommended substantial increases in the level of Ministers and Members pay. The Review Body had drawn attention however to the fact that in their 7th Report in 1975 they had recommended salaries which had not yet been implemented and that this fact made their new recommendations seem much greater than should have been the case.

The Leader of the House said that the Government accepted the new salaries but felt that the House of Commons should not be seen to be acting more generously to themselves than they would expect the public to be in matters of wage restraint. The Government therefore proposed that the new salaries should be implemented in three equal annual stages beginning with June 1979. This announcement was greeted with considerable hostility by backbenchers on all sides of the House but on 11th July the House agreed to the Government's proposals after a number of divisions.

The recommended salaries apply in full only for pension purposes until June 1981.

Ontario (Members' pay and allowances).—1979 marked the first report on Members' indemnities from the Commission on Election Expenses and Contributions. This independent body was empowered in a 1978 amendment to The Legislative Assembly Act to review Members'

indemnities and expenses allowances and to report to the Speaker, thereby providing an independent and automatic review mechanism for this touchy subject. The Government agreed with the Commission's recommendations and, shortly after, an amendment to The Legislative Assembly Act was passed to implement them.

Saskatchewan (Members' pay and allowances).—The Legislative Assembly Act was amended during 1979 to provide that the Members' "pay and rations" are set automatically each year based on the increase in the Canadian Industrial Composite Index. The first increase under the Act took effect on 1st January, 1980 at 7.7%.

New South Wales (Salaries and allowances for members) Ministers and office holders).—Although not changed by enactment of legislation during 1979, the previously submitted details of new salaries and allowances for Ministers, office holders and Members of Parliament made by the Parliamentary Remuneration Tribunal (now The Hon. C.L. D. Meares, C.M.G., retired Judge), under the provisions of the Parliamentary Remuneration Tribunal Act, 1975, were altered from 1st January, 1980.

New rates for travelling allowances for the Premier, Ministers of the Crown, certain recognised office holders and Committee Members, were also brought in from 1st January, 1980.

New South Wales (Compensation to non-continuing Members of the Legislative Council).—**The Constitution (Legislative Council Compensation) Act, 1979, No. 11,** assented to on 18th April 1979, provides for the payment of compensation for the loss of anticipated parliamentary remuneration and pension to non-continuing Members of the Legislative Council consequent upon the reconstitution of the Legislative Council on 6th November 1978. Section 2 provides for the payment of an amount of $10,952 to non-continuing Members who were not re-elected at the first periodic Council election held on 7th October, 1978, and who would have had three years and six months to serve until retirement in the normal course, and for the payment of $1,565 to those Members who had only a further six months to serve. The Members who fall into each category are listed in Schedule 1 of the Act.

The Act also provides for the additional payment in respect of loss of superannuation entitlement amounts recommended by the Parliamentary Remuneration Tribunal for the 4 Members who had not served for 8 years and who were not entitled to parliamentary superannuation. The additional payment, equal to one-eighth of their total superannuation contribution multiplied by the number of their completed years of service, requires a total payout of only $3,103.

Three other Acts were also passed to ensure that Members of the Legislative Council were not disadvantaged financially.

New Zealand (Parliamentary Salaries and Allowances).—During the 1979 session the legislation contained in the Civil List Act 1951 and a number of amending Acts governing the payment of salaries and allowances to the Governor-General, Ministers of the Crown, and the Speaker and other members of Parliament was consolidated. Very few substantive changes were made to the law as it applies to parliamentary salaries and allowances, the most important being the inclusion of a provision dealing with the salary and allowance payable in situations in which an election return is overturned following an election petition. This new provision was prompted by the success in 1979 (noted elsewhere in this volume) of an election petition. The view taken at the time of the success of that petition was that both the member originally returned and the member declared returned following the election petition were entitled to be paid the salary and allowance of a member of Parliament during the period the return was in dispute. In respect of the person whose election was eventually overturned this was because he was in fact the member during this period as his name was endorsed on the election return, and in respect of the successful petitioner because the 1951 Act conferred a salary and allowance on each person elected to Parliament from polling day onwards, and the Court's judgment on the petition meant that he had been 'elected' on polling day although because of the view of the electoral law taken by the Returning Officer he had not been 'returned'. Despite the fact that in this view both the outgoing and incoming members were paid during the period between the election and the resolution of the petition, it was decided to make this position explicit in the new consolidating Act. The position now is that any member whose election is overturned is entitled to the salary and allowance of a member until the amending of the return, and the person who is declared elected as a result of an election petition is paid salary and allowance back-dated to election day.

