The Table

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

EDITED BY
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VOLUME LI
for 1983

ISBN 0 904979 08 3
ISSN 0264-7133

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

1983

Price £5.50

USUAL PARLIAMENTARY SESSION MONTHS

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

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

I. EDITORIAL

With the publication of this Volume of The Table, the Society of Clerks-at-the-Table in Commonwealth Parliaments embarks on its second fifty years. The changes which have taken place in the Parliaments of the Commonwealth over the last fifty years are unlikely to be repeated in scale during the next half-century. Most members of the Society no longer serve colonial legislatures but rather the parliaments of independent countries. Nevertheless, this Volume carries a follow-up article to those printed last year on the patriation of the Canadian Constitution. This was a major constitutional change and shows that the evolution of Commonwealth constitutions is still taking place. In this connection, we also publish an account of the procedures and practice of the new Northern Ireland Assembly.

On the other hand, matters which have grown more important over the last few years and which may become regular subjects for coverage in The Table are the broadcasting, or televising, of parliamentary proceedings and the training of both Members of Parliament and officers. Both these subjects are dealt with in this Volume. The second of these is, of course, one where members of the Society have, and will continue to have, an important role.

We also include several articles about the work of committees and the developments which are taking place in this field of parliamentary activity.

Michael Davies writes: This is the last volume of The Table which I will edit. In conjunction with several House of Commons colleagues, I have edited seventeen volumes, and I believe it is now time to hand over my duties to someone else. I have immensely enjoyed my editorship and the opportunities it has given me to make many friends in the Common-

wealth Parliaments. I hope that I will be able to retain my links with members of the Society, particularly since, in the autumn, I will become responsible for the Overseas and European Office in the House of Lords.

Sir Richard Barlas, KCB, OBE.—In Volume XLVIII the end of Sir Richard Barlas's distinguished career in the service of the House of Commons at Westminster was marked by a retirement notice; now, only three years later, it is our sad duty to record his death.

It is indeed a cruel blow that someone who had accomplished so much in his life's work should have been granted so short a period for the enjoyment of his retirement. 'Enjoyment', indeed, is the utterly appropriate word in Sir Richard's case. There was no need for him to pine for an occupation gone; he threw himself into a multitude of other interests of his own devising. Some of these were a continuation and expansion of those for which he had found time even during his years of labour in Parliament's vineyard. His large and beautiful garden was even more carefully and imaginatively tended than before, and he had more time to spare for exploring the inland waterways of England at the helm of his narrow-boat, the 'Erskine May'.

But his parliamentary activities did not totally come to an end. At the time of his retirement, the Canadian House of Commons was embarking on an administrative reorganisation not dissimilar to that which, at Westminster, had taken shape in the House of Commons (Administration) Act 1978. When the writer of this notice was asked if he could spare one of his more experienced colleagues to visit Ottawa for a period and assist this process in the light of Westminster's acquired knowledge, his immediate advice was that Sir Richard's services should be sought; the advice was accepted, and the services enthusiastically accorded. The ensuing months in Ottawa were enormously relished by him, and the work which he there performed will be of lasting value.

Richard died peacefully on 10th November 1982, after about two months of illness. On 15th December following, a memorial service for him was held at St Margaret's Westminster, at which Mr Speaker Thomas gave the Address, and a Reading from 'The Wind in the Willows', one of his best-loved books, was given by his son Christopher.

To all his family, and especially to his wife Ann, so much cherished by Richard's colleagues of all ages, the Society extend their heartfelt sympathy.

(Contributed by Sir Charles Gordon)

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

C. K. Murphy.—Clerk of the House of Assembly of Tasmania, 1941–1969

G. W. Brimage.—Clerk of the Legislative Council of Tasmania, 1965–1971

J. R. Reeves.—Clerk of the Manitoba Legislative Assembly, 1973–1982

J. A. Pettifer, CBE.—On 6th May, the last sitting day of the autumn period of sittings of 1982 the Speaker of the Australian House of Representatives, the Rt Hon Sir Billy Snedden, informed the House of the impending retirement of Mr Jack Pettifer, an officer of the House since 1939 and Clerk of the House of Representatives since 1977.

Mr Speaker paid generous tribute to Mr Pettifer's achievements. Jack Pettifer served Australia in an exemplary manner for almost 50 years. A graduate of the University of Melbourne as a Bachelor of Commerce and a qualified accountant, he was appointed to the Prime Minister's Department in 1934. On 19th April 1939 he joined the House of Representatives and worked there continuously except for an interruption for war service.

After discharge from the Royal Australian Air Force in December 1945 with the rank of Flight Lieutenant he became Serjeant-at-Arms in 1954, Third Clerk-Assistant in 1955, Second Clerk-Assistant in 1959, Clerk-Assistant in 1964 and Deputy Clerk in 1971. He was made a Commander of the Order of the British Empire in 1981.

Among the many achievements of his meritorious career, the most recent was perhaps the most striking and perhaps the most enduring. Jack Pettifer, as editor, headed a team of professional officers who produced *House of Representatives Practice*. This publication has received wide acclaim. The first edition is a fitting monument to the man and his dedication.

He was Secretary to the House of Representatives Select Committee on *Hansard* which led to the introduction of a daily *Hansard*. He was also Secretary to the Joint Committee on the New and Permanent Parliament House during the period 1966 to 1969 which covered exhaustively much of the ground which had to be settled before a new building could be built. He participated in many important Commonwealth Parliamentary Association activities.

In drawing the House's attention to Mr Pettifer's retirement, Sir Billy Snedden said in part:

> All members of the House admire the depth of his professional parliamentary expertise, his unfailing courtesy, his calmness and his absolute integrity. His sound advice is characteristically proffered in a totally unassuming manner. Typical of the man was his request to me that he cease duty with a minimum of fuss. His request notwithstanding, I am sure honourable members would have wanted me to announce his impending retirement and would endorse my wishes for a happy retirement to Jack and his wife, Ruth, who is present in the Gallery today and who has supported him throughout his years of service. We would wish to say well done to a true and faithful servant of the House and a fine Australian.

The Prime Minister, the Rt Hon J. M. Fraser, followed, and said, in part:

His dedication has made every honourable member of the House aware of his professionalism, integrity, ever-present courtesy and willingness to help . . . In the heat of political debate we so often seek cool and dispassionate procedural advice. In his years in this House, Jack Pettifer has provided that advice without fear or favour and in the face of what must sometimes have been quite trying circumstances.

The Leader of the Opposition, the Hon W. G. Hayden, in supporting the Prime Minister's remarks said, in part:

Jack . . . has . . . as I mentioned earlier, been one of that long line of serving officers in this Parliament who, regardless of which party happens to be in government or opposition, are unflagging in their energies, unfailing in their courtesies and unremittingly dedicated to making the democratic parliamentary institution work.

Many members joined in the tribute and on the motion of the Leader of the House, the Rt Hon I. McC. Sinclair, the House agreed to the following resolution:

That this House places on record its appreciation of the long and meritorious service to the Parliament by the Clerk of the House, Mr J. A. Pettifer, CBE., and extends to him and his wife every wish for a healthy and happy retirement.

(*Contributed by the Clerk of the House of Representatives*)

Keith Oscar Bradshaw, OBE.—On 15th July 1982, Keith Oscar Bradshaw retired as Clerk of the Australian Senate.

After serving with the Royal Australian Air Force in England during the war and a period of service as an officer with the House of Representatives, Keith Bradshaw joined the Senate, in July 1950, as Clerk of Papers and Accountant. He served as Private Secretary to the President of the Senate during 1953 and 1954 and held a number of Senate procedural positions, culminating in his appointment as Clerk of the Senate in October 1980.

During the ten years in which he was Usher of the Black Rod and later, as a Clerk-at-the-Table, Mr Bradshaw served with distinction as Secretary to a number of Standing and Select Committees. The Committees on which he served covered fields as diverse as constitutional review, the Australian television industry, foreign affairs and defence and off-shore petroleum resources. As a Clerk-at-the-Table he was particularly admired for his meticulous attention to detail, his broad knowledge and sympathetic interpretation of the Standing Orders and the practices of the Senate.

On 20th May 1982, the last day on which Mr Bradshaw served in the Senate Chamber as Clerk of the Senate, the following motion was agreed to unanimously:

That, on the occasion of the retirement of Keith Oscar Bradshaw 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.

The then Leader of the Government, Senator the Honourable Sir John Carrick, in moving the motion, said, in part:

'It is no mean thing for a person to proceed through the various offices of the Senate and come to the very high office of Clerk of the Senate. It is a distinguished office and an office of very great significance and importance. Keith Bradshaw has had some very distinguished predecessors and he walks amongst them as a peer. He walks as one who has in his journey given to this Senate not only his qualities of experience and knowledge but also the qualities of a very warm and human personality, a kind and gentle person, exercising his authority with the gentleness of strength and therefore adding much to the ease of our journeys . . .

'On behalf of us all, I thank him very much indeed for the great contribution he has made here, for the warmth of his friendship with us all, for his objectivity in discharging his duties, for his tolerance . . . and for the contribution he has made to the evolution of the system.'

The motion was supported by the Leader of the Opposition in the Senate, Senator John Button, the Leader of the National Country Party in the Senate, Senator the Honourable Douglas Scott, the Leader of the Australian Democrats, Senator the Honourable Donald Chipp, and Independent Senator Brian Harradine.

Mr Bradshaw's services to the Parliament were recognised by Her Majesty the Queen, when he was awarded an O.B.E. in the New Year's Honours List in January 1983.

B. G. Murphy.—The Clerk of the House of Assembly of Tasmania from 21st January, 1969, Mr Bruce Gregson Murphy, retired on 12th October 1982. He was Clerk-Assistant from 1963–69, and prior to that was Third Clerk-at-the-Table in the Legislative Council from 1955. He was also Secretary to the Public Works Committee for 13 years. It was principally through the efforts of Bruce Murphy that a Hansard Service was established in Tasmania. Associated with its establishment were renovations and extensions to the Parliament building. Hansard began its service in 1979 and the renovations and extensions were opened in 1980 during the 11th Australasian Conference of Presiding Officers and Clerks.

K. C. McRae.—Mr Kenneth Colin McRae retired from the Office of Clerk Assistant of the Legislative Council of New South Wales as from 13th January, 1983, a position which he had held since 1977. He joined the Legistative Council as a temporary clerk in 1960. In 1961 he was appointed Clerk of Bills and in 1966 Clerk of Records and Clerk of Select Committees. In 1971 he was appointed Usher of the Black Rod.

Satyapriya Singh.—Mr Satyapriya Singh, Secretary of the Uttar Pradesh Legislative Assembly, retired on 31st January 1983.

Clerks become Members, and vice versa:—In Volumes XLV, XLVI,

XLVIII and L we published the names of clerks who either have been, or have become, Members. One further name has been drawn to our attention:

Pearson, Hon. Christopher. – Clerk of the Yukon Legislative Assembly 1966–1973. Government Leader, Yukon Legislative Assembly, since 1973.

II. THE CANADIAN CONSTITUTIONAL PATRIATION PROCESS, 1980–1982

BY D. E. STOLTZ

Assistant Parliamentary Counsel, House of Commons, Canada

The last amendment to the Canadian constitution to be initiated by an Address to the Queen, and implemented by an Act of the United Kingdom Parliament, proved to be the most contentious as well, and the related parliamentary proceedings the most protracted. In the past, debate on such measures took up at most a few days of parliamentary time.[1] In marked contrast, proceedings for the final 'patriation' of the constitution, from presentation of the Canadian government's initial proposals through to the final proclamation of the Constitution Act, 1982, spanned eighteen months and occupied the Canadian House of Commons for some ten weeks altogether, not including committee hearings.

The difference this time was that the proposed amendments were determinedly opposed by eight of the ten provincial governments as well as by the Official Opposition in Parliament. As well, minority and women's groups seized the opportunity to press their claims for recognition in the country's basic law. Controversy was fuelled by latent ambiguities in the historic amending procedure and in the constitutional relationship between Great Britain and Canada, which invited resort to litigation by aggrieved parties hoping to gain time and an additional public forum. The sovereign Parliaments of both countries in succession thus found themselves postponing a major item of legislative business to await the pronouncements of their respective appellate courts.

Numerous accounts of the political and legal issues, arguments and events of this period are available elsewhere.[2] What follows is a chronological summary of the procedural stages of the debate as influenced by proceedings in the courts, concluded by a brief description of the contents of the measure that emerged.

Following the success of pro-federalist forces in the May 1980 Quebec referendum on 'sovereignty-association', efforts were renewed by the federal and provincial governments to achieve constitutional reform. At the First Ministers' Conference in September, these efforts ended in failure, the tenth unsuccessful attempt since 1927 to produce a constitutional amending formula.[3] Early in October 1980, the Government of Canada, having determined to proceed unilaterally, published a 'Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada.' The draft Bill incorporated an amending formula which had obtained unanimous provincial consent in

1971, but with a modification that would have allowed future constitutional amendments, initiated by the federal government, to be approved by popular referenda without reference to provincial legislatures.[4]

The proposed resolution contained a number of other provisions not directly connected with patriation *per se*, of which the *Canadian Charter of Rights and Freedoms* was the most significant and far-reaching, if not revolutionary, in its potential impact. The Charter had the effect of limiting the existing legislative powers of the provinces (as well as those of the federal Parliament) and entrusting the judiciary with the future elaboration of those limits. In arriving at a formulation of the newly entrenched rights, Ottawa had not sought the advice or consent of the provincial governments. Principally on the basis of these two items, eight provinces (all but Ontario and New Brunswick) took strong exception to the federal Government's plan and pledged themselves to alter or defeat it.

Procedurally, the proposed Address provided the now unusual occasion for a debate founded on a government motion (as distinct from a bill). Apart from the essentially formal motions which introduce the throne speech and budget debates, virtually all the government's time in the Canadian Parliament is today devoted to the different stages of government bills. (It is otherwise on opposition 'supply' days and on private members' days.) Exceptions to this rule occur when it is impossible or inappropriate to give legislative form or legal consequences to the expression of Parliament's will. Other examples from recent years are the resolutions of 1964 approving a Canadian flag (subsequently given effect by proclamation pursuant to the royal prerogative) and the 1973 resolutions respecting the use of the official languages in the public service (implemented subsequently by administrative action).[5] A proposed amendment to the constitution of Canada, other than one capable of enactment by the federal Parliament alone, is in the same category. This will, incidentally, continue to be the case under the new amending formula, but resolutions of provincial legislatures now figure in the equation as well.

Debates on government motions, unlike debates on government bills, are not subject to the time allocation rules added to the Standing Orders in 1969, and can therefore only be limited by closure. This was to occur once during the long course of the constitutional debate, and nearly a second time in response to Opposition resistance to a Special Order for time allocation. When the constitutional issue had been shifted from Parliament to the Supreme Court in the summer of 1981, closure would also have to be invoked to dispose of the motion for summer adjournment, so strained had relations grown between the parties in the Commons.

Proposed Address and Special Committee

The strategy adopted for moving the Address through Parliament

contained certain variations from the procedure followed in previous instances. When the House of Commons was called back early from its summer recess on October 6, 1980, it was presented, not with a motion for an Address to the Queen, but with a motion for the establishment of a Special Joint Committee of both Houses to *consider and report* on a draft resolution for an Address. The Committee was to recommend 'whether or not such an Address, with such amendments as the Committee considers necessary, should be presented by both Houses of Parliament to Her Majesty the Queen.' By mounting public hearings and inviting submissions from interested groups and individuals, the Committee, it was argued, would establish the consensus that had so long eluded the eleven first ministers.[6] The Official Opposition, however, took up the banner of the dissenting provinces and insisted on changes to the motion.[7]

The resolution passed the Commons only after the Government's invocation of closure on October 23. An identical resolution was adopted by the Senate (whose Rules, incidentally, contain no closure provision) on a recorded division on November 3. The Committee set to work shortly thereafter. Subsequently, at the urging of opposition parties, the original reporting deadline of December 9 was twice advanced. Authority was obtained for the live televising of proceedings, the first such extension of television to committees of Parliament. The Committee sat for 56 days, receiving approximately 100 oral submissions in addition to many written briefs.

An interesting feature of the Committee study of the Address was the clause-by-clause consideration of the draft Bill proposed to be laid before the British Parliament. Each provision of the proposed Constitution Act, 1980 (as it then read) was discussed and voted on as though it were a Bill introduced in the Parliament of Canada, and destined for passage there – except that members of both the Senate and the Commons debated and voted together in the same forum. No fewer than 123 amendments were proposed, of which 67 found their way into the Committee's report, presented in the Commons on February 13, 1981.[8] The Committee recommended that the Government introduce the resolution anew, as amended and approved by the Committee, and that upon adoption by both Houses the Address be presented to the Queen.