A further change in respect of members' salaries concerns the amount which is to be deducted from the salary of a member who absents himself from Parliament for more than 14 sitting days. In these circumstances a deduction of $2 for each sitting day of absence (exclusive of the first 14) was fixed in 1951. No deduction is made where the absence is due to illness or other cause certified by Mr Speaker to be unavoidable, or where the absence is due to the member's attendance at any conference, meeting or ceremony, nor when he travels as a representative of Parliament or with the authority of Parliament. There is no record of a deduction having been made from a member's salary in pursuance of the provision but consideration was given to increasing the amount of the deduction to take account of the increase of salary payable to members since 1951. To maintain the daily deduction at the same proportion of a member's

salary now as it was in 1951 would have necessitated a figure of approximately $85 being written into the section. In the event the figure of $10 was chosen and now represents the financial penalty on a member of absenting himself from Parliament.

India (Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 1979).—The Act provides that a Member who is blind, or is so incapacitated physically as to require the facility of an attendant, while performing journeys by air along with an attendant, will be entitled to an amount equal to one fare by air for each such journey in addition to the allowances to which he is otherwise entitled under the parent Act.

XVII. REVIEWS

Legislative Drafting. Second Edition. By G. C. Thornton (Butterworths, 1979, £25).

It is just ten years since the first edition of Mr. Thornton's work was reviewed in these pages (The Table) Vol. XXXIX, pages 182–184). In approaching the second edition, any self-respecting legislative draftsman would write that "the provisions of that review apply with the necessary modifications to the second edition as they applied to the first", leaving the reader to trace the source referred to and work out for himself what modifications are necessary. To save him the trouble it can be stated here that the reviewer gave a cordial welcome to this new entry in the field of writings about drafting (no less difficult than drafting itself), with particular reference to Mr. Thornton's main theme. This was the need for draftsmen to re-examine their techniques; to improve them where possible; and to develop an "obsession" to draft so as to be readily understood.

The first edition was an immediate success. As Sir William Dale has written in his review of the second in the Law Quarterly Review, Vol. 96, pages 151 to 153, "Its practical spirit quickly attracted, and held, the attention of the large number of government lawyers aspiring to draft the laws of Commonwealth countries. The book has become their working manual, and as the first edition was out of print, it has been brought up to date in a second edition".

The new edition is greatly improved by the addition of Tables, statutes and cases. The latter includes almost 30 English cases decided since 1970 and cited in the text, dealing (inter alia) with words such as "cause", "may", "or," "lawful excuse", "on ," "from", "forthwith", "person aggrieved", and general principles such as the relevance of international conventions, purpose clauses, cross-headings and marginal notes. Account is also taken, where relevant, of the new British Interpretation Act 1978 and of the Report of the Committee on the Preparation of Legislation published in 1975 (Cmnd. 6053).

Mr. Thornton suggests (at p. 97) that it is an excellent practice to acquire the habit of reading through the relevant Interpretation Act every three months or so. "It is remarkable how every reading brings to light at least one point which had been either overlooked before or forgotten". By the same token it might do no harm if each of the legislative draftsmen could find the time to re-read regularly one of the standard works, of which Thornton can now be considered as one, to remind him of what he learned at mother's knee.

There is one rule of drafting so elementary that it is not even mentioned in Thornton, namely to read the "copy" over and over again. In the second edition, at page 46, there is a reference to section 20 of the Limitation Act 1975 (U.K.) which should refer to section 2D of the Limitation

Act 1939 as amended by section 1 of the Limitation Act 1975. At page 80 the quotation from section 3(4) of the Administration of Justice Act 1956 is corrupt at the crucial point. In the review referred to above Sir William Dale picked up the second of these errors, but went on to refer to the Administration of Justice Act by the wrong year. The rule in question applies to reviews as it applies to the works reviewed.

(Contributed by Sir Noel Hutton, G.C.B., Q.C. formerly First Parliamentary Counsel to the Treasury, United Kingdom).

European Electoral Systems Handbook. Edited by Geoffrey Hand, Jacques Georges and Christoph Sasse (Butterworths, 1979, £10).

Reading this book one is inevitably reminded of de Gaulle's despairing remark about France: "How can one govern a country which produces 365 different kinds of cheese." The European Parliament is required to find a uniform system for its own elections, but how can it possibly harmonise nine national systems as diverse as those described here?

The first requisite is to understand those systems, and to such understanding this book (which, despite its title, is concerned only with the nine EEC countries) makes a valuable contribution. Each contributor has written a chapter setting out the facts in respect of his own country under a series of headings which are uniform for the whole volume: franchise, voting paper, election dates, constituencies and so on. It is an exhaustive list, and even covers such matters as party financing and selection procedures.

The editors' intention is that the chapters should be purely factual, but judgements inevitably creep in, and help to make the book less indigestible. For example, we are told (with some justification) that the Danish system of seat allocation is "one of the most complicated and opaque in Europe" and, also with some justification, that the same country comes nearer than most to achieving "full proportionality". On the other hand, no one will be surprised to read that the distortion produced by the UK system is generally greater than that produced by any other practised method of translating votes into seats. The author of the chapter on France frankly admits that massive frauds occur in that country's overseas constituencies.

Great detail is provided. Not only are there examples of ballot papers from each country, but the complexities of the d'Hondt and St. Lagüe systems are described, and we even learn that in Belgium "boatmen and travelling-show people" may vote by proxy, and that in Luxembourg one may not be a candidate if one keeps or has kept a disorderly house or a house of prostitution, or if one has been "deprived of tutelage for misconduct or infidelity".

The editors say that their book is designed for "those who have to be politically well informed: politicians, administrators, journalists for example." To these it may be warmly recommended. The necessary information is set out in a manner which makes it easy to find, and within an amazingly compact volume. The only major omission is any account

of presidential election machinery. Presumably this was left out because it was not relevant to elections to the European Parliament.

There is a final chapter on legislation covering European elections in each country. Here there is a glimmer of hope for the harmonisers, because several countries have already shown a willingness to make changes in respect of E.P. elections which they will not at present make for elections to their national parliaments. Thus, France introduced proportional representation, and several countries, though unfortunately not the UK, have decided to allow their citizens living in other Community states to participate. In spite of this, however, the clearest message that comes through this mass of facts is that the creation of a uniform electoral system is going to be a Herculean task.

(*Contributed by A. A. Barrett, a Deputy Principal Clerk in the House of Commons*)

In on the Act. By Sir Harold Kent (Macmillans, 1979, £8.95).

The work of Parliament can, in general terms, be divided into three distinct parts – legislation, debate and the scrutiny of the actions of the executive. Of these three, legislation is certainly the most important because it is by way of an Act that Parliament expresses its sovereignty. Sir Harold Kent's book will therefore be of interest to all who work in Parliament since it describes, from the point of view of a draftsman, the processes which lead to the enactment of legislation. The book is not a dry and learned handbook on the art of drafting – there have been plenty of those, one of which is reviewed in the pages of this volume – but rather an autobiographical account of the work of parliamentary draftsmen by one who spent twenty very busy, but happy, years in this work.

It is an easily read book (as one might expect of an author who once wrote detective stories rather than Acts) containing many anecdotes, personal glimpses and recollections, and throwing new light on a number of historical events. The period covered by the book includes the war years, 1939–1945, and the years of post war reconstruction. These were, of course, years which imposed great burdens on parliamentray draftsmen, who were required first to draft all the wartime regulations and then the massive social welfare and nationalisation measures of the 1945–1951 Labour Government.

While, however, Sir Harold's account of his years in the Office of Parliamentary Counsel is full of charm and a certain innocence, it also gives an unmistakable impression of "all's well in the best of all possible worlds". The picture which he paints of Whitehall and Westminster is an unreal one; surely not everyone was quite as brilliant or quite as nice as Sir Harold would have us see his contemporaries!