During the course of the Joint Committee's deliberations, major developments were occurring elsewhere on the constitutional front. Court proceedings of an unprecedented character, questioning the constitutionality of the proposed resolution (which had yet to be formally moved) were launched on behalf of six of the provinces opposed to it. The Governments of Manitoba, Newfoundland and Quebec submitted references to the Courts of Appeal of those three provinces on October 24, December 5 and December 17, 1980, respectively. The first of the judgments to be delivered was that of the

Manitoba Court of Appeal on February 3, 1981. In a split 3–2 decision, the Court ruled that the consent of the provinces was not 'constitutionally' required for amendments to the constitution, even where provincial powers, rights or privileges were affected.

Simultaneously, the whole question was being examined in considerable detail by the Foreign Affairs Committee of the British House of Commons, in anticipation of the eventual introduction of a Bill based on the Canadian Address. The Committee heard briefs from British legal authorities and from several of the Canadian provinces as to the potential choices available once the Bill arrived. The Government of Canada did not appear, claiming that to do so would be inconsistent with the fully independent status of each country in relation to the other. However, it did launch an extensive campaign in both Canada and Britain.

It was common ground that, under the Statute of Westminster 1931, the legal power to amend the Canadian constitution (so far as contained within the B.N.A. Acts) continued to reside at Westminster, subject to the previous request and consent of Canada. Ottawa took this a step further, however, and argued that, by virtue of the 1926 Balfour Declaration establishing Canada's status as an autonomous state, there existed side by side with this legal *power* a conventional *obligation* upon the United Kingdom Government and Parliament to introduce and to pass, without modification, every amendment requested by Canada. In its report of January 30, 1981, the British 'Kershaw Committee' concluded, in effect, that Canada, in the context of such 'request and consent', meant Canada 'as a federally structured whole'. Accordingly, the United Kindgom was entitled to decline a requested amendment in the absence of 'a sufficient level and distribution of provincial concurrence.'[9] The report added further fuel to the debate already raging in Canada, and the federal Government quickly published a rejoinder.[10]

Revised Address and Supreme Court Reference

On February 17, 1981, in conformity with the recommendation of the Special Joint Committee, the Minister of Justice moved in the Canadian House of Commons for an Address to the Queen. One change, not among the Committee's recommendations, that now appeared in the Address was in the long title to the draft Bill from 'An Act to amend the Constitution of Canada' to 'An Act to give effect to a request of the Senate and House of Commons of Canada'. The new title would serve to remind British members of Parliament that the measure had come to them with the backing of a majority of their Canadian counterparts. What is more, since amendments to a Bill must not go beyond the scope indicated by the title, it could also serve to foreclose, by the application of the House's own rules of procedure, any amendment whatsoever by either House of the British Parliament. A Bill that had been amended would no longer 'give effect' to the Canadian request.[11]

The motion for an Address was debated continuously for the next five

weeks. Technically, the debate was on a Progressive Conservative amendment to the draft Bill moved the same day as the main motion, but the rule of relevance was given even more than its usual flexibility. During this time the official opposition consistently opposed passage pending the conclusion of all judicial proceedings.

On March 23, a proposed motion appeared on the Order Paper in the name of the Government House Leader, providing for the final disposition of the resolution after four additional sitting days. Under the proposal, House hours were to be extended, the time limit on speeches was to be shortened, and members who missed the opportunity to be recognised were to have the right to submit a written speech for publication in Hansard. This proposed motion was immediately attacked by the Opposition as a modified form of closure, and the arsenal of procedural tactics was unleashed to prevent the Minister from moving it. On March 24, the Government got to the point of calling the motion as the first item of government business. On succeeding days the House never even reached Government Orders. More than 120 interventions on 60 points of order and privilege succeeded in monopolizing the Government's time for more than a week.

On March 31, the Newfoundland Court of Appeal handed down its decision on the constitutional reference. In contrast to the Manitoba ruling, all three judges held that substantial provincial consent *was* required for amendments affecting the provinces. In consequence, on April 2, the parties in the House agreed to move on temporarily to other business while seeking a compromise. Then, on April 6, the Government House Leader gave notice of a motion of closure against the Conservative amendment that had been before the House since the beginning of the debate (though not on the main motion).

The breakthrough in the logjam finally came after question period the next day, when the three party leaders found the basis of an accord during a dramatic exchange on the floor of the House. The House agreed to adjourn to allow the continuation of negotiations in private, and later in the day debate was resumed on one of many backed up bills as talks continued. Following caucus meetings the next morning, April 8, an agreement was announced in the afternoon and put in the form of a Special Order of the House. Debate on the resolution was to be limited to five more sitting days. All amendments were to be voted on at the end of the third day, April 23.

The timing was at the Government's insistence, so that the resolution would be in its final form when the Supreme Court of Canada began consideration of the Manitoba and Newfoundland appeals at the end of the month. However, to meet the demands of the Opposition, two final days of debate, as well as the vote on the resolution as a whole, were to take place after the Supreme Court had rendered its decision. The House Order concluded:

'Provided that nothing in this order shall be considered to affect in any manner or to any degree the separation of the legislative and judicial powers, a fundamental principle of our constitution.'

The final provincial reference case, that of Quebec, was decided on April 15 and it supported the federal government's position by a margin of 4 to 1. Cumulatively the ratio was now 7 judges to 6, an indication of the difficulty of the legal and constitutional issues involved. All three references were thus before the Supreme Court when it heard argument at the end of April, days after the Commons had agreed to certain amendments to the draft Bill in the resolution.

Meanwhile, the eight 'dissenting' provinces had met in Ottawa on April 16 to sign an accord demanding simple patriation without a charter of rights, and a different amending formula without a referendum procedure. And in Quebec, the *indépendantiste* Parti Québecois Government was re-elected, but on a platform that now played down separation.

The federal Government hoped and expected that the Supreme Court would rule before its annual summer recess. In fact, the Court deliberated for nearly five months. On September 28, 1981, it handed down its lengthy judgment, in which it emphasised the distinction between the legality of the proposed resolution and its constitutionality in the conventional sense. Six of the nine judges held that a convention did exist requiring 'substantial' provincial consent for the resolution; however, of these, only two held that the two Houses of Parliament lacked the legal authority to pass it.[12] This outcome gave comfort to both sides in the dispute, and set the stage for a new round of federal-provincial talks which commenced almost immediately.

In the meantime, Parliament had taken summer recess, though only after closure had been invoked on the adjournment motion in the Commons. When the House reassembled on October 14, there remained on the Order Paper the Special Order from April, providing for disposition of the constitutional resolution following two final days of debate. The Government clearly did not wish to call the old resolution for debate while negotiations were under way with the provinces for a compromise. At the same time, the continued presence of the Special Order served as a bargaining chip in those negotiations, providing the Government with the potential vehicle to get its unilateral resolution through the Commons without further obstruction – albeit at considerable political risk in light of the Supreme Court's ruling, as well as rumblings in the British Parliament against the measure. The session, which had commenced a year and a half earlier in April 1980, was overdue for prorogation but the Special Order would not have survived into the next session. Hence the Government at first put off the usual fall prorogation and throne speech, and ultimately dispensed with them altogether.[13] For the first few weeks after summer recess, therefore,

while intergovernmental negotiations took centre stage in the patriation saga, Parliament turned its attention to some of the backlog of legislation sidetracked in the first part of the session.

Final Address and Enactment of Canada Bill

Finally, on November 5, 1981, an accord was reached by the Prime Minister and the provincial Premiers, with the exception of the Premier of Quebec. The amending formula agreed to by the dissenting provinces on April 16 was adopted with modifications. The Charter of Rights was retained with a number of modifications, including one that allowed for certain of its provisions to be expressly overridden by future provincial or federal laws. Accordingly, on November 20 the Minister of Justice, Hon. Jean Chrétien, introduced a third proposal resolution in the House of Commons, incorporating the changes agreed upon with the nine provinces. A week later, the House agreed to a new Special Order for the disposal of all amendments and limiting further debate to two sitting days. The final resolution as amended was passed by the Commons by a vote of 246 to 24 on December 2, 1981. The Senate followed suit, 59 to 23, on December 8.[14]

Immediately after Senate passage, the Cabinet passed an Order in Council declaring the 'request and consent of Canada to the enactment' of the Bill contained in the Addresses.[15] On the evening of December 8, the Speakers of the two Houses presented engrossed copies of the Addresses (bound in red and green, respectively) to the Governor General at a ceremony at Government House. The Prime Minister also handed the Governor General a copy of the Order in Council and a Instrument of Advice requesting that he transmit the two Addresses to the Queen.[16] The documents were delivered the next day in person by the Governor General's secretary to the Queen's private secretary. Travelling on the same Canadian Forces flight was the Minister of Justice, who met Her Majesty to explain the contents of the proposed Bill.

What *The Times'* Parliamentary correspondent referred to irreverently as 'the most boring bill in history' was given first reading in the British House of Commons on December 22, 1981. The British Government thereby complied with the literal terms of the Addresses:

> 'We, Your Majesty's loyal subjects, the House of Commons (Senate) of Canada in Parliament assembled, respectfully approach Your Majesty, requesting that you may graciously be pleased to cause to be laid before the Parliament of the United Kingdom a measure containing the recitals and clauses hereinafter set forth.'

The Order in Council, on the other hand, requested not just the introduction but the 'enactment' of the Bill – though the request was not directed to any particular person. However, judicial proceedings, this time in the courts of the United Kingdom, once again delayed consideration of the measure.

On December 9, just a few hours before the presentation of the Addresses to the Queen, the Queen's Bench Division of the High Court had turned down an application by the Indian Association of Alberta. The Association sought a declaratory judgment to establish that treaty obligations entered into by the Crown were still owed to the Indian peoples of Canada by Her Majesty *in right of the United Kingdon*. The Indians were dissatisfied with the provisions of the patriation Bill related to native peoples. Their legal action, while it did not challenge the legality of the Bill, sought to establish that the effect of patriation would be to deprive native peoples of existing protection of the British Crown. Had they succeeded in this, it might have had a bearing on the course of the debate in the British Parliament, and conceivably on the final outcome.

On December 21, the day before first reading of the Canada Bill, leave to appeal from the initial judgment was granted to the Association by the Court of Appeal. The Court moved quickly to hear the appeal and handed down its decision on January 28.[17] In affirming the judgment below, the Court held that the Crown was divisible and had been so since, at the latest, the Balfour Declaration adopted at the Imperial Conference of 1926. Accordingly, all treaty obligations toward the Indian peoples were now owed by the Crown in right of Canada.

In light of the clear and unanimous decision of the Court of Appeal, there now seemed little reason to postpone the debate further. Despite a 'last-ditch' application to the House of Lords on February 16 for leave to appeal, second reading of the Canada Bill was moved in the House of Commons on February 17 by Mr. Humphrey Atkins, Lord Privy Seal, and voted on the same day. After two days in Committee of the Whole, third reading was moved and carried on March 8.

In another intriguing juxtaposition of events, the House of Lords in its legislative incarnation gave first reading to the Bill on March 9, two days before the hearing of argument on the application to the Law Lords on March 11. Leave to appeal was denied.[18] Second and third readings followed quickly on March 18 and 25, respectively, with one day in Committee. The Queen signified her assent to the Bill (along with three unrelated bills) on March 29, 1982. The date was 115 years to the day after Queen Victoria had sanctioned the *British North America Act, 1867*.[19]

In the meantime, the Government of Quebec had not abandoned the struggle to thwart the patriation process. Its principal objections were the *Charter's* interference with provincial jurisdiction over civil rights and education, particularly as respects language,[20] and the loss of what it regarded as Quebec's historic right of veto over future constitutional change. On November 25, 1981, while the Canadian House of Commons was debating the compromise accepted by the other nine provinces, the Quebec Cabinet issued a Decree (Order in Council) declaring that 'le Québec oppose formellement son véto à l'encontre de

la résolution présentée à la Chambre des Communes.' On the same day it presented a fresh reference to the provincial Court of Appeal, asking whether a constitutional convention existed requiring Quebec's consent to amendments affecting legislative and governmental powers in the province. The case was argued from March 15 to 17, after the House of Lords had refused the Indian Association's application for leave to appeal, but before the Lords began debate on the Canada Bill.[21] On April 7, the five judges of the Court of Appeal gave their judgment, unanimously answering the question in the negative. It held that the 'substantial' provincial consent referred to earlier by the Supreme Court of Canada did not necessarily include the consent of Quebec. On April 13, the Government of Quebec filed an appeal in the Supreme Court of Canada, which was heard in June by the full Court. It was not until December 6, 1982, that the Supreme Court unanimously affirmed the judgment of the Court of Appeal.[22]

The Canadian Government had in the meantime decided to press ahead with arrangements for bringing the new law into force at an early date. The Queen was invited to Ottawa for the occasion and, by her proclamation, the amendments took effect on April 17, 1982.[23]

On May 5, 1982, a Bill (No 62) was introduced in the Quebec National Assembly providing that all existing Acts of the province operated 'notwithstanding sections 2 and sections 7 to 15 of the Constitution Act, 1982'. The Bill was assented to on June 23. A similar provision has been inserted in all Bills introduced since then. The effect has been to limit the application of the Charter, so far as Quebec legislation is concerned, to the democratic rights, mobility rights and language rights provisions (none of which is subject to the possibility of such legislative override).

The Canada Act 1982

The constitutional amendments of 1982 are more elaborate, in format and in content, than any of the previous 19 British statutes since Confederation modifying Canada's constitution. On the whole, post-1867 'British North America Acts' and other amending Acts were brief and relatively simple, touching a single subject matter at a time. In a few cases, there were appended schedules of moderate length setting out documents confirmed by the Act, such as the 1949 Terms of Union with Newfoundland. The Constitution Act, 1982 does contain a few simple textual amendments to the earlier Acts. For instance, the sole modification to the distribution of legislative powers is an amendment to the B.N.A. Act, 1867 enlarging provincial competence over natural resources. Another amendment re-names all the B.N.A. Acts 1867 to 1975, 'Constitution Acts'.[24] The bulk of the new provisions, however, constitute a discrete enactment superimposed on the prior statutory framework.

The main parts of the Act are those containing the long sought-after

amending formula for future constitutional change (Part V; sections 38–49) and those enumerating individual rights that limit legislative power at both the national and provincial levels (part I, separately named the Canadian Charter of Rights and Freedoms; sections 1–34). Three other single-section Parts of the Act dealing with aboriginal peoples, regional disparities and a constitutional conference are in the nature of policy statements having uncertain (if any) legal effect.[25]

The bilingual Constitution Act, 1982, comprising altogether 60 sections and a Schedule[26], is itself Schedule B to the Canada Act 1982, the French version of which appears as Schedule A.[27] The inclusion of an authentic French version is a novel feature (ignoring, for present purposes, that the original language of English statutes was Norman French). The only other amendments to the B.N.A. Act to be enacted in both languages were those passed after 1949 by the Parliament of Canada under the limited amending power conferred upon it in that year. The four-section text of the Canada Act was enacted in English, the only language now known to the United Kingdom Parliament, but section 3 gives equal authority in Canada to the French version in Schedule A. On the other hand, the Constitution Act, 1982, appears as Schedule B in the two-column bilingual format of the Statutes of Canada.

The Charter of Rights is broken down into fundamental freedoms (conscience, expression, association), democratic rights (elections and summoning of legislatures), mobility rights (across national and provincial frontiers), legal rights (criminal procedure), equality rights (non-discrimination), and language rights (government institutions and schools). Of particular relevance to readers of *The Table* are the democratic rights, sections 3 to 5. Section 3 entitles every citizen to the right to vote and to stand for election. This could invalidate certain provisions of existing federal and provincial election laws that disqualify, for instance, judges and prisoners. Sections 4 and 5 re-formulate the provisions of sections 50 and 20, respectively, of the B.N.A. Act and extend them to provincial legislatures. Section 4 limits the peacetime mandate of a House of Commons or a legislative assembly to five years, while section 5 directs 'a sitting of Parliament and of each legislature at least once every twelve months'. On the basis of this wording, it has been argued by Opposition members in Parliament that the current three-year marathon session had been unconstitutional since the anniversary of the proclamation of the Act.[28]

Elsewhere in the Charter, sections 16 to 20 re-state and supplement the provisions of section 133 of the B.N.A. Act, which made English and French the language of debate and of the journals and statutes in both Ottawa and Quebec, as well as of the federal and Quebec courts. The new provisions are the same in substance but this time apply to Canada and New Brunswick but not to Quebec.[29] In addition, there is now a more general guarantee of 'equality of status and equal rights and

privileges' in 'all institutions of the Parliament and government of Canada' and 'all institutions of the legislature and government of New Brunswick'.