There are one or two particular points in the book which will be of interest to members of the Society. For instance, Sir Harold mentions that Maurice Gwyer, a Civil Servant, served as secretary to the Joint Committee on the Indian Constitution (page 51). It seems curious to say the least, that a Joint Committee of two Houses of Parliament should be served as

secretary (or clerk) by someone who was not a servant of Parliament. Another curiosity is the suggestion that the Clerk of Public Bills in the House of Lords was considering advising that the Iron and Steel Bill of 1949 was hybrid, despite no such ruling by the Speaker in the House of Commons. Comity between the two Houses normally requires officers of the second House to accept the rulings of their colleagues in the first. Sir Harold's account is admittedly speculative (page 207), but, if true, would be in conflict with recognised parliamentary practice.

In conclusion, despite the rather complacent tone of the book, it remains eminently readable and was enjoyed by the reviewer.

XVIII. EXPRESSIONS IN PARLIAMENT, 1979

The following is a list of examples occuring in 1979 of expressions which have been allowed and disallowed in debate. Expressions in languages other than English are translated where this may succinctly 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. They have also excluded the words "lie" and "liar", which are invariably disallowed in all legislative assemblies. Unless any other explanation is offered the expressions used normally refer to Members or their speeches.

Allowed

"absurd" (*Bermuda Hans.*, 1979)
"adamant" (*T.N.L.C. Debs*, Vol. CLXI, No. 1)
"clown" (*Aust. Sen. Hans.*, 1979)
"disgrace" (*Can. Com. Hans.*, 1979, p. 3679–80)
"irresponsible" (Member's statements) (*Ontario Hans.*, p. 2944)
"pitiful" (*Bermuda Hans.*, 1979)
"political madman" (*H.C. Deb*, 11.3.80, c. 1190)

Disallowed

"align themselves with anarchists and obstructionists." (*N.Z. Hans.*, Vol. 422, p. 580)
"allegation [by Member] . . . . . is untrue" (*Ontario Hans.* p. 4413)
"Ayatollah" (*N.Z. Hans.*, Vol. 425, p. 2515)
"Ayatollah of Nareen" (of the Prime Minister) (*Aust. Sen. Hans.*, 1979)
"bent" (*N.Z. Hans.*, Vol. 426, p. 3570)
"big bastard" (*Aust. Sen. Hans.*, 1979)
"bitched" (*Ontario Hans.* p. 1258–9)
"blackguard" (*W.A. L.A. Debs.*, 1979, p. 3937)
"blackmail" (*Aust. Sen Hans.*, 1979)
"blatantly dishonest" (*Can. Com. Hans.* 1979, p. 2838)
"bloodsuckers" (*Lesotho Provs* 1979)
"bloody" (*Q'ld. Hans.*, p. 1773)
"bourgoisie agent" (*West Bengal Procs*, 13.9.79)
"brate majority" (*Gujarat Procs*, 24.1.79)
"bullshit" (*Can. Com. Hans.*, 1979, p. 3524)
"bunch of crooks" (*Aust. Sen. Hans.*, 1979)
"burglar" (*Aust. Sen. Hans.*, 1979)
"cheats should not prosper". (*N.Z. Hans.*, Vol, 422. p. 483)
"chimpanzees, Organ grinder has given his, their instructions and they are jumping according to the tune." (*N.Z. Hans.*, Vol. 425, p. 2990)
"complete and absolute lie". (*N.S.W.L.A. Hans.*, 1978–79, p. 4725)

"consideration there have been complaints that questions are being asked for a . . . . (*L.S. Deb.* 4.4.79 col. 16)
"coward" (*L.S. Deb.*, 30.3.79, col, 674)
"crap, do not talk" (*Vict. L.A. Hans.*, 1979, p. 1453)
"crook" (*Q'ld. Hans.*, p. 1727)
"delusions of grandeur" (of the Chief Justice) (*Aust. Sen. Hans.*, 1979)
"despicable person" (*Aust. Sen. Hans.*, 1979)
"dingo" (*Q'ld. Hans.*, p. 2190)
"disgrace" (of a judge) (*Aust. Sen. Hans.*, 1979)
"disloyalty" (*Gujarat Procs*, 27.9.79)
"distorting" (*Can. Com. Hans.*, 1979, p. 2927)
"false" (*Can. Com. Hans.*, 1979, p. 3260)
"garbage" (*Bermuda Hans.*, 1979)
"honourable fascists" (*Vict. L.A. Hans.*, 1979, p. 4025)
"idiot" (*Aust. Sen. Hans.*, 1979) 1979)
"idiotic talk" (*West Bengal Procs*, 15.2.79)
"insincere" (*N.Z. Hans.*, Vol. 422, p. 545)
"intellectual idiot" (*N.Z. Hans.*, Vol. 423, p. 1145)
"intentionally misled the House" (*Can. Com. Hans.*, 1979, p. 4382)
"last frontier for the study of anthropological man" (*Bermuda Hans.*, 1979
"lunatics" (*Lesotho Procs*, 1979)
"mad as hell" (of Prime Minister) (*N.Z. Hans.*, Vol. 424, p. 2094)
"mad-dog approaches." (*N.Z. Hans.*, Vol. 422, p. 561)
"misled that audience" (not House) (of a minister) (*Ontario Hans.*, p. 1860)
"objectivity of a Stalinist" (of the Prime Minister) (*Aust. Sen. Hans.*, 1979)
"oppressive, corrupt rule" (*Ontario Hans.*, p. 766)
"parasitical wanderings" (of visits by members of the Royal Family) (*Aust. Sen. Hans.*, 1979)
"party . . . Mr. Speaker, you yourself were seen to be a party to this (ruse) and your next move confirmed it", (*N.S.W.L.A. Hans.* 1978–79 p. 2717)
"peeing in the wind" (*Can. Com. Hans.* 1978, p. 1596)
"pigeons." (*N.Z. Hans.*, Vol. 424, p. 1821)
"pin head" (*Bermuda Hans.* 1979)
"political nonentity" (*Lesotho Procs*, 1979)
"pseudo-academic bull shit" (*Vict. L.A. Hans.* 1979, p. 6623)
"rascist" (*Bermuda Hans.*, 1979)
"rats and rabbits". (*N.Z. Hans.*, Vol. 427, p. 4483)
". . . . (revenue) will be (used) to finance the ratbag activities of the Minister . . . . . " (*N.S.W.L.A. Hans.*, 1978–79, p. 4571)
"running dog" (*W.A.L.A. Debs.*, 1979, p. 780)
"shady activities". (*N.Z. Hans.*, Vol. 422, p. 115)
"slimy mongrel bastard" (*Q'ld. Hans.*, p. 3519)
"slippery Bill" (*N.Z. Hans.*, Vol. 422, p. 201)
"smugglers" (of the Opposition) (*L.S. Deb.*, 1.3.79, col 223)
"snake" (*Bermuda Hans.*, 1979)
"snide dealings" (*W.A.L.A. Debs* 1979, p. 3001)

"speculated inland with inside assistance" (*Aust. Sen Hans.*, 1979)
"stupid" (*W.A.L.A. Debs* 1979, p. 5118)
"subterfuge" (*Aust. Sen. Hans.*, 1979)
"sucking the blood" (of Government) (*Gujarat Procs*, 16.3.79)
"swine, pearls cast before" (*N.Z. Hans.*, Vol. 422, p. 373)
"talking duck that keeps quacking". (*N.Z. Hans.*, Vol. 423, p. 1324)
"thug" (*Aust. Sen. Hans.*, 1979)
"totalitarianism, which seems to be the policy of the members opposite" (*Ontario Hans.* p. 1192–3)
"truth, usual disregard for" (*Aust Sen. Hans.* 1979)
"twisting what we are saying". (*N.Z. Hans.*, Vol. 422, p. 356)
"weasel" (*W.A.L.A. Debs.* 1979, p. 772)
". . . when his voice breaks, he will be able to speak like a man . . . ." (*N.S.W.L.A. Hans.*, 1978–79, p. 4569)
"witch doctor" (*N.Z. Hans.*, Vol. 426, p. 3607)

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 £20, 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 £4.50 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.