The general amending formula in Part V of the Constitution Act, 1982 (section 38) requires resolutions of the two Houses of Parliament and of the legislative assemblies of at least two-thirds of the provinces (presently seven out of ten) to authorise an amendment to the 'constitution of Canada'. The latter expression is defined to include the British North America Acts and the instruments admitting or creating new territories and provinces subsequent to 1867, as well as the Statute of Westminster so far as it applies to Canada (of which ss. 4 and 7 (1) are repealed). The general amending procedure would apply to any amendment that affects all the provinces and does not require unanimity. A transfer of legislative jurisdiction between the two levels of government would be the most important example in this category. However, a province may 'opt out' of an amendment that derogates from its rights or powers. The general formula is made expressly applicable to changes in provincial representation in the federal Parliament, to the constitution of the Senate and to the creation of new provinces, and from these there can be no opting out (Section 42).

Certain other categories of amendments require unanimity, including those relating to the monarchy, reducing the existing representation of a province in the House of Commons or modifying the amending formula itself (section 41). On the other hand, amendments affecting some but not all provinces need be approved only by the two federal Houses and the provincial legislatures concerned (section 43). In all the foregoing cases, if the Senate does not approve an amendment within six months after the Commons does so, the Commons may adopt it again in lieu of Senate approval. Finally, ss. 91.1 and 92.1 of the B.N.A. Act are re-enacted (sections 44 and 45), the former in a modified formulation. Parliament may now amend the Constitution of Canada 'in relation to the executive government of Canada or the Senate and House of Commons', while each provincial legislature may continue to amend 'the constitution of the province'.

Canadians may not have to wait long to see their new domestic amending procedure put to work. A number of items of unfinished business remain on the constitutional agenda relating, among other things, to the federal-provincial distribution of powers, reform of the Senate and the status of the Supreme Court of Canada. The continuing lack of consensus on these basic issues (not to mention a growing weariness on the part of the public with the constitution) could delay major initiatives in these areas. Nevertheless, the new procedure is likely to be given its first application before the end of 1983 as a result of events affecting two particular minority groups whose positions were left ambiguous by the 1982 amendments.

The first amendment to be made without the approval of the United

Kingdom Parliament will, appropriately enough, probably be one dealing with Canada's original inhabitants. In March 1983, pursuant to a stipulation of the Constitution Act, representatives of Canada's Indian, Métis and Inuit peoples were invited to a federal-provincial constitutional conference. Most of the major issues discussed such as land claims and native government remain unresolved. However, it was agreed to insert into the constitution some minor changes in the wording to the sections affecting native rights, as well as an agreement to hold two further meetings during the next five years and a commitment to call a special conference with native representation before making any other amendments affecting native peoples. The last item, being an amendment to the amending procedure itself, would appear to require unanimous provincial consent. (The government of Quebec did not participate in the March meeting or agreement.) The other provisions require the approval of seven provinces having fifty percent of the country's population. By the end of June, resolutions approving the 'Constitutional Amendment Proclamation, 1983' had been passed by the Legislatures of Ontario, Alberta and Nova Scotia and by the Canadian House of Commons.

Another amendment in the process of adoption is one amending the Manitoba Act of 1870, a Dominion statute confirmed by the B.N.A. Act, 1871. The Act originally made both English and French official languages of the legislature and courts of Manitoba, in terms identical to section 133 of the B.N.A. Act, 1867 as it applied to Quebec. In 1890, the Legislature, acting under its power to amend the provincial constitution, purported to make English the sole official language of the province, and ever since Manitoba's statutes and journals have been published in that language only. (In 1977, Quebec purported to give the same status to French.) In 1979, however, the Supreme Court of Canada held that the 1890 Act (as well as the 1977 Quebec Act) was beyond the jurisdiction of the Legislature. Subsequent court proceedings have sought to establish the invalidity of the whole of Manitoba statute law since that date. In May 1983 the parties to the litigation, who included the provincial and federal Attorneys General, reached a settlement which provides a timetable for the translation into French of all the public general Acts of the province by 1993. Under the Constitution Act's amending formula, an amendment relating to the use of English and French within any province requires the approval of both Houses of the federal Parliament as well as of the Legislature. Accordingly, the federal and Manitoba governments have undertaken to introduce the necessary authorising resolutions, with a view to their adoption before the end of 1983.

The form of the resolutions and the mechanics employed for communicating their adoption among the several legislative chambers and from them to the Governor General will establish precedents for future constitutional amendments. The function of the Governor General

under the Constitution Act, on the advice of the Privy Council, is to issue the proclamation that formally enacts the text of an amendment once it has received the requisite legislative approval. This device will allow a short breathing space between the last ratification of an amendment and its effective date. Interestingly, it allows a continuing (if symbolic) role for the Crown's representative in constitutional amendment, a role that has its antecedent in the old conventional procedure by way of parliamentary Address to the Queen. Now, however, the Governor General will himself consummate the adoption of an amendment, rather than simply pass it on to a higher authority. While this final step in the process will be carried out by a federal instrumentality, the Governor in Council (in a manner analogous to the proclamation of a federal statute), it will not be a 'unilateral' act. The degree of provincial support expressly prescribed by the constitution will be a condition precedent to the proclamation of an amendment. Such support, having the force of majorities in elected legislatures, will henceforth be a requirement not of convention but of law.

The appearance of the *Constitution Act, 1982* as a separate document (in bilingual form), appended as a Schedule to the parent United Kingdom Statute, and its proclamation in Canada under the Great Seal of Canada, suggest an attempt to accord it the status of a Canadian, as opposed to a British, instrument – a status consistent with the new procedure for future amendment entirely within Canada. Technically, all the constitutional Acts of the United Kingdom Parliament affecting Canada remain British statutes, amendable by that Parliament as before.[30] Practically speaking, however, section 2 of the Canada Act, providing that no future United Kingdom Act shall extend to Canada, will have exactly the effect that it intends. A long and amicable association has achieved its logical conclusion, and Canada has become sovereign in every sense.

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1. For example, the relatively controversial amendment of 1949 respecting the federal amending power cleared the Canadian Commons in four sitting days: *Commons Journals*, 1949 (2nd Sess.), pp. 120–170 *passim*. For the history of constitutional change in Canada and the 'Address procedure' see D. E. Stoltz, 'The Achievement of Canadian Sovereignty', *The Table*, vol. 50 (1982), p. 26, to which the present article is a sequel.
2. Two of the most complete are Edward McWhinney, *Canada and the Constitution 1979–1982* and David Milne, *The New Canadian Constitution*. Notwithstanding the latter title and similar references by the mass media, it is inapt to describe the results of patriation as a 'new' constitution. As Senator Forsey has pointed out, what Canada has is the old constitution with some modifications and some important additions.
3. See L. J. Raymond, 'The Canadian Constitution and the Federal Provincial Conferences of 1950', *The Table*, vol. 19, p. 177 (1951). The two previous attempts were as recent as 1978 and 1979.
4. There was, in addition, provision for the substitution, within the first two years after patriation, of an alternative amending formula if one could be agreed on.
5. *Senate Journals*, December 17, 1964; *Commons Journals*, June 6, 1973. Interestingly, the Supreme Court has held that the latter resolutions were 'indicative of legislative intention' for the purpose of construing a related statute passed several years previously *Kelso* v. *The Queen*, 120 Dom. Law Rep. (3rd series), p. 8 (1973).
6. Hon. Jean Chrétien, Minister of Justice, in *Commons Debates*, 1980–81–82–83, p. 3280 *et seq.*
7. Many opposition members of Parliament sought to expand and 'strengthen' the Charter at the same time as they were objecting to the unilateral procedure. There was relatively little discussion of the issue that most troubled some of the provincial premiers, the transfer of political decision-making from elected legislatures to appointed courts. Ironically, in their effort to avert such an outcome, the provinces took their case to court!
8. Questions had previously been raised as to the propriety of proceeding beyond this point by way of a motion to concur in the report of the Committee, as opposed to a fresh motion for an Address based on that report. The effect in either case would have been for the House to have signified its approval of the terms of the Address, but in the former case the opportunity for amendment and debate would have been restricted, in the House of Commons at least. In the end, the latter course was effectively ordained by the form of the Committee's recommendation.
9. United Kingdom, House of Commons, Foreign Affairs Committee, First Report (Session 1980–81): *British North America Acts: The Role of Parliament*.

10. Jean Chrétien, *The Role of the United Kingdom Parliament in the Amendment of the Canadian Constitution* (March 1981).
11. This was, in fact, the advice given to members of the House of Lords by the Clerk of the Parliaments. See D. R. Beamish, 'The Passage of the Canada Act 1982: Some Procedural Aspects', *The Table*, vol. 50 (1982), p. 105. The author provides a detailed account of the Bill's progress in the U.K. Houses.
12. *Re Resolution to amend the Constitution*, 125 Dom. Law Rep. (3rd series), p. 1.
13. At the time of writing, the First Session of the Thirty-Second Parliament had passed the three-year point. (By contrast, the whole of the Thirty-First Parliament lasted less than two months).
14. This was the twenty-first occasion since Confederation that an Address (or pair of Addresses) had been passed requesting an amendment to Canada's constitution. Five of the earliest sought the addition by Imperial Order in Council of new territories and provinces. All the others were for Imperial Acts modifying, or supplementary to, the B.N.A. Act, 1867.
15. The preamble to the Canada Act begins: 'Whereas Canada has requested and consented to the enactment of an Act . . .' This recital was to satisfy sections of the Statute of Westminster 1931 (now repealed), which provided that no future Act of the United Kingdom was to extend to a Dominion unless the Act itself declared the Dominion's request and consent to it. Legally, the request and consent of the Dominion Government would seem to have been both necessary and sufficient to satisfy the Statute. Conventionally, however, Addresses from Parliament had presumably become part of the established amending procedure before 1931. The new legal requirements was consistent with the old conventional one.
16. Generally, the Governor General acts only on the advice of his Canadian Ministers. However, in receiving and transmitting the Addresses, it could be argued that he was acting as agent of the Queen in right of the United Kingdom, as it requested the introduction of a Bill in the U.K. Parliament. This could be carried out by a British Minister, acting on behalf of the British Government.
17. *Regina v. Secretary of State for Foreign and Commonwealth Affairs, Ex parte Indian Association of Alberta*, (1982) 2 All Eng. Rep., p. 118.
18. *Ibid.*, p. 143. Lord Diplock gave the decision of the five-member Appeal Committee in a single paragraph.
19. *Canada Act 1982*, United Kingdom Statutes, 1982 c. 11.
20. One provision of the Charter was in direct conflict with Quebec laws respecting eligibility for English-language schooling. The latter were accordingly declared invalid after the Charter came into force. *Quebec Assn. of Protestant School Boards v. A. G. Que.*, 1982 Cour supérieure 673.
21. Counsel for the province conceded that, at that point in time, the Court's decision could only have 'political', not legal consequences. The Court nevertheless decided it ought to settle the constitutional 'legitimacy' of the process.
22. *Quebec Constitutional Amendment Reference (No. 2)*, 45 Nat. Rep., p. 317.
23. The proclamation together with the Act appears in a special issue of the *Canada Gazette* (Part III) published September 21, 1982.
24. The suppression of the old name and the play given to the severing of legal ties with Great Britain has led many people to imagine that the B.N.A. Act was repealed, whereas it remains in force substantially unaltered under its new designation. Some scholars continue to refer to it by the title it bore for its first 115 years, to avoid confusion with the other basic document of the amended constitution, the new Constitution Act, 1982. See Peter Hogg, *Canada Act Annotated*, p. iii.
25. E.g., s. 36(1): 'Parliament and the legislatures . . . are committed to . . . providing essential public services of reasonable quality to all Canadians.' See E. A. Driedger, 'The Canadian Charter of Rights and Freedoms', 14 *Ott. Law Rev.* 356 (1982).
26. The Schedule sets forth the Acts and Orders in Council to be known hereafter collectively as the 'Consitution of Canada' which by section 52 is made the 'supreme law of Canada'.
27. The structure thus takes on the multi-layered aspect of a Ukrainian Easter egg. The Charter forms the first 34 sections of the Constitution Act, which is actually a Schedule to the Canada Act. All of that, preceded by words of petition to the Queen, constituted the Addresses from the Canadian Houses of Parliament. While being debated there, the Addresses themselves were subsumed within the motions for adoption (which had their own preamble, distinct from that of the Canada Act).
28. Section 20 of the B.N.A. Act formerly read:

    'There shall be a Session of the Parliament of Canada once at least in every year, so that Twelve Months shall not intervene between the last sitting of the Parliament in one Session and its first Sitting in the next Session.'

    The omission of the second part of this provision suggests that the new section is not concerned specifically with the span of time without a sitting. However, if it was intended that a new *session* should be commenced each year, it may be asked why the first part of section 20 was altered the way it was.
29. New Brunswick had the largest second-language minority of any province. Quebec was not party to the November 1981 constitutional accord. Its National Assembly remains subject to s. 133 which has not been repealed. Identical provisions in the Manitoba Act of 1870 govern the legislature of Manitoba, but more in the breach than in the observance: see *Forest v. A. G. Man.*, 101 Dom. Law Rep. (3rd series), p. 305 (1979).
30. The question may arise to what extent the U.K. *Interpretation Act 1978* (c. 30) continues to apply to these statutes.

III. THE ZAMBIAN COMMITTEE ON GOVERNMENT ASSURANCES

BY ANNA SICHONE

A Clerk in the National Assembly

A dramatic event occurred in 1973 which would alter the role and direction of Parliamentary Committees in Zambia. This was the abolition of the Multi-Party system of Government and the introduction of a One-Party Parliament. At first it would have seemed as if the scrutiny and criticism of Government policies and actions, a role held in Parliament by the Opposition in a Multi-Party system, had been stifled. This assumption could not have been dismissed in a better way than was done by His Excellency the President of the Republic of Zambia, Dr K. D. Kaunda, during an occasion to mark the initiation of the One-Party system:

'In future, under a One-Party Parliament, the scope of participation in criticism in influencing the formulation of policy must go far beyond the confines of the Chamber. The House will have responsibilities beyond those of legislative and budgetary policy.

Parliamentary Committees will be introduced as part of the programme of Parliamentary reform under a One-Party Participatory Democracy. Members of Parliament must be able to conduct hearings on a more regular basis where Ministers and other Party and Government Officials will be expected to account for policies under their portfolio. This will increase the chance of making leaders in all sectors more responsible to the people through the people's Parliament.

This means that Opposition had ended but criticism and self-criticism must increase. Leaders in the Party and Government will certainly be on their toes and will have to be ready for Parliamentary hearings even at short notice.'

This declaration marked a large stride for Parliamentary reform with specific emphasis on the creation of new Committees. It was envisaged that through a powerful system of watchdog Committees, Parliament would maintain effective control and scrutiny of the affairs of the Executive. As a result, since 1973, the Parliamentary Committee system has attained tremendous developments with the creation of a number of Committees with specific functions. One of these Committees is the Committee on Government Assurances.

The Committee on Government Assurances was established in 1979. The recommendation for its formation was a result of the great concern expressed by both Members of Parliament and the general public that the economic ills that beset the Zambian Nation were in part a result of mismanagement, inefficiency, general maladministration, failure to implement decisions of the Party, the Government and the House, laziness and general indiscipline in the public sector. Members of

Parliament had particularly expressed concern and demanded a provision for tighter control and accountability in the administrative structure of the public sector. The absence of such a provision to ensure that Government policies and General Orders were strictly adhered to had inevitably led to confusion and overlapping of functions, resulting in laxity and sometimes shirking of responsibilities in the execution of Party and Government Policies.

It was also difficult for the House, even with the existence of other watchdog Committees such as the Public Accounts Committee and the Committee on Parastatal Bodies, to effectively discuss in detail serious administrative lapses in Government Ministries and Departments. It was impossible for Members to put questions to Ministers in the House relating to matters on which they had no information. It was, therefore, envisaged that through the Committee on Government Assurances, Members of Parliament would be better informed when discussing matters on which they had a thorough background knowledge gained by serving on the Committee or from its reports.

In the same vein, the efficiency of the public sector would be improved if necessary steps were taken by the appropriate authorities to expeditiously implement the recommendations of the Committee on assurances, promises and undertakings given by Ministers on the floor of the House.

The Committee on Government Assurances was specifically initiated with these elements in mind. The idea was that the Committee would keep track of all the assurances, promises and undertakings given by the Government on the floor of the House and watch their implementation. These principles are clearly reflected in the terms of reference of the Committee, which are:

(a) to scrutinise the assurances, promises and undertakings given by Ministers from time to time on the floor of the House;
(b) to comment on delays in implementation and also adequacy of the action taken;
(c) to examine annual reports of all Government Ministries and Departments in the context of the autonomy and efficiency of Government Ministries and Departments and determine whether the affairs of the said bodies are being managed according to established standing rules and General Orders;
(d) to exercise such other functions that are not covered by paragraphs (a), (b) and (c) above as may be allotted to the Committee by Mr Speaker from time to time; and report on:

    (i) the extent to which such assurances, promises and undertakings have been implemented; and
    (ii) where implemented, whether such implementation has taken place within the minimum time necessary for the purpose.

For purposes of the operations of the Committee, an assurance is liberally defined as a statement which obliges the author to perform the stated action.

The Committee, examines all contributions made by Ministers in the House. Statements which in the view of the Committee are consistent with the definition of an assurance are closely scrutinised to determine whether follow up action is necessary. Where the Committee decides that follow up action must be taken, the Committee initiates correspondence with officials in the relevant Ministry or Department seeking to be informed of the steps being taken to fulfil the assurance made by the Minister and thereafter, the Committee demands progress reports periodically until they are satisfied that the assurance has been adequately implemented.

In some cases, the Committee has resorted to provisions in Standing Orders which empower them to summon public officials to appear before them in person to explain in detail or give clarifications on matters relating to assurances under scrutiny. The Committee sometimes has insisted on carrying out physical checks of projects to see for themselves the progress made towards their execution as assured by a particular Minister. If need be, the Committee is also empowered to demand the attendance before them of a Minister to defend an assurance he has made.

In line with the practice adopted by other watchdog Committees in the National Assembly of Zambia, at the end of every session, the Committee on Government Assurances prepares a report which is submitted to the House for debate and adoption. By debating the report in detail, Members are afforded the opportunity to analyse and appreciate the operations of Government Ministries and Departments in relation to the issues raised in the House itself. During such debate, Ministers are once again called upon to give explanations and clarification on the responses given to the Committee by officials in their Ministries during the course of the year. This is a further opportunity for the House to question the efficiency of individual Mnistries and a Minister cannot afford to come unprepared for such a debate, as this may occasion further assurances being made, which may be a source of embarrassment to himself and his Ministry officials.

The report of the Committee contains the views of the Committee on all assurances considered by the Committee during the course of the year. It also includes the reaction of Ministries to the queries raised by the Committee on those assurances. The Committee comments on the adequacy and inadequacy of the steps taken by the authorities to implement or fulfill the promises made by Ministers. Recommendations are also made which call for further action on assurances.

Since its inception in 1979, the Committee has so far submitted four reports to the House. When the first report was presented in 1979, it was taken for granted that the responsible Ministries would take appropriate

action to implement the relevant assurances in accordance with the recommendations of the Committee. There was no method of feed-back to satisfy the Committee that their recommendations had been acted upon. A new development was as a result added to the procedures of the Committee. The Committee adopted a new procedure which required that whatever action was taken by Ministries to implement the recommendations contained in a report of the Committee should be followed up by a feed-back to the Committee in the form of an Action-Taken Report. Therefore, Ministries are not only expected to act on the recommendations of the Committee, but must also inform the Committee what their actions are. However, in accordance with parliamentary practice and procedure, it is not obligatory for Ministries, or the Executive, to actually take the action recommended by the Committee. If no action is taken, they should nevertheless give satisfactory explanations in the Action-Taken Report for not doing so.

The consolidated Action-Taken Report, which is compiled by the Office of the Prime Minister, should be laid on the Table of the House by the Prime Minister, within sixty days following the adoption in the House of the Committee's Report. Thereafter, the Action-Taken Report is referred to the Committee for consideration.

The obligation to submit an Action-Taken Report has to a large xtent enhanced the effectiveness of the Committee on Government \ssurances. The result of this has been that Ministers have become more careful in making assurances, knowing that their Ministries will be called upon to account for and implement those assurances. Furthermore, at the persistent urging of the Committee, Government officials have been driven into taking concrete action on matters which would ordinarily be left idle. This has, in fact, been one of the major contributory factors towards achieving the main aims of the Committee on Government Assurances.

Previously, it was common for Ministers to ward off persistent questioning and demands for action, for example, on development projects by simply promising to look into it or undertaking to do something about it at a later date, but in reality, no further action would be taken and the matter would die a natural death. Alternatively, Ministers took refuge in the adverse economic conditions afflicting the country by blaming lack of progress in most developments on the scarcity or lack or funds. 'Lack of funds' became an unpopular cliche among Members which nevertheless saved Ministers from continuous bombardment and demands for development in Constituencies.

The intervention of the Committee on Government Assurances has brought a change to this situation and Government Ministries are forced into action towards fulfilling whatever assurances are made by Ministers on the floor of the House. Ministers will no longer give answers in incomplete or vague terms knowing very well that, if they do so, they will be answerable to the Committee on Government Assurances which

will inevitably demand more detailed responses to questions raised by Members in the House. This has had the effect of elevating the level of debate in the House, particularly as regards the type of answers provided by Ministers.

To illustrate this, here is an example. On 6th February, 1981, an hon. Member asked the Right Hon. Prime Minister what immediate plans ZIMCO (the Zambia Industrial and Mining Corporation) had to open depots for Contract Haulage Limited in the North-Western and Luapula Provinces. The Prime Minister could easily have brushed aside this question by either saying, 'There are no immediate plans', or, 'This cannot be done due to lack of funds'. However, because of a particular interest the Member who asked the question had in the depots he was asking for, such a response could have generated supplementary questions which could have forced the Prime Minister to make an undertaking, such as to look into the necessity of the depots. Obviously, at this point the interest of the Committee on Government Assurances would be aroused and the Committee would follow this up and demand detailed information and action from the Prime Minister's Office.

It is because of this awareness by Ministers of the watchdog role of the Committee on Government Assurances that the Prime Minister was obliged to provide the House with the following comprehensive reply; which simply highlights the problem of lack of funds and the fact that there are no immediate plans:-

'Mr Speaker, Sir, the existing policy of Contract Haulage is to render a National Service covering international and internal operations. Currently, the external routes being operated extend to Malawi, Mozambique, Botswana, Tanzania, and, of late, Zimbabwe. The internal distribution operations cover the whole of Zambia.

There are no immediate plans to open new depots in the Luapula and North-Western Provinces because:

(a) the present demand for freight services in these provinces is being met to a large extent through the existing depots and does not warrant opening new depots in the near future; and
(b) the finances of the company are tied up in running the existing depots.

However, the company has made commitments for purchasing 100 trucks costing about K5 Million. These trucks are required to replace the old vehicles which have either become non-operational or operate well below economic levels. The resources of the company are very limited and the funds generated will be barely adequate to service the loans of paying for the purchase of the 100 trucks and other past commitments. It is, therefore, difficult for the company to incur any capital expenditure in opening new depots in the near future.'

This is an extremely detailed and elaborate reply to a question which could have been answered in a few words. The Officials who provide such information for use by Ministers in the House were aware that if inadequate information was given, Ministers would be forced to give assurances in the House and it would eventually be the same officials who would be queried by the Committee.

One other aspect of significance in the role played by the Committee on Government Assurances since its inception, is its effect to urge Ministries to uphold and observe the principle of collective responsibility. Just as a Minister, as observed earlier, will often promise action in order to avoid further questioning, there are occasions when a Minister will refer a question directed at him to another Ministry for a reply, on the ground that the matter is not part of his Ministry's portfolio. The Minister to whom the matter is referred will be reluctant to provide an immediate explanation because he requires notice. Very often, this will be the end of the matter and the House remains denied of information it needs.

Such shirking of responsibilities has not passed the attention of the Committee on Government Assurances. Follow-up action by the Committee in a case like this is best demonstrated in the following extract from the Committee's First Report published in 1979:

'Following an undertaking by the Prime Minister on 28th March, 1979, your Committee queried the delay in repairing the defective Bulaya Pontoon as a result of which Kaputa District was cut off from the rest of the Northern Province. The Permanent Secretary for the Provincial and Local Government Administration Division referred your Committee to the Ministry of Works and Supply who, he stated, were responsible for repairing the Pontoon.

Your Committee were informed that efforts to repair the Pontoon last rainy season were unsuccessful because wrong spare parts were ordered and would not be fitted to the vessel and replacements were being awaited from the suppliers of the spare parts. This fact was made known to the House by the Minister of Works and Supply on 4th September, 1979.

The Ministry of Works and Supply's expert advice on the condition of the Pontoon was that it was too old to be repaired and had reached a stage where further funds should be spent to purchase a new Pontoon.

The Northern Province was requested to provide the amount of K60,000 required for the purchase of a new Pontoon.

In his submission to your Committee, the Permanent Secretary Provincial and Local Government Administration Division disputed the statement that communications to Kaputa District are cut off as there is a loop road through Mporokoso District to Kaputa. However, the Northern Province Permanent Secretary said that the road was in such a bad state of repair that big trucks carrying essential commodities could not use it. He also denied responsibility for repairing the effective Pontoon and maintained that both the Pontoon and the road were the responsibility of the Ministry of Works and Supply, who should also provide funds for the purchase of a new Pontoon.

Your Committee are dismayed that nothing seems to be happening regarding repairing and replacing Bulaya Pontoon while Kaputa District has no means of communicating with the rest of the Northern Province in spite of the clear undertaking by the Prime Minister and an acknowledgement of the problem by the Ministry of Works and Supply. They also deprecate the mudslinging between the three Ministries involved and regard this as inefficiency on the part of the officers. Because of their concern for the problem, your Committee expressed a wish to visit the site of the Pontoon in order to gather first-hand information on the spot. They recommend that this matter be vigorously followed up by the appropriate authorities.'

What has not been said so far about the functions of the Committee on Government Assurances is the fact that the Committee also monitors

the implementation of Private Members' Motions adopted by the House in the same way as it does assurances. Private Members' Motions, like Questions for oral and written replies are vehicles used by back benchers to solicit information or call for action from the Executive.

Although the examination of Private Members' Motions is not expressly included in the terms of reference of the Committee, the Committee considered it their responsibility to ensure that Private Members' Motions adopted by the House, urging or directing the Government to perform certain actions, were implemented. For this to be possible, Members of the Committee asked the Hon. Mr Speaker to exercise the power he has under the Standing Order governing the duties of the Committee to allot the function of following up Private Members' Motions to the Committee on Government Assurances.

Before the Committee was empowered to deal with these motions, a good number of them introduced in the House were forgotten the moment they were passed by the House and no follow up action was taken. In principle, because adoption of Private Members' Motions is done by the House as a whole, such motions become decisions of the House. But because previously Parliament had no mechanism for follow up, these decisions were lost and left implemented. On top of that, most Private Members' Motions had an easy passage through the House even if they made far reaching demands on the Government. The Government knew that it did not have to take any action on the adopted motions.

This state of affairs changed, however, because of the involvement of the Committee on Government Assurances. The Committee keenly follows up any adopted motions in order to be satisfied that the relevant Government Ministry has complied with the spirit of the motion. Now, however, under this realisation, what is apparent is that Ministers are eager to introduce amendments to Private Members' Motions aimed at watering down the intentions and demands of the original motions. There is an element related to this worth considering.

Because of a seemingly in-built Front Bench majority in the House, which materialised with the appointment of some back benchers as District Governors, Ministers are not frightened by any motions introduced by back benchers no matter how vigorously worded they are. Ministers are confident that whatever amendments they move to such motions will receive the majority support of the House. This confidence makes them underestimate the fiery debate that can result from such motions.

A recent example appropriately demonstrates this point. On 2nd March, 1983, the following Private Members' Motion was brought up:

'*Implementation of Educational Reforms*: That this House urges the Government to provide emergency funds with which to construct additional classrooms in existing schools, to subsidise the construction of schools on a self-help basis and provide the appropriate educational requisites and equipment in these schools in order to implement the Educational Reforms satisfactorily.'

The hon. Minister of General Education and Culture immediately moved a far reaching amendment, almost introducing a new motion, retaining only the first three words of the original motion. The amended motion read as follows:

'That this House congratulates the Party and its Government for increased opportunities to its citizens through massive expansion of education at all levels of the educational system since Independence and urges the Party and its Government to continue being committed to the expansion of education until the Educational Reforms are satisfactorily implemented.'

This amendment precipitated a heated debate among back benchers. Front benchers went to great lengths to support the Minister's amendment but the back benchers were unmoved. In the end, the Minister of General Education and Culture was compelled to withdraw his amendment and move an alternative but less far reaching one which nevertheless was still unacceptable to the back benchers. Consequently, when the matter was put to a vote, the motion, in its original form, was adopted by the House, a triumph for the back benchers.

Implementation of the unamended motion became obligatory for the Executive and the Committee on Government Assurances is there to see that this is done and report to the House at a later stage whether, in their opinion, such implementation is adequate or inadequate as the case may be.

In conclusion, it should be observed that the operations of the Committee on Government Assurances hinge on the contributions of Ministers on the floor of the House which are normally a result of questions of Members. The significance of questions asked by Members is that Ministers are their major source of information on the affairs of their Ministries. But Ministers are often reluctant to reveal all the details sought by Members in the House. They tend to guard jealously the information in their possession for fear of revealing deficiencies in their Ministries or information which Members may use in the House to attack them or their Ministries. Such fears however, do not exist when any such information is supplied to a Committee like the Committee on Government Assurances. The Committee operates *in Camera* and proceedings are confidential and may not be revealed or discussed outside the Committee until the Committee has presented its report to the House for debate. In the Committee, therefore, Members and Ministers or their officials are able to exchange views frankly and it has been noted that in this way solutions to difficult problems are easily found. This has given confidence to Ministers in making contributions in the House and officials in executing the decisions of the Government conveyed in the House by Ministers. This has been because of the watchdog role played by the Committee on Government Assurances. The direct result of the existence of the Committee is that Ministers no longer take refuge in promises which

they have no intention of fulfilling. They are now more careful in the type of assurances they make.

There is no doubt, therefore, that the greatest achievement of the Committee on Government Assurances is its contribution towards enhancing efficiency in Government Ministries and Departments.

IV. DETERMINATION OF PAY OF MEMBERS OF THE UNITED KINGDOM HOUSE OF COMMONS

BY R. S. LANKESTER

Clerk of Select Committees

Members first received payment from national funds in 1911, and since then the determination of the proper amount has been a chronic embarrassment both to the Government who alone can effectively propose increases in public expenditure and to the House which alone can approve them. The considerable inflation of the seventies and early eighties, by making the need for increases more pressing at the same time as governments were attempting to reverse the inflationary trend, heightened this embarrassment.

For the first fifty years or so, either the Government held informal talks through the 'usual channels' and subsequently proposed changes to the House, or a Select Committee was appointed to consider the matter and its report formed the basis of further discussion. Neither method was without difficulty. On one occasion the House refused to agree to an increase proposed by the Government and on another the Government refused to implement an increase recommended by a Committee and approved by the House. The chronic difficulty is that the House is always exposed to the charge of voting itself more pay, while other deserving cases go unsatisfied.

In 1963 the Government appointed an independent Committee of Inquiry to review payments to Members of both Houses and to Ministers. This recourse to an independent body was an attempt to take the matter out of politics. The recommendations of the Committee (the Lawrence Committee)[1] was, as far as the payment of Members was concerned, accepted by the Government and agreed to by the House. The value of that award was, however, progressively eroded by inflation in the later sixties while at the same time the burden of work falling on Members was increasing. Some mechanism was needed for periodic reviews.

In 1970 a new procedure was adopted. First the government were to refer the matter to the newly established Review Body on Top Salaries, who would thereupon examine the question and report to the government. There was an understanding that only in exceptional circumstances would the government not accept what was recommended. Normally they were to commend the Review Body's findings to the House and, with the approval of the House, implement them.

This understanding largely broke down almost as soon as it was formulated. To begin with the government chose not to refer the matter

to the Review Body from 1971 to 1975. During this period prices had risen by 66%, and the value of the Member's salary had fallen by 40%. Not surprisingly the Review Body in 1975 recommended a very substantial increase which the government could not bring itself to commend to the House. It proposed instead a half of the recommended increase.

The pay restraint policy of the then government thereafter superseded the accepted machinery until 1978 when the Review Body was again asked to make recommendations on salary, severance pay and secretarial allowances. They reported in June 1979 and the government accepted their recommendations on the latter two points, but once again demurred on pay. As a consequence only half the projected increase was agreed to at once. The rest was to be staged and the Review Body were asked to produce approriate proposals, to include the second stage of the previous award, for the next year. The government expressed the intention to accept what was proposed, yet, once again, when the time came, it found compelling reasons for not accepting the proposals in full.

Disenchantment with the way remuneration was arrived at was evident by the mid-seventies and the concept of automatically linking pay with some index either of the cost of living or of wages gained considerable support among Members. When the 1975 settlement was accepted by a reluctant House, the Leader of the House, conscious of this disenchantment and to test opinion, as he expressed it, moved:

'That in the opinion of this House it is desirable in principle that the salaries of Members should be regulated to correspond with the amounts of the salary paid to a specified grade in the public service.'

The House by 128 to 127 amended the motion to read:

'That in the opinion of this House it is desirable in principle that the salaries of Members should be regulated to correspond with a point on the scale paid to an Assistant Secretary in the public service, not later than three months after the next General Election, and annually until that date, the salaries of Members should be increased by not less than the same amount of increase as these Assistant Secretaries'

and, in that amended form, agreed to it by 169 votes to 70.[2]

The Government, who alone could provide the money to implement this resolution, did nothing.

When the 1980 pay settlement was accepted, again by a largely reluctant House, a further resolution was agreed to:

'In the light of the continued difficulty in providing fairly for the salaries of Members of this House, the salaries of Members should be regulated to correspond with the amounts of the salary paid to a specified grade in the Public Service.'[3]

Once, again the then Government took no steps to implement this Resolution. Like its predecessors, it was not attracted to automatic linkage. Instead a Select Committee was appointed to 'give further

consideration to the desirability and possible method of conducting reviews of Members' salaries by an independent body once during the first Session of each Parliament and of adjusting such salaries during the periods between such reviews by reference to increases in the remuneration of a designated group of outside occupations, and to make recommendations to the House.' What was suggested for examination was, then, a sort of hybrid procedure. The Top Salaries Review Body, for they were the obvious choice, would early in each Parliament recommend what they considered to be the proper pay for Members and then for the rest of that Parliament Member's pay would be indexed to a 'basket' of appropriate salaries, rising or falling as they rose or fell.

The Committee was confronted with three main methods by which pay might be considered. First the government and the House could take sole responsibility as had been the case until 1963. Second, an independent body could make recommendations to which they could respond. Third, there could be some sort of automatic linkage. As the Committee rather wearily said in their report, the pros and cons of the various methods and their variations were well known, and had been stated often enough, perhaps too often, in debate when the question of pay came before the House.

The Committee at the outset limited themselves to considering hose various payments and benefits – salary, pension and severence rights – which form a Member's remuneration. They did not concern themselves with the various allowances which Members receive to enable them to discharge their duties more effectively and from which they do not receive personal financial benefit. They further postulated first that membership of the House, whatever a Member's other activities or sources of income should be remunerated as a full time occupation; second that any other activities, paid or unpaid, which a Member chose to undertake were matters for his judgment and for that of his constituents; and third that public service should properly entail some personal sacrifice, but not to the extent of deterring would-be candidates from standing, or of causing a prudent Member financial anxiety.

The recommendations of the Committee, a compromise both within the Committee and between the methods, were that

'reviews be conducted by the Review Body on Top Salaries once during the fourth year of each Parliament with a view to that Parliament taking a decision on the recommendations. When shortened Parliaments preclude the operation of this recommendation, the Review Body should institute a new Review not later than four years after rates of salary consequent on the previous review first became payable. [It further recommended that] at the same time as the decisions on the findings of the Review are taken, the House agree to the annual automatic interim adjustment of salaries so determined by reference to increases in the nearest percentile in the Department of Employment's New Earnings Survey until those salaries are superseded by decisions on the next review. Such adjustments should take place in November, the first after an interval of at least one year.'[4]

On 10 June 1982[5] the House considered an increase in present pay and allowances and at the same time the recommendations of the Select Committee. The Government motion was

'That this House –

(a) welcomes the Report of the Select Committe on Members' salaries which was ordered by this House to be printed on 17 February 1982;
(b) agrees with the recommendation in that Report that a review of Members' pay be conducted by the Review Body on Top Salaries once during the fourth year of each Parliament and that, where a shortened Parliament precludes this, the Review Body should carry out a new review not later than four years after the rates of salary consequent on the previous review first became payable;
(c) agrees with the view expressed in that Report that, between such reviews, Members' salaries should be adjusted annually by reference to increases in outside salaries, but does not accept the recommendation that there should be an annual automatic adjustment by reference to figures taken from the Department of Employment's New Earnings Survey;
(d) is of the opinion that her Majesty's Government should instead, in the period between one such review and the next, move annual motions to effect changes in Members' salaries and in so doing should be guided by the average change in the rates of pay of appropriate groups in the Public Service over a relevant period'

In short the Government accepted most of the recommendations but not the proposed comparator group. They preferred to tie Members firmly to increases in public service pay. This motion was duly agreed to by the House, but not before the Chairman of the Committee had moved and lost an amendment to agree with the recommendations of the Report *in toto*.

The Leader of the House indicated that since the coming year was the fourth of the Parliament, the Review Body would be asked to conduct such a review as was recommended by the Committee.

The Government had received the Report[6] in May 1983 from the Review Body and were in process of considering it when the dissolution of Parliament supervened and precluded, on this first occasion, the old House settling the starting salary of the new. The omens were not good for the recommendations being accepted. In answer to a written question on the day before dissolution, the Prime Minister said that the Report would be for consideration after the election and added:

'So far as the proposed salaries for Cabinet Ministers are concerned, members of the Cabinet take the view that the increases proposed are of a magnitude which they could not possibly accept, and trust that Members of Parliament will take a similar view about recommendations affecting their own salaries'.[7]

1. Cmnd 2516
2. *C. J.*, 22 7.75
3. *C. J.*, 21.7.80
4. H. C. (1980–81) 208
5. *Com Hans.* 10.6.82, cc 628–9
6. Cmnd 8881
7. *Com Hans.* 12 May 1983, col w 435

V. THE CURRENT PARLIAMENT IN MALTA: SOME INTERESTING FEATURES

BY C. MIFSUD

Clerk of the House of Representatives

Party Strength

The present parliament was inaugurated on the 15th February 1982, after the General Elections of the 12th December 1981, which returned the Labour Party to office, for the third consecutive time since August 1971, with 34 seats as against 31 seats of the Nationalist Party – thus leaving the position of the Parties in the House of Representatives as it was in the Fourth Parliament (1976/81).

Election of Speaker

When the Fifth Parliament[1] first met, the Hon. Daniel Micallef, M.P. was unanimously elected Speaker of the House, on motion of the Prime Minister the Hon. Dom Mintoff, M.P. seconded by the Senior Deputy Prime Minister and Minister for Justice and Parliamentary Affairs, the Hon. Dr Joseph Cassar, M.P. This indeed was the first time that the Speaker was elected 'from among persons who are members of the House' as per Section 60(2) of the Constitution which however provides also for the election of the Speaker 'from among persons who are not members of the House of Representatives and are qualified for election as members thereof'. In fact ever since this constitutional provision in 1962, the Speakership had always been filled by a defeated candidate of the Party which won the general elections. The reason for this, as I see it, is that Section 72(2) of the Constitution lays down that 'The Speaker shall not vote unless on any question the votes are equally divided, in which case he shall have and exercise a casting vote'; and naturally this means that if a Speaker is elected from among the members of the House, the Party in Government would lose one original vote, which it can usually ill afford to do because of its narrow majority in the House.

Appointment of President of the Republic

At the second sitting of the House, on the 16th February 1982, Mr Speaker informed the House that he had received a letter from the Hon. Agatha Barbara, M.P. who resigned her seat in the House with effect from the same date. The Prime Minister then moved that the House appoint Miss Barbara as President of the Republic and the motion was unanimously agreed to. In fact Her Excellency Miss Barbara is very well known to the House in which she had served uninterruptedly (except for 1958/1962 when the Constitution was withdrawn by the British Govern-

ment) ever since 1947 when Self-Government was restored to Malta; and since 1955 she was always a Minister when the Labour Party was in Government. The President of the Republic was then led in procession to the Speaker's dais where she took the oath of office and from where she addressed the House. After Her Excellency left the Parliamentary Chamber, the Prime Minister moved a motion of thanks to the ex-President of the Republic Dr Anton Buttigieg LLD, who had previously been the Minister for Justice and Parliamentary Affairs in the Labour Government of 1971/76, and whose five-years term of office as President had expired as per Section 49 of the Constitution.

Absenteeism and its sequel

The elected representatives of the Nationalist Party did not attend the opening of Parliament or any of its subsequent sittings[2] and thus at Sitting 13 of the 29th March 1982 before the House rose for its Easter recess until the 26th April, Mr Speaker made a statement in which he dealt in detail with the provisions of the Constitution and of the Standing Orders regarding the absence of members of the House. Section 56(1) of the Constitution states that 'the seat of a member of Parliament shall become vacant . . . (d) if he is absent from the sittings of the House of Representatives for such period and in such circumstances as may be prescribed by the Standing Orders of the House'; while Standing Order 157 states that 'the seat of a member of the House shall become vacant if he shall absent himself from the sittings of the House for a period of two months during any session thereof, provided that a member shall not be deemed to have been absent from any sitting if his absence therefrom shall have been approved by the Speaker within a period of two months from such sitting.' Mr Speaker pointed out that this two-month period would expire on the 15th April 1982, i.e. during the period of the adjournment of the House; but as the responsibility according to the Standing Orders pertained to the chair, Mr Speaker ruled that if the Nationalist representatives stated that they were prepared to take the Oath of Allegiance (or make the Solemn Declaration also provided for in the Constitution)[3] in Parliament at the first sitting due, he would consider the period between April 16th and 26th as a justified extension of the two-month period specified in the Standing Orders. But when the House met again on the 26th April 1982, Mr Speaker informed the Hon. Members that the Nationalist representatives had not taken the necessary steps he had warned them to take; and that consequently he was declaring all seats of the Nationalist Opposition as vacant.

Yet, while speaking on his votes in the Committee of Supply at Sitting 72 of the 22nd December 1982, the Prime Minister said that as long as no violence was resorted to, and as long as the Leader of the Nationalist Party (Dr E. Fenech Adami LL.D.) respected the laws of the country and the Constitution, the Opposition seats would remain vacant; and all

that the Leader of the Nationalist Party had to do, so that ways and means could quickly be devised for their return to Parliament, was to write to him that they were prepared to take their place in Parliament without setting any conditions.

In the meantime, life in the House in 1982 was normal though less hectic. As compared with the previous year, when the Fourth Parliament was dissolved on the 9th November, the 'vital' statistics show:

	1981	1982
Sittings of the House	95	77
Questions put to Ministers	3110	739
Government motions passed	65	54
Private Members Motions	2	–
Motion for the adjournment of House under Standing Order 13 (definite, urgent, public importance)	–	–
Papers Laid on the Table	220	169
Ministerial Statements	24	22
Privilege (cases of)	2	–
Number of Bills which became Acts (of which 11 and 9 were Principal Acts for 1981 and 1982 respectively)	53	20
Divisions	6[4]	–

Moreover Leave of House or of Committee was more frequently resorted to in 1982 than in 1981; while competition for adjournment time was less keen in 1982 than it had been the year before.

Legislation

Among the Acts passed in the year under review there were: The Adaptation of Laws Act, which provided for the adaptation of various enactments rendered necessary by assignments of portfolios to Ministers following the last General Election; The Laws (Amendment and Repeal) (No. 2) Act which in amending the Conditions of Employment (Regulation) Act of 1952 provided that up to 31st December 1983 no employers should keep the number of persons in his employment below the number of persons employed by him on November 16th 1982 (Budget Date)[5] without the consent in writing by the Director of Labour; The Foreign Interference Act which provided mainly for the regulation of foreign activities which may amount to interference in Maltese Affairs; The Colour Television Receivers (Excise Duty) Act which provided for the collection of excise duty on colour television sets assembled in Malta for the first time; and The Transfer of Immovables (Regulation) Act which provided for the freezing of conditions regarding the transfer of immovables, until the 31st December 1981. In fact the relative bill was entitled 'The Emphyteutical Grants (Regulation) Act' providing for the freezing for one year of the conditions under which land and buildings may be given on emphyteuses; but following

the wider amendments at the Committee Stage to include all immovables the title of the Bill was altered accordingly.[6]

It may also be recorded that for the first time since 1950, a Private Member's Bill was introduced by the Hon. Joseph Brincat[7] at Sitting 51 of 5th October 1982. This Code of Organisation and Civil Procedure (Amendment) Bill intends mainly to facilitate the recourse to arbitration which is becoming a more useful alternative to settling civil disputes in most progressive countries. It was read the second time on the 3rd November 1982 and has now to go through its further stages in 1983.

Officials take part in Committees of the Whole House

Another interesting feature of the present Parliament lies in the fact that the consideration of the General Estimates for 1983 in Committee of Supply, for which the Standing Orders allow 'not more than 7 sittings', was by the Procedure Motion of the 22nd November 1982 extended to 13 sittings so that a whole Committee sitting was allotted to the votes of each Ministry, with the exception of two Ministries which happened to have one Minister responsible for them both, as he was also acting for another Minister who could not attend the House because of illness. Moreover, the same procedure motion did away with the two days allotted by the Standing Orders for the general debate on the motion that the House resolve itself into Committee of Supply. But the outstanding innovation in this procedure motion was that it provided for Heads of Department and other officials and members of Parastatal Organisations to participate in all the thirteen Committees of Supply, as indeed they eventually did. In fact in the last electoral manifesto of the Labour Party, mention had been made that steps would be taken to make it possible for officials to take part in certain committees of the House; and indeed, earlier in the year, representatives of the Council of the University and of the Commission for the Development of Higher Education had also taken part in the Committee on the Estimates of the University for 1982 (sittings of 8th and 9th June 1982) and for 1983 (Sittings of 9th and 10th November 1982) in accordance with Section 34(4) of the Education (Amendment) Act of 1980, which section however had not been implemented in 1981 as the House did not then opt to have these officials take part in this Committee where they 'may make their submissions and may give answers and explanations' as stipulated in the said section. Thus the 8th June 1982 was the first time ever that officials took part in a Committee of the House. Moreover, so far, section 34(4) of the Education Act is the only case of its type in our legislation.

Live Sittings on Radio and Television

Yet another interesting feature of the current Parliament lies in the extensive use it has made of live sittings on radio and television.

The first sitting of the House given live on wireless only was that of

the 12th October 1977 when a motion of the Leader of the Opposition on want of confidence in Government was debated in Parliament; while the first sitting given live on both radio and television was that of the 16th November 1978 when the House debated a motion of the Prime Minister on foreign policy. Since then, there were in the Fourth Parliament (1976/81) another two sittings given live on radio only in 1979 (the first sitting was taken wholly by the Leader of the Opposition and the second one was similarly taken by the Prime Minister – the debate being on the motion that the House do resolve itself into Committee of Supply, for which the Standing Orders allot 2 sittings) and another 8 sittings[8] given live on both radio and television simultaneously between 31st July 1979 and 4th November 1981 when the House met for the last time before the dissolution of the Fourth Parliament, which would have completed its five-years life on the 23rd November 1981, as per Section 77(2) of the Constitution.

The last electoral manifesto of the Labour Party had indeed stated that 'A Socialist Government will do its best so that the people would be better informed about all parliamentary business and that it will do this by extending the televising of parliamentary debates.[9] In fact, as per motion passed at Sitting 3 of the 17th February 1982, any Sitting or Committee of the House or part thereof during the Fifth Parliament may be given live on radio and television as ordered by Mr Speaker. The following sittings were thus given live on these media – the first two by leave of House, and all others as ordered by Mr Speaker: The Opening of Parliament (15.2.82);[10] the Appointment of President of the Republic (16.2.82); the Statement by Mr Speaker declaring all seats of the Nationalist representatives as vacant (26.4.82); the second reading of the Ratification of Treaties Bill (spread over parts of 5 sittings); the second reading of the Foreign Interference Bill (again spread over parts of 5 sittings); the Budget Speech (16.11.82) and all 13 sittings of the Supply Committees in connection with the General Estimates 1983 (from 23.11.82 to 22.12.82). Moreover the following parts of the Sitting of 22.12.82 were also given live on television and wireless: The presentation of a certificate of appreciation by the Prime Minister to each of three persons for their valour or high civic sense; and the Prime Minister's end-of-year message to the nation. Thus out of the 77 sittings held in 1982, 26 sittings or parts thereof have been given live on radio and television.

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1. This is the Fifth Parliament since Independence (1964). The First Parliament was a continuation of the 1962 Legislative Assembly until 1966; while the other three Parliaments were those of 1966/71, 1971/76 and 1976/81. The Nationalist Party was in office from 1962 to 1971.
2. In the General Election of December 1981 the Nationalist Party obtained 114,132 votes and the Labour Party obtained 109,990 votes. The Nationalist Party held that under our Proportional System of Representation this result could be attributed only to the revision of the Electoral Boundaries - which, however, had been made by the Electoral Commission which is independent of Government. In fact no court redress could be or indeed was attempted.
3. This is the Oath or Solemn Declaration to 'bear true faith and allegiance to the people and the Republic of Malta and its Constitution' – as per the Third Schedule of the Constitution.
   Section 69 of the Constitution, reproduced almost verbatim in Standing Order 5, states that 'No Member of the

House shall be permitted to take part in the proceedings of the House (other than the proceedings necessary for this section) until he has taken and subscribed before the House to the Oath of Allegiance:

Provided that the Election of the Speaker and Deputy Speaker may take place before the Members of the House have taken and subscribed such oath".

4. In 1981 the Opposition was absent on Supply Days in connection with the Budget 1982 (delivered in the House on 1st September 1981) which they held Government should not pass at a date so close to the General Election as the five-years life of the Fourth Parliament was to expire on the 23rd November at the latest.

   In fact in 1980 the number of divisions was 20, and of these 13 had been taken in connection with the Budget for that year.
5. A wage freeze and a price freeze for 1983 had been announced in the Budget. In fact the price freeze started in December 1982.
6. The Port Manager Bill was the last bill to have had its title altered following amendments at the Committee Stage. It became The Director of Ports Act 1971 passed during the Third Parliament (1966/71).
7. The Hon. Joseph Brincat was Minister for Justice, Lands, Housing and Parliamentary Affairs before the General Election of December 1981.
8. These include the Sitting of 1st September 1981 when the Budget Speech was given live on television for the first time.
9. The Electoral Manifesto was published in Maltese only, and this is a free translation into English from page 47.
10. This was the first time ever for an opening of Parliament to be given live on radio and television, although never before had a motion for this purpose been moved without notice by Leave of House in a first sitting of Parliament. According to our Standing Orders every motion requires at least three days' notice and no notice can be given before the first sitting of a new Parliament. The proceedings on the Opening of a new Parliament or Session are laid out in Chapter One of the Standing Orders.

VI. RINGING IN REFORM: AN ACCOUNT OF THE CANADIAN BELLS EPISODE OF MARCH 1982

BY CHARLES ROBERT

Table Research Office, House of Commons

For more than fourteen days in March 1982, the bells of the Canadian House of Commons rang summoning Members to the Chamber for a recorded division. The opposition Progressive Conservatives, however, refused to heed the bells. They were protesting the government's proposed legislation on energy and threatened to stay out until certain concessions were made. The government Liberals denounced the tactic as blackmail and refused to consider the demands. Each accused the other of obstructing the principles of parliamentary government. Caught in the middle of this dispute was the Speaker of the House, Madame Jeanne Sauvé. The actions which the Speaker took during those two weeks between March 2 and 17 were carefully watched by all the Members and by the news media. For better or for worse, the Speaker found herself in the eye of an intense political storm. In the end, the Speaker sought to use the offices of the Chair to encourage a resolution of the conflict. Differences between the government and opposition were eventually resolved, but the impact of the event still echoes through the halls of Parliament long after the bells have fallen silent.

The dispute centred on an item of government legislation, Bill C-94, the *Energy Security Act*, a 149 page package composed of eight parts plus six schedules which in total amended 11 existing acts and created four more. As consideration of second reading of the bill was about to begin, Mr Harvie Andre, the Tory energy critic, raised a point of order to argue that Bill C-94 was out of order because of its unwieldy omnibus character. 'Certainly', he said, 'there has never before in the history of Parliament been included in one proposed bill such an incredible hodge-podge and mish-mash of such disparate items'.[1]

He proceeded over the course of fifty minutes to explain various reasons why the bill in its present form should not be allowed to proceed. Towards the conclusion of his argument, he summed up his case by charging that the bill violated a number of fundamental precepts of parliamentary law. 'It is impossible' he claimed, 'to have a reasonable transaction of public business in an orderly manner when one has this kind of omnibus bill to consider. It would be a travesty and a precedent of scary proportions to allow this type of bill to go forward with so many disparate and different items collected together for no other reason than to obfuscate and confuse'.[2] For his part, Marc Lalonde, the Minister of

Energy Mines and Resources, replied that the bill did indeed have a single theme and objective, namely energy security. He stated that the bill, the major legislative component of the National Energy Programme, contained interdependent aspects of an overall energy strategy aimed at securing Canada's energy needs.

The following day, March 2, the Speaker announced to the House her decision on the point of order. While appreciating all the arguments developed by Mr Andre, Mme Sauvé noted that 'no precedents were cited which would establish the validity of his point of order that the bill should be divided'.[3] Referring to decisions made by former Speakers Lamoureux and Jerome on similar points of order, the Speaker underlined the fact that the Chair had not been able to propose a solution to the matter of omnibus bills. Consequently, the Speaker suggested that 'it may be that the House should accept rules or guidelines as to the form and content of omnibus bills, but in that case the House, and not the Speaker, must make those rules'.[4] As to the specific measure before the House, the Speaker concluded that the Chair could not support the proposition that the bill should be divided or struck down.

The decision of the Speaker, although probably not unexpected, set off a series of exchanges between Members and the Chair and between Members themselves. Mr Andre asked the Speaker what the principles of Bill C-94 might be, to which the Government House Leader, Mr Yvon Pinard, interjected that the question was hypothetical. Mr Andre went on to say that the decision created a situation 'where literally the tyranny of the majority prevails'.[5] Mme Sauvé responded by stating that the only protection that Members have, aside from the rules which the Chair is bound to enforce, is the House itself. Additional remarks were made until finally Mr Andre moved 'That this House do now adjourn'.[6] The question, a dilatory motion, was put immediately by the Chair and was declared to be defeated. However, since more than five Members rose at their places, the question was put to a recorded division with the Speaker giving the signal for the bells to start ringing by requesting that the Members be called in.

For votes which are not scheduled, the Standing Orders provide no fixed time limits. Nonetheless, the fifteen minutes which are stipulated for votes on the Budget, Supply and the Address-in-Reply to the Speech from the Throne have usually been taken as an approximate guideline for most votes.[7] In recent years, there have been exceptions when one party or the other has kept the bells ringing for an extended period. This can happen because the custom has developed whereby the bells are not stopped until both the government and opposition whips indicate to the Speaker their readiness to proceed with the vote. They do this by walking into the Chamber together and bowing to the Speaker before taking their places.

As the hours passed and the bells continued to ring, it became clear that the Conservatives were objecting to the methods being used by the

government to implement their policies, but during those first hours, few realised that the protest would become a full scale boycott. That this was indeed the case became apparent only after the regular adjournment time of 10 pm. Up to that hour, most had expected that the opposition would call off their protest once they had clearly shown how angry and frustrated they were. After all, other methods remained available to them by which they could hamper and delay the passage of the legislation. By the next day, however, it was becoming evident that the Conservatives intended to keep the bells ringing for days, and even weeks if necessary, until they obtained certain concessions from the government.

Following a caucus meeting on Wednesday March 3, Erik Nielsen, the Progressive Conservative House Leader, defended the actions of his party by accusing the Prime Minister of throttling Parliament. He pointed out that there were three ways the Government could stop the persistent bell-ringing: 'They can recant, change the order of business, or call an election'.[8] Yet if the Conservatives were determined to stand firm, this was no less true of the government. Yvon Pinard, the Government House Leader, accused the Tories of blackmail. He said the Conservative tactic was an attack against the Speaker and against Parliament. Nor was he prepared to compromise; 'I cannot negotiate with a knife under my throat'.[9] Furthermore, the Liberals engaged in a counter-boycott by refusing to participate in committees. They claimed that meetings of House committees cannot proceed once the bells have begun to ring for a vote. Thus, the entire operations of the House of Commons came to a standstill (although the Chair and the Table were manned throughout the period as the House was still technically sitting). Clearly, the protest had now become a complete boycott and both parties sought public support for their position.

In the midst of this confrontation was the Speaker. As the stalemate dragged on, considerable public attention centred on Mme Sauvé, and the role she might play in ending the deadlock. Numerous newspaper editors and political commentators publicly expressed the opinion that she should intervene. The Speaker later admitted that she had often been tempted to respond to such appeals. However, she resisted the impulse to act because, as she explained, 'any action on my part would be incompatible with my concept of the responsibility of the Speaker to the House'.[10] Without the benefit of clear and precise rules, Mme Sauvé believed it would be too difficult for the Speaker to act with authority for the good of the House and with undoubted impartiality.

In urging the Speaker's intervention, the press freqently cited several precedents which, they maintained, demonstrated that she had the authority to act. One example dated from 1961 and the Speakership of Mr Roland Michener. On one occasion, after the bells had rung less than an hour, Speaker Michener sent a message to the whips ordering them to enter the House for a division. There is no evidence of a

political crisis, nor is there any indication from the *Debates* as to when this incident took place. Even Mr Michener, when contacted for an explanation, could not recall why the whips had been late. In that event, the whips did enter the House and the division was taken without any question being raised on the matter. The uncertainty surrounding this affair made it difficult for the Speaker to accept it as convincing precedent. In addition, the Chair had to take into account the clear possibility that the whips would refuse to come into the House and vote.

Another event mentioned as a possible precedent related to the action taken in the British House of Commons a century ago by Mr Speaker Henry Brand to terminate a protracted debate which had continued for several days without interruption. Responsibility for the obstruction lay squarely with the Irish Nationalists, a group of 60 members who had systematically employed the rules to cripple the conduct of House business. The Speaker, in putting the question, effectively imposed closure on the debate. This action was undertaken on the Speaker's own authority after having consulted with, and having received support from both the Prime Minister and the Leader of the Opposition. The example of Britain in 1881, however, did not really apply to Canada in 1982. The Canadian situation did not involve a parliamentary rump but the entire Loyal Opposition. For the Speaker to intervene on strictly procedural grounds in a matter which quickly became largely a political dispute could have done irreparable harm to the authority of the Chair and to the vital restoration of cooperation in the House. It was feared that an intervention would have lead to allegations of partiality. Moreover, it was necessary to consider the possible or likely consequences of such an act. Even if the Chair had sacrificed itself to get the House back to work, it was thought unlikely that this would have restored calm to the House.

There remained one more incident to which several newspapers referred when considering whether the Speaker could break the deadlock. It had occurred in 1956 during the Speakership of Mr René Beaudoin and the tumultuous pipeline debate. The procedural manoeuvre of the Conservatives in effecting their boycott depended on the custom that the bells will be kept ringing so long as either the government or opposition whip remains away from chamber. On June 1, 1956, however, Speaker Beaudoin had allowed a division to proceed despite the fact that only the government whip had returned. Mme Sauvé had reviewed the case but had rejected it because of the controversial circumstances surrounding the situation dealing with the motion which Speaker Beaudoin had put before the House. He had asked the House to confirm his decision to reverse a ruling which he had made the previous day.

The practice of waiting for the whips to return before proceeding to a vote has not been challenged seriously in the last twenty years and has been widely interpreted as a rule. Indeed, this proposition would appear

to be confirmed in the fifth edition of *Beauchesne's Rules and Forms of the House of Commons of Canada* which states that 'the signal for taking the division is the return of the Government Whip and the Opposition Whip'.[11] However, this proposition is not nearly as clear as has been assumed. Earlier editions of *Beauchesne* indicate that the signal for stopping the bells was given not by the whips, but by the Sergeant-at-Arms, an officer of the House who acts under the authority of the Speaker.[12] According to these earlier editions, some time was given to the whips to muster their Members for the vote before the bells were silenced, but control of the bells was not vested in them. It would seem that the passage of time and the lack of any difficulties in taking a vote gradually encouraged the notion that a division could not proceed unless the whips, on behalf of their party, had indicated their readiness for it.

On those few occasions when complaints were expressed about prolonged bells, the role of the whips was not challenged and the question of responsibility for the bells was not raised. The issue did come up once, however, when the bells were silenced in less than fifteen minutes, but on that occasion, the Speaker pointed out that since the whips had agreed to proceed to the division, it was not for the Chair to interfere in their task of deciding when a sufficient number of Members had been collected for a vote.[13]

To have asserted the authority of the Chair by silencing the bells contrary to a widely accepted practice and in the midst of a heated political confrontation would have appeared arbitrary at best, and partisan at worst. Mme Sauvé recognised this problem and sought to achieve a solution acceptable to all. At one point she wryly observed that 'The House gets itself into a mess and the House gets itself out of a mess'.[14]

Having decided that an active intervention by the Chair would not likely resolve the impasse without causing serious damage, the Speaker proposed to exert her influence in promoting negotiations among Yvon Pinard, Erik Nielsen and Ian Deans, the House Leader of the New Democratic Party. The Speaker met with them in her office on two separate occasions. The first meeting took place on Tuesday March 9, one week after the boycott began, and the second two days later. Both were relatively brief. The Speaker indicated to the House Leaders that they must try to reach a compromise and that she would not take any action unless that attempt had been made first. At the same time, the Speaker was careful to avoid any involvement in any actual political discussion for fear of compromising the neutrality of the Chair.

Despite the Speaker's efforts, neither party seemed willing to make the first move. The government agreed to discuss splitting Bill C-94, but only after the opposition had returned to the House. The Conservatives, however, insisted on a guarantee that the bill would be split into separate measures before they called off their boycott. In addition, neither side could agree on allocating time for debate. The government

wanted assurances that all bills based on Bill C-94 would be debated for a limited time, while the opposition would only concede that some bills would be debated quickly.

Finally, an agreement was reached by which the opposition returned to the House to vote on the adjournment motion on Wednesday March 17 and, during the next two days, while the Commons considered two opposition supply motions, negotiations proceeded on the division of the energy security legislation. It was a compromise solution designed to satisfy the political position of both parties. The following Monday, the Government House Leader presented to the House the agreement on the energy legislation. It required the adoption of a special Standing Order which detailed the steps for the consideration of the eight separate legislative measures and which was to remain in effect even if the session were prorogued. This Standing Order fixed the number of hours to be allowed for debate to each party during second-reading stage and report and third-reading stages. In addition, it stipulated a time formula by which the House had to dispose of the legislation. Once this was done, the Standing Order would expire.

There is no doubt that public opinion was a factor in prompting the parties to reach a solution. Both the Speaker and the members were aware of the adverse reaction of the general public to the two-week-long episode. The Speaker took note of the public's indignation in her statement made to the House on March 18; she also underscored a perceived cause of it – the inadequate rules of the House: 'What ensued from our failure to bring our rules up to date earned us shrugs and even sneers from our fellow citizens. We may even have strengthened an unfortunately widespread tendency to be sceptical of the actions of Parliament.'[15]

Mme Sauvé also explained that the ability of the Chair to act is weakened to the extent that the rules are deficient. 'The Chair will continue to be vulnerable until the House provides it with guidelines which would lead to settled practices regarding those very difficult and highly controversial questions where the rules and practices appear to be less than satisfactory'.[16]

Reflecting on the bells episode itself, Mme Sauvé indicated that the Chair could not, and would not, consider the incident as a precedent. This was because, as she explained, 'the rules by implication assume that the procedure of voting will be completed when members are called in. Today, we all know that the procedure must be spelled out more clearly, since the House cannot function satisfactorily while debate may be interrupted indefinitely by any of the parties.'[17] Moreover, Mme Sauvé indicated that the Chair would not be limited in the future by the course of action it had followed, particularly if the House did not establish firm guidelines to avoid such an incident again. In such an event, she said, 'the Chair, . . . would need to consider its course of action with very great care under the new circumstances.'[18]

As to the need for reform, the House agreed in some measure with the Speaker. On Thursday March 18, the House engaged in a day-long debate on possible recommendations for the reform of its procedures. Two months later, on May 31, the House ordered that a special committee be appointed to consider the rules of the House and to recommend changes to them, whether they applied to practices in the House itself or to its committees. The Special Committee on Standing Orders and Procedure made up of 20 Members under the chairmanship of Mr Tom Lefebvre set to work almost immediately. By early November, they were able to submit to the House a report unanimously approved by the committee recommending numerous changes to the Standing Orders. These proposals constituted the most substantial reforms since 1968/69. On November 29, the report was accepted and the new rules were adopted for a trial period of one year to begin December 22, 1982.

The progress made in implementing reforms has been significant. Yet, in itself, the reforms cannot guarantee the smooth and effective operation of the House, for this also depends upon a co-operation largely determined by political considerations which are often beyond the control either of the Standing Orders or of the Chair. Indeed, it was principally the breakdown of this co-operation, rather than the rules, which led to the bells episode. This breakdown, which was manifested in a sustained spirit of political rancour and invective, was acknowledged openly in the House the very day the bells episode began. The Solicitor General, Robert Kaplan, in offering his good wishes to a Member on his retirement from the House, observed that 'this has been a particularly bitter Parliament for all of us – very partisan, with lots of confrontation and difficult moments'.[19]

When political partisanship which usually infuses such a lively spirit in the activity of the House, exceeds the limits of the normal give-and-take and makes compromise difficult, and when such partisan attitudes subvert the fundamental operating principles of the House, then the risk of a breakdown, as occurred with the bells episode, becomes real.

Unfortunately, there have been one or two occasions since March 1982 when the bells were deliberately kept ringing for an extended period of time simply as an expression of partisan rivalry. More significantly, the government and opposition House Leaders have expressed conditional support for the temporary reforms. Erik Nielsen, when speaking on the motion to adopt the reforms on a trial basis, stated his belief that the reforms offered too many advantages to the government and too few to the opposition, and unless concessions were forthcoming, there would be no question of making these temporary reforms permanent. Yvon Pinard, in a letter to the opposition House Leaders written late in March 1983, linked the government's support of reforms to the progress of its legislation in the House, which he complained had been too slow.

Co-operation can exist only when there is a mutual understanding of the role to be played by the government and by the opposition. This in turn is founded on a recognition that the transaction of public business must be secured in an orderly manner while, at the same time, acknowledging the right of the minority to be heard. Moreover, it cannot be the sole responsibility of the Speaker to maintain co-operation in the House or to exercise the rules in the face of intensive political rivalry. The Speaker's authority can be no greater than the collective will of the House to work together. When, therefore, the will of the House ceases to be guided by co-operation, the authority of the Speaker can be radically diminished and the House can come to a standstill. That this can actually happen is certainly the most significant lesson to be learned from the two week shutdown of the House in March of 1982.

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1. *Commons Debates*, March 1, 1982, p. 15479.
2. Ibid., p. 15485.
3. Ibid., March 2, 1982, p. 15532.
4. Ibid.
5. Ibid., p. 15533.
6. Ibid., p. 15539.
7. Arthur Beauchesne, *Rules and Forms of the House of Commons of Canada* (4th ed., 1958) p. 51 and William F. Dawson, *Procedure in the Canadian House of Commons* (Toronto, 1962) p. 182.
8. *Toronto Sun*, March 3, 1982.
9. *Windsor Star*, March 4, 1982.
10. *Commons Debates*, March 18, 1982, p. 15556.
11. *Beauchesne's Rules and Forms of the House of Commons of Canada* (5th ed. 1978) p. 74.
12. Arthur Beauchesne, op. cit., (4th ed. 1959) pp. 51–2; Ibid., (3rd ed. 1943) p. 47.
13. *Commons Debates*, April 1, 1977, p. 4561.
14. *Toronto Star*, March 16, 1982.
15. *Commons Debates*, March 18, 1982, p. 15555.
16. Ibid., p. 15556.
17. Ibid., p. 15556.
18. Ibid., p. 15557.
19. Ibid., p. 15527.

VII. THE NORTHERN IRELAND ASSEMBLY: A BRIEF BACKGROUND AND SOME EARLY IMPRESSIONS

BY J. E. WOLSTENCROFT

Clerk Assistant of the Assembly

In October 1982 a consultative Assembly, without legislative power, was elected in Northern Ireland. This article outlines briefly the background to that Assembly and offers some initial impressions.

For over fifty years Northern Ireland had its own Parliament and a system of legislative and executive devolution operated in that part of the United Kingdom. But the devolved Parliament had limited legislative competence, and Northern Ireland continued to be represented at Westminster. The Westminster Parliament was responsible for legislation on imperial or national issues, known as 'excepted' matters, and for legislation on other issues, known as 'reserved' matters. All other matters, known as 'transferred', were the legislative responsibility of the Northern Ireland Parliament.

That Parliament, and the executive responsible to it, were brought to an end in 1972 because of communal violence between the unionist majority and the nationalist minority. They were replaced by a system of government envisaged as temporary and colloquially referred to as Direct Rule. Under Direct Rule executive power is vested in the Secretary of State for Northern Ireland; and most, though not all, legislation for Northern Ireland is processed at Westminster through Order in Council procedure. These Orders in Council are published as draft Proposals for consultation before they are presented at Westminster, where they cannot be amended, only accepted or rejected in toto. Since Direct Rule is considered to be temporary, the objective of successive Governments has been to restore a form of devolution in Northern Ireland that will attract widespread support in both the unionist and nationalist communities.

Though both communities express a balanced preference for devolution, they want it for different reasons and in distinct forms. The unionists want to protect their British citizenship by returning to straightforward, though modified, majority rule; the nationalists want to assert their Irish identity through power sharing at executive level. A power sharing executive and a legislative Assembly were introduced into Northern Ireland for a few months in 1974 by virtue of the Northern Ireland Constitution Act 1973 and the Northern Ireland Assembly Act 1973. But they were rejected by the unionist majority, and Direct Rule was re-introduced by the Northern Ireland Act 1974. Since then successive Governments have attempted, unsuccessfully, to resolve the

impasse. The present consultative Assembly is the latest, and perhaps not the last, such attempt.

In 1982 a White Paper was published as a prelude to legislation. It proposed the election, by a system of proportional representation, of a 78 member unicameral Assembly in Northern Ireland. Though without legislative powers the Assembly would have important scrutinising, deliberative and consultative functions. Emphasis was placed on the prospective role of scrutiny committees, corresponding to each of the Northern Ireland departments, and on the positive relationship which would develop between the Secretary of State and his ministerial team on the one hand, and the local Assembly, on the other. The Assembly would be able to forward proposals for the restoration of a devolved legislature in Northern Ireland subject to the central principle of cross community acceptability. Though no specific form of devolved government would be required, cross community acceptance would remain the touchstone.

These proposals formed the substance of the Northern Ireland Act 1982, a piece of legislation that is permissive rather than prescriptive in spirit. It amends or affects three Acts, the Northern Ireland Assembly Act 1973, the Northern Ireland Constitution Act 1973, and the Northern Ireland Act 1974. Direct Rule continues and these Acts, though amended, remain on the statute book with most of their provisions unaffected. In the Government's view the Northern Ireland Act 1982 is modestly realistic legislation establishing a forum with immediately useful functions, and a structure within which devolution could be secured and Direct Rule brought to an end.

In the elections to the Assembly the two major unionist parties secured 47 seats between them; this figure has been increased to 48 as a result of a recent by-election. The main nationalist parties obtained 19 seats, subsequently reduced to 18 when one of their members was disqualified; and a centre party secured 10 seats. One independent was returned; and there was a single representative, subseqently elected Speaker, from a minor unionist party. But the nationalist parties had campaigned on an abstentionist ticket and refused to take their seats. Therefore, following the election of the Speaker, the Assembly operates with 59 of its 78 members attending.

Those members attending have different levels of experience upon which to draw. Most have more familiarity with local rather than regional politics. Only 9 had experience in the previous, short lived, Assembly in 1974; and 3 had experience in the former Northern Ireland Parliament. But 12 are members of the House of Commons and one of the House of Lords; and 2 are members of the European Parliament. This infusion of Westminster and European experience has had a procedural impact, not least because those with such expertise have an opportunity to play a more prominent and confident role on the floor of the Assembly and in Committees.

Though the continuing abstentionism of the nationalist parties cannot make its central political objective any easier to achieve, the Assembly has proved to be busy. This is due to a number of factors. Most members have been energetic, eagerly making the best political advantage out of a local representative forum with scrutiny committees. The Secretary of State and his ministerial team have been responsive to invitations to attend the Assembly, and Ministers frequently attend committee meetings. The Clerks, conscious of the political imperative attached to the Assembly, have been obliged to go beyond their traditional role in assisting with the planning and direction of Assembly business. The local civil service, taking their ministerial cue, have responded rapidly and efficiently to requests for information and official attendance. But the conditioning factor, perhaps, is that the Northern Ireland Act 1982 has set out an imaginative role for the Assembly and its committees in the event of Direct Rule continuing and agreement on devolution remaining elusive. The relevant provisions of that Act have been carefully included in the Standing Orders of the new Assembly.

While Direct Rule continues the Assembly can consider the full range of 'transferred' and 'reserved' matters of its own volition; and it could consider 'excepted' matters if any were referred to it by the Secretary of State. In addition, the Assembly has been given an interesting pre-legislative role. It can consider Proposals for Draft Orders in Council in the 'transferred' field; and it could consider such Proposals for Draft Orders in Council in the 'reserved' field if any were referred to it by the Secretary of State. This is complemented by a scrutiny role in relation to subordinate legislation. Moreover, the Assembly may report to the Secretary of State on any matter it has considered; and the Secretary of State is required to lay such reports before Parliament when they deal with 'transferred' matters or with any matter specifically referred to the Assembly by the Secretary of State.

The role of the departmental scrutiny committees is of central importance. The Northern Ireland Act 1982 gives them a statutory basis; and, unlike the position at Westminster, it allows for the payment of both their Chairmen and Deputy Chairmen. The Act also allows the Assembly to set up other committees, though their Chairmen and Deputy Chairmen would be unpaid. Taking advantage of this provision the Assembly has set up a Privileges Committee, a Services Committee, a Broadcasting Committee and a Security and Home Affairs Committee. Moreover, through its own Standing Orders, the Assembly has increased the influence of the Statutory Committees giving precision and definition to their central role. A number of features are indicative.

First, given the absence of a Government in the Assembly, a Business Committee was established to programme the work of the Assembly. The bias of representation on that Committee favours the statutory Committee Chairmen, affording them decisive influence over the scheduling of Assembly business. All committees, both statutory and

non-statutory, have leave to report to the Assembly on matters referred to them or on other matters. The Chairmen and Deputy Chairmen, on notice given, can make statements to the Assembly followed by a time limited debate with right of reply. Moreover, Standing Orders provide that committee reports shall be considered on the floor of the Assembly and set out the procedures to be followed.

With paid Chairmen and Deputy Chairmen, a majority on the strategic Business Committee, and the right to have their reports debated on the floor of the House, statutory committees of the Assembly have certain distinctive features unfamiliar to Westminster Select Committees. This has given them a greater influence over procedure and a larger share of business time than Select Committees currently obtain at Westminster. Indeed, in the light of the First Report of the Liaison Committee on the operation of the Westminster Select Committee system, it would appear that committees of the Northern Ireland Assembly have a status and role within the Assembly to which Select Committees aspire within the House of Commons.

Subject to these significant differences, the profile and practice of Assembly committees are modelled closely upon Westminster Select Committees. Though the Assembly is without power, and its committees likewise, Standing Orders set out functions analogous to those of Westminster Select Committees. The Assembly has given its committees the right to adjourn from place to place, to appoint specialist advisers and to invite the attendance of persons and the submission of papers and records. The responsiveness of Government and officials, and the apparent readiness of others to supply evidence, means that Assembly committees operate to all intents and purposes as do Select Committees.

The pre-legislative role of Assembly committees is of particular interest. Since Direct Rule continues, most, though not all, legislation for Northern Ireland continues to be processed at Westminster through Order in Council procedure. In dealing with Proposals for Draft Orders in Council referred to them, Assembly committees invite and receive written and oral evidence from interested bodies, suggest amendments to the proposed legislation and embody these suggestions in a report to the Assembly. Though such a report may be agreed to either with or without amendment, referred back in whole or in part, or rejected by the Assembly, it is normally presented to the Secretary of State for consideration.

It follows that the pre-legislative scrutiny exercised by Assembly committees is broadly similar in approach to the legislative role currently performed by Special Standing Committees at Westminster and recently, in a rather more radical initiative, by the Transport Select Committee in relation to the 1982 Transport Bill. Indeed, the role of Special Standing Committees, embracing functions traditionally associated with both Select Committees and Standing Committees, is perhaps

the closest Westminster analogy to the approach adopted by Assembly committees in their pre-legislative scrutiny of Proposals for Draft Orders in Council.

Another interesting feature is that some practices more characteristic of the European than the Westminster Parliament are apparent. The pace and impetus of Assembly committees makes their reports an integral component of Assembly business, unlike the reports of Select Committees at Westminster. Since 1979 a relatively small number of Select Committee reports have been debated at Westminster and Government seems reluctant to make more time available for this purpose. Since its first meeting twenty-four committee reports have been debated in the Assembly. This certainty of having a motion debated on the floor of the Assembly on the presentation of a Committee Report is a procedural feature more reminiscent of practice in the European, than in the Westminster, Parliament.

Indeed, just as the European Parliament relies upon its committees to provide opinions on legislative proposals made by the Commission, so the Northern Ireland Assembly relies on its committees to do similar work in relation to proposed Orders in Council made by local Government Departments. Moreover, the succinct form of report normally associated with European Commission practice has also found favour with a number of Assembly committees in preference to the more discursive form of report traditionally associated with Westminster Select Committees.

It is much too early to assess the impact of the Assembly and its committees. While abstentionism continues the Assembly may not be able to address its primary political purpose – devolution based upon cross community acceptability. But the committees are proving energetic, if rather eclectic, in their choice of enquiry. Through their work more modest, but not inconsiderable, political objectives may be secured.

Clearly the committees are attracted by the prospect of finding out what the local executive is doing and of holding it publicly accountable. Should their scrutiny prove effective it could be counted as a bonus given the lack of close political oversight during the last eleven years. Of course exercising an influence upon policy formation, expenditure priorities and executive action will be more difficult. Much will depend upon the ability of committees to establish and sustain their own credibility with Government Ministers, the civil service and public opinion. This presents the local politicians with a formidable but fascinating challenge. If the Northern Ireland Assembly endures, it will be interesting to see how this challenge is met.

VIII. INDEPENDENCE COMPROMISED? PRIVATE MEMBERS ON GOVERNMENT BOARDS, COMMISSIONS AND AGENCIES.

BY GWENN RONYK

Deputy Clerk of the Saskatchewan Legislative Assembly

Should private Members be appointed to government boards, commissions and agencies and should they receive expenses or remuneration for such service? Is the legislation which prohibits such activity in Saskatchewan out of date and obsolete? This article outlines the relevant practice and law in Saskatchewan on these questions, discusses the parliamentary principles involved, describes the practice and law in other Canadian jurisdictions and concludes by offering alternatives which would not compromise the independence of private Members.

Saskatchewan

A Member of the Legislative Assembly is currently prohibited by statute from holding an office or place of profit under the Crown. Subsection 3(1) of The Members of the Legislative Assembly Conflict of Interests Act provides as follows:

> No person who holds any office or place of profit under the Crown or who is employed in any manner in the public service of the province for salary, wages, fees or emolument shall sit or vote in the Assembly, and the election of any such person as a member is void. (S.S. 1979, c.M 11.2)

The section also includes a list of exceptions such as holding the offices of Speaker, Deputy Speaker, Whips, Committee Chairmen, Ministers, legislative secretaries, etc. Section 11 of The Legislative Assembly and Executive Council Act has companion provisions:

> Notwithstanding any other Act or law:
>
> (a) the receipt by or entitlement of a member to any payment or benefit of any allowance, grant, indemnity, disbursement, reimbursement or salary under this Act;
>
> (b) the appointment of a member as Speaker or Deputy Speaker of the Assembly, leader of an opposition party, whip or deputy whip, member of the Executive Council, legislative secretary, deputy chairman of committees, chairman of crown corporations or public accounts committee, Opposition House Leader, coroner, justice of the peace, notary public, official auditor, official trustee, registrar of vital statistics or commissioner for oaths or the appointment of a member of the Executive Council as a chairman, vice-chairman, director or member of a Crown corporation;
>
> does not, by reason of the acceptance thereof or by reason of any profit, emolument or benefit of or in respect thereof, disqualify him as a member of the Assembly or from sitting or voting in the Assembly and does not vacate or require him to vacate his seat in the Assembly. 1979–80, c.85, s.4; 1982–83, c.38, s.4. (S.S. c.L-11.1, 1979)

These sections clearly prohibit a private Member from holding any office under the Crown for which he receives any salary, wages, fees or emolument, other than the listed exceptions. These prohibitions have been in place since 1897 when the territorial assembly first achieved responsible government.

Questions that are less clear are: (1) Could a Member hold an office without receiving remuneration of any kind? and (2) Could a Member hold an office for which he is reimbursed for expenses only? The practice in Saskatchewan has been that the sections from the relevant statutes are interpreted strictly. Private Members are not entitled to hold an office for which they receive expenses from the public purse, and further, Members have not been appointed to boards and commissions even without pay.

Two practices have been authorised by statute in Saskatchewan to provide exceptions to the general rule about Members receiving payment from public funds for non-legislative duties. These are: (1) the provision for appointment of legislative secretaries,* and (2) an amendment to The Legislative Assembly Act which allows private Members to receive reimbursement for actual expenses while acting on behalf of the government at the request of a Minister outside of the province. The latter section of The Legislative Assembly and Executive Council Act reads as follows:

> 58. Each member, other than a member of the Executive Council or a legislative secretary, is entitled to receive reimbursement for actual travel and other expenses incurred by him in respect of duties carried out by him outside the province while acting as an official representative of the Government of Saskatchewan at the request and under the direction of a member of the Executive Council. (S.S. c.L 11.1, 1979)

Under these provisions, private Members may receive remuneration for carrying out executive functions by being appointed a legislative secretary or may receive expenses for carrying out duties outside the province at the request of a Minister. The existence of these specific provisions in the Act strengthens the argument that holding an office or receiving remuneration is not permissible unless legislation specifically allows it. If it were thought desirable to permit Members to serve on boards and commissions, amendments to The Legislative Assembly Act and The Conflict of Interests Act would be required.

The Question of Principle

The principle reflected in the prohibition against MLAs holding an office or place of profit under the Crown is an old one but is still relevant today. Persons holding an office at the nomination of the Crown have

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* Legislative secretaries are similar to parliamentary secretaries or parliamentary assistants in other jurisdictions. Legislative secretaries are private Members who are appointed to assist a particular Minister in carrying out his or her duties. They receive an additional allowance for these duties but are not cabinet ministers.

traditionally been disqualified from sitting or voting as a Member in Westminster style parliaments. The most important reason for the law is to ensure the independence of Members. One of the roles of the legislative arm of government is to hold the executive arm accountable to the people. This duty could be, or could appear to be, weakened by private Members being paid for services to the Crown. Conversely, the ability of the individual to carry out duties as a member of a board or commission may be deleteriously affected by his position as an elected Member. Having private Members on government boards and commissions would upset the constitutional balance between the legislative and executive branches of government. In the past, even Members who were appointed to the executive council automatically had to vacate their seats and had to run again.

Another major principle involved is the concept of ministerial responsibility. Constitutionally, government is supposed to be by Ministers responsible to parliament. There is no established practice or theory that private Members are responsible to the Legislature. The practice of having private Members carry out executive functions may blur the lines of responsibility to the legislature and thus accountability to the public.

There are other arguments both for and against the appointment of private Members to government bodies. A succinct summary of some of them was made by the Ontario Commission on the Legislature, First Report, 1973 as follows:

Arguments in Support of the Practice

(a) The presence of a politically astute person provides an input to, or a check on, an agency usually at arm's length from public opinion.
(b) The Member serves as a useful information source for the Legislature, and especially for the Government Caucus.
(c) It provides a training ground for talented Members.
(d) It is a means by which the Premier can reward loyal Members of long service or young ambitious M.P.P.s aiming towards a future Cabinet position.

Criticisms of the Practice

(a) It gives too much patronage to an executive which already has too much domination in the Legislature – i.e. the rewards keep Backbenchers supplicant and cripple their independence of mind – in the Caucus, the Assembly and its committees.
(b) The appointees do little or nothing for their rewards and have an unfair advantage in terms of income and perquisites over their colleagues.
(c) At Ottawa such appointments are never made (but there is, of course, the Senate).
(d) The appointees have no legislative responsibilities for their agencies – i.e. they do not answer questions in the House, neither do they put through their agency's estimates. They serve an 'executive' or 'administrative' function, neither of which is consistent with the nature of legislative responsibility.
(e) The practice conceals a 'fat' level of remuneration for Government M.P.P.s which the public doesn't know about.
(f) As long as a substantial number of such appointments are made and one assumes that 'work' is being done by the appointees, the idea that the job of an M.P.P. is a full-time one is undermined.
(g) There is something anomalous and potentially dangerous in terms of conflict of interest in having an M.P.P. on a board which makes major recommendations after

public hearings. As they affect his private interests, such conflicts may be no different from those of any other board members, and would perhaps be covered by a conflict of interest policy of the board. However, as an M.P.P. he has certain political and public interests (e.g. those of his constituency) which may be more difficult or impossible to resolve.

The commission found that the criticisms outweighed the arguments in support of the practice and subsequently recommended that the practice of appointing M.P.P.s to permanent boards and commissions be discontinued. Current practice in Ontario is outlined below.

Practice and Law in Other Jurisdictions

The practice and law regarding private Members holding an office under the Crown varies somewhat from province to province in Canada. Six provinces, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick and Prince Edward Island have legislation which prohibits private Members from holding a place of profit under the Crown, with certain specific exceptions. In contrast, British Columbia, Alberta and Ontario have provisions in statute which permit private Members to hold offices under the Crown, with certain exceptions, and also permit Members to receive fees or expenses for such service. However, the use made of these provisions varies widely in the last three provinces as follows:

British Columbia – while there is legal provision for private Members to be on government- appointed boards and agencies, it is very rarely used. It was a new provision enacted in 1979 to cover a specific situation and has not been accepted as general practice. The relevant provisions are contained in the B.C. Constitution Act, R.S. c. 62, s. 25 and 26.

Ontario – there is legal authority and a long-standing practice for private Members to be appointed to government bodies. In the last ten years, however, the practice has almost disappeared. At the present time there are only two or three such appointments still in effect. The relevant provisions are contained in the Ontario Legislative Assembly Act R.S.O. c. 235, s. 8.

Alberta – detailed legal provisions allow private Members to be appointed to government boards and receive fees and expenses for such duties. The provisions have been in place for about eight years and are extensively used. In 1980/81 private Members were appointed to 43 remunerated positions on government boards, commissions and other bodies. (Sessional Paper No 72/82, Legislative Assembly of Alberta.) The relevant provisions are contained in the Alberta Legislative Assembly Act, R.S.A. 1980, c. L-10, s. 8 and 12.

Federal legislation prohibits private Members of the Canadian House of Commons from holding an office for which payments are received from the Crown. The Senate and House of Commons Act specifically permits members to be appointed to such bodies as long as they receive no remuneration or expenses for such service. In practice, the provision is not used. It is extremely rare for a private Member of Parliament to serve on a government-appointed body.

Conclusions

The independence of the Legislature and the independence of individual Members is a crucial element in the well-being of the parliamentary system. In view of the important principles that are at issue here, it is concluded that no changes should be made to the legislation prohibiting Members from holding an office of profit under the Crown in Saskatchewan. However, there are some alternatives that could be explored to meet some of the same needs:

(1) Continued use of legislative secretary appointments – this programme was specifically designed to permit a private Member to work closely with a cabinet minister and to carry out certain duties for the minister.
(2) Greater use of legislative committees – in situations where the executive is seeking greater MLA participation, more feedback and input from the public or advice from members in a particular issue, legislative committees can very appropriately serve any or all of these functions. Depending on the nature of the subject matter, standing, special or select committees could be used. Legislative committees also have the additional advantage of airing all sides to an issue often resulting in recommendations that are more widely acceptable.
(3) An expansion of section 58 of The Legislative Assembly Act to permit private Members to receive expenses while acting as an official representative of the Government of Saskatchewan inside the province – currently the Act allows Members to receive expenses for duties assigned by a Cabinet Minister only when they are carried out outside the province. This amendment would permit private Members to act on behalf of the government or a Cabinet Minister on ad hoc occasions whenever convenient or desirable.

These alternatives provide Cabinet with a means to utilise the knowledge and experience of private Members. They provide a means for the government to hear what the public have to say while at the same time ensuring that there is a public forum through which views can be made known to the Legislature and to the government. The alternatives can also provide valuable learning experience for private Members while permitting them to make a significant contribution to the public life of the province. And most importantly, they can be accomplished without compromising the independence of private Members.

IX. AUSTRALIAN SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

BY ANNE LYNCH

Clerk of Committees

Introduction

On 19th November 1981, the Senate embarked upon an experiment which is, to my knowledge, unique in the Westminster-based parliamentary experience. On motion by the then Chairman of the Senate Standing Committee on Constitutional and Legal Affairs (Senator Missen) the Senate agreed to the establishment of a Standing Committee for the Scrutiny of Bills, to operate for an experimental period to 30th June 1982.

The Committee was appointed with the following terms of reference:

(1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise –

(i) trespass unduly on personal rights and liberties;

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

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

(b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

The purpose of the Committee was to examine, in a manner similar to the Senate Regulations and Ordinances Committee's examination of delegated legislation, clauses of proposed laws to ensure that rights and liberties of citizens were safeguarded. The need for such an examination of Bills had been argued by a number of Senators for some years, culminating in a recommendation from the Senate Standing Committee on Constitutional and Legal Affairs that a committee be appointed to undertake the task. It had often been pointed out that the effect of Bills on the rights and liberties of citizens tended to be overlooked, with debate focussing on the policy of the proposed legislation, and that the

existence and effectiveness of the Regulations and Ordinances Committee had meant that delegated legislation was scrutinised more effectively than primary legislation.

The terms of reference empowered the Committee to look at Acts as well as Bills, so that it could comment on Bills after they had passed, and would not have to ask that a Bill be held up while the examination of it was concluded. It was also envisaged that the Committee might wish to comment upon an Act which was proposed to be amended by a Bill. The paragraph about 'proposed law or other document' was intended to allow the Committee to commence its consideration of a Bill before the Bill had actually been received by the Senate.

Early Operations

In its First Report to the Senate, tabled on 23rd February 1982, the Committee described its general method of operations till that time. The Committee, in accordance with the resolution of the Senate, appointed with the agreement of the President an eminent counsel, Professor Dennis Pearce, Professor of Law at the Australian National University and a learned authority on administrative law, to examine all Bills before both Houses of the Parliament. Almost fifty Bills, including all Government and Private Members' Bills which were before both Houses of Parliament when it rose for the summer recess, were referred to Professor Pearce for advice on any provisions which, in his opinion, might be regarded as infringing any of the principles set out in paragraph 1(a) of the terms of reference. The Committee considered his comments at a meeting held in early February 1982. Following that consideration, the Committee reported to the Senate on the clauses of nine Bills which either were before the Senate at the time of its Report or had passed the Senate and were in the lower house. In addition, the Committee made preliminary comments on Bills which had been introduced into the House of Representatives, but had not yet reached the Senate. These preliminary comments were contained in a document called the Scrutiny of Bills Alert Digest, which listed and described all Bills which the Committee had considered at its first meeting.

As indicated in its First Report, the Committee perceived its purpose as being to identify clauses of Bills and to raise questions under one or another of its principles. It did not necessarily have a concluded view that the principle in question was in fact infringed. The Committee indicated that it regarded its role as being to alert the Senate, rather than to perform a function, similar to that undertaken by the Regulations and Ordinances Committee, of recommending to the Senate that action be taken.

Ninth Report – Work of the Committee

Under the terms of the motion agreed to by the Senate in November 1981, the Committee was required to make a report to the Senate, prior

to 30th June 1982, 'on the work of the Committee and the need, if any, for a separately constituted Standing Committee'. On 20th May 1982, and following eight Reports and Scrutiny of Bills Alert Digests, the Committee tabled in the Senate a unanimous Report, summarising its activities over the previous months, and concluding, *inter alia*:

1. that the need for a scrutiny of Bills function previously identified by the Constitutional and Legal Affairs Committee, and during debate on the motion for the establishment of the Scrutiny of Bills Committee, was confirmed;
2. that the basic procedure for the scrutiny of Bills [described above] had worked satisfactorily; and
3. that the function of scrutinising Bills should be performed by a separately constituted Senate Standing Committee for the Scrutiny of Bills, with terms of reference very similar to those of the experimental committee.

The Committee was pleased to note in the Report that its comments on clauses of a great variety of Bills had been generally well received, and that a number of amendments, sponsored by both Government and non-government Senators – and, indeed, by members of the House of Representatives, most notably Ministers – had been agreed to by the Parliament.

The Committee pointed out in the Report that, even in the early stages of its operations, it had received submissions from private organisations and individuals; comments on matters raised in the Alert Digests from Ministers; and comments by private Senators. Since the Report was tabled, the practice has continued, particularly by Ministers, and the Committee's conclusion that the effectiveness of the scrutiny function would be enhanced by such submissions and comments has been borne out by its later experience.

It also made the point that the informal influence of the Committee's existence on the preparation of legislation, and possible amendments, should not be underestimated. While the Committee realised that it was difficult to quantify the results of its work in the area of indirect influence, it noted that the demand for the Scrutiny of Bills Alert Digests and Reports had been exceedingly high. Again its judgment was vindicated, by the subsequent release of instructions from Parliamentary Counsel to all Departments of the Commonwealth, drawing attention to the Committee's comments in its various Reports and Digests and emphasising the need to take matters which the Committee had raised into account when preparing instructions for legislative proposals.

While it is to be noted that the Committee's terms of reference empowered it to examine existing legislation, the Committee took the view that it would be inappropriate for the present parliamentary scrutiny function to extend to legislation already in place. It therefore supported the comments made by the Constitutional and Legal Affairs Committee that, while there was undoubtedly a need to examine the backlog of legislative provisions which remain on the statute books

notwithstanding the possible infringement of civil liberties by undue delegations which they continue to authorise, it was not appropriate for the Parliamentary Committee to carry out this function.

In order to give the Senate time to consider the Report, interim arrangements were made to enable the Committee to continue its work. Soon after the Report was tabled, the Senate agreed to a temporary resolution which kept the Committee in existence. In addition, the President of the Senate, noting the Committee's conclusions that continued recourse to independent legal advice was imperative and that adequate secretariat assistance was needed, approved the continuance of the services of Professor Pearce, at a remuneration more appropriate to the duties which he was required to undertake, and also made provision for fulltime secretariat assistance to the Committee.

Senate Consideration of Ninth Report

On 28th October 1982, the Senate agreed in principle to the establishment of a separately-constituted Standing Committee for the Scrutiny of Bills, and referred a draft Standing Order to the Standing Orders Committee for examination before formal recognition of the Committee was given in the Standing Orders of the Senate. One pleasing aspect of the Senate's consideration of the Committee's activities during the experimental period was the recognition by the then Government of the Committee's work. The then Minister for Social Security, Senator Chaney, in making the Government's response to the Ninth Report, acknowledged the Government's original misgivings about the Committee's establishment but then went on to say:

'In the light of the experience of the actual working of the Committee, the Government now takes a different attitude to the proposal which is before us . . . experience has shown that the Committee has not caused inconvenience to the Government's legislative program. Indeed, many of its recommendations have been readily accepted by the Government . . . So there has been a demonstration, in terms of amendments accepted by the Government and subsequently by the Senate, that there is a function to be performed in this area.

In addition, on behalf of the Government I wish to acknowledge that there has been a hidden flow-through effect into the departments. The very existence of the Committee is causing officials to think more closely about provisions in legislation concerning personal liberties and the delegation of legislative power and parliamentary scrutiny. So one of the other predicted effects of the Committee's existence has come about; namely, there has been a heightened awareness, in the pre-legislature stage of legislative preparation, of the sorts of principles with which the Committee is concerned.

So in the light of that experience the Government would propose . . . to support the continuance of the scrutiny of Bills function.'

The Standing Orders Committee did not have the opportunity to complete its consideration of the proposed new Standing Order before the Parliament was dissolved in February 1983.

Conclusion

It is reasonable to suggest that the Senate Standing Committee for the Scrutiny of Bills was a daring experiment in legislative scrutiny of the executive. It is clear that the Committee's success in its first year of operation has exceeded the wildest expectations of even those quaint optimists who regard Parliament's paramount legislative