LIST OF MEMBERS

Antigua

L. Stevens, Esq., M.B.E., Clerk to the Parliament, St. John's.

Australia

R. E. Bullock, Esq., O.B.E., B.A., B.Comm., Clerk of the Senate, Canberra, A.C.T.

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XX. INDEX TO VOLUME XLVIII

ABBREVIATIONS

(**Art**) = Article in which information relating to several territories is collated.
(Com.) = House of Commons.

ACCOMMODATION AND AMENITIES
—Parliament House, new (Aust.), 149
—security (Aust,), 151
—yaqona oasis (Fiji), 152

AUSTRALIAN COMMONWEALTH, *see also* Privilege
—Committees,
—bills, reference to (Sen), 143
—estimates (H.R.), 146
—Parliament House, new, 149
—petitions (**Art.**), 105
—regulations etc. committee (Sen), 141
—remuneration tribunal, 76
—security, 151
—Speaker, 15
—sub judice rule (H.R.), 144
—subordinate legislation, disallowance (H.R.), 148; (Sen), 142

AUSTRALIAN STATES,
—New South Wales,
—bills, procedure on (L.A.), 149
—compensation to non-continuing members, 155
—electoral, 137
—payment of members, 155
—petitions (**Art.**), 107
—Northern Territory
—petitions (**Art.**), 108
—self-determination, 133
—Queensland,
—petitions (**Art.**), 108
—South Australia,
—petitions (**Art.**), 109
—Tasmania,
—elections, invalid, 138
—petitions (**Art.**), 110
—Victoria (L.A.),
—committee stage, omission, 143
—division and unseen member, 85
—member's dissent recorded, 143
—petitions (**Art.**), 110
—Western Australia,
—open day, 91
—petitions (**Art.**), 110

BAHAMAS,
—petitions (**Art.**), 116

BARBADOS,
—petitions (**Art.**), 117

BERMUDA,
—members' interests, 136
—petitions (**Art.**), 117

BILLS, PUBLIC,
—procedure on (N.S.W.L.A.), 149
—referred to legislative etc. committees (Aust. Sen.), 143

CANADA,
—petitions (**Art.**), 101
—Senator's voluntary attendance at Commons' Committee, 140
—Speaker, 15

CANADIAN PROVINCES,
—Alberta,
—petitions (**Art.**), 101
—Northwest Territories,
—electoral, 137
—petitions (**Art.**), 102
—standing orders, 141
—Ontario, *see also* Privilege
—payment of members, 154
—petitions (**Art.**), 102
—standing orders, 140
—Quebec,
—electoral, 136
—petitions (**Art.**), 104
—Saskatchewan,
—Members' interests, 133
—payment of members, 155
—petitions(*Art.*), 104
—Yukon,
—petitions (**Art.**), 104

CAYMAN ISLANDS,
—petitions (**Art.**), 119

CLERKS,
—become members, and vice versa, 14

COMMITTEES,
—bills, reference to legislative, etc. (Aust. Sen.), 143
—departmental (Com), 29
—estimates, introduction of (Aust. H.R.), 146
—petitions, on (Ind. R.S.), 60

COMMONS, HOUSE OF,
—administration, 68
—committees, departmental, 29
—Fridays sittings, 140
—gifts, presentation of, 93
—petitions (**Art.**), 99

DEVOLUTION,
—(U.K.), 80

DIVISIONS,
—member not seen (Vict. L.A.), 85

ELECTORAL,
—changes (NSW), 137; (NWT), 137; (Qbc), 136
—European Parliament, 53
—invalid elections (Tas.), 138
—irregularities (NZ), 138
EUROPEAN PARLIAMENT,
—elections to, 53
FIJI,
—petitions (**Art.**), 118
—yaqona oasis, 152
GHANA,
—seminar, parliamentary, 87
GUYANA,
—parliament, length of, 136
—petitions (**Art.**), 119
HONG KONG,
—petitions (**Art.**), 120
INDIA, *see also* Privilege
—Lok Sabha, length of, 135
—payment of members, 157
—petitions (**Art.**), (L.S.), 113
—committee on (R.S.), 60
— privileges, 135
INDIAN STATES,
—Gujarat,
—petitions (**Art.**), 114
—Haryana,
—petitions (**Art.**), 115
ISLE OF MAN,
—petitions (**Art.**), 99
—standing orders, 140
JAMAICA,
—seminar, parliamentary, 87
JERSEY,
—petitions (**Art.**), 100
KENYA,
—petitions (**Art.**), 116
—sittings, 143
KIRIBATI,
—gavel, presentation of, 93
LORDS, HOUSE OF,
—expenses of peers, 154
—petitions (**Art.**), 98
—photographic record, 150
MALTA, *see also* Privilege
—petitions (**Art.**), 115
MEMBERS,
—interests (Berm), 136; (Sask), 133
MINISTERS,
—payment of (NSW), 155; (West), 154
NEW ZEALAND, *see also* Privilege
—electoral irregularities, 138
—payment of members, 156
—petitions (**Art.**), 112
—standing orders, 35
PARLIAMENT,
—length of (Guy.), 136; (Ind. L.S.), 135
—open day (W.A.), 91
—seminars on, 87
PARLIAMENTARY PROCEDURE,
—bills, public (NSWLA), 149
—reference to committees (Aust. Sen.), 143
—estimates committees (Aust. H.R.), 146
—sub judice rule (Aust. H.R.), 144
—subordinate legislation, disallowance (Aust. H.R.), 148
—"topics for the tropics", 87
PAYMENT OF MEMBERS,
—compensation to non-continuing members (NSW), 155
—general (H.L.), 154; (Ont.), 154; (NSW), 155; (Sask), 155; (West), 154; (Ind), 157; (N.Z.), 156
—remuneration tribunal (Aust), 76
PETITIONS, PUBLIC,
—(**Art.**), 98
—committee on (Ind. R.S.), 60
PRIVILEGE,
(*Note.—In consonance with the decennial index to Vols XXXI–XL, the entries relating to privilege are arranged under the following main heads:*
1. *The House as a whole*—contempt of and privileges of (including the right of Free Speech).
2. *Interference* with Members in the discharge of their duty, including the Arrest and Detention of Members, and interference with Officers of the House and Witnesses.
3. *Publication* of privileged matter.
4. *Punishment* of contempt or breach of privilege).

1. THE HOUSE
—derogatory remarks by Speaker, alleged (Ind. L.S.), 128
—Hansard, production in court (Aust. H.R.), 121
—imprisonment of member, failure to inform President (Aust. Sen.), 123
—(Malta), 131
—murder, alleged threat (Ind. L.S.), 129
—petition to read transcript in court (N.Z.), 131
—scope of (Ont.), 124
2. INTERFERENCE
—imprisonment of member (Aust. Sen.), 123
REVIEWS,
—"European Electoral Systems" (ed. Sasse), 159
—"In on the Act" (Kent), 160
—"Legislative Drafting" (2nd Ed.) (Dale), 158

SECURITY,
—arrangements in Canberra (Aust.), 151
SESSION MONTHS OF LEGISLATURES, *see back of title page.*
SOCIETY,
—Members' retirement notices:
Barlas, Sir R., 7
Edwards, G. B., 14
Fraser, A., 10
Hull, J. W., 13
Odgers, J. R., 12
SOLOMON ISLANDS,
—clock, presentation of, 93
SPEAKER,
—in Canada and Australia, 15
STANDING ORDERS,
—amendments (I.o.M.), 140; (NWT), 141; (Ont.), 140
—Committee stage omitted (Vict. L.A.), 143
—Friday sittings (Com), 140
—members' dissent recorded (Vict. L.A.), 143
—regulations etc. committee (Aust. Sen.), 141
—Senator before Commons committee (Can), 140
—sittings of House (Ken), 143
—subordinate legislation, disallowance (Aust. Sen.), 142
SUB JUDICE RULE,
—(Aust. H.R.), 144
TUVALU,
—gavel, presentation of, 93
UNITED KINGDOM,
—devolution in, 80
WESTMINSTER,
—payment of members and ministers, 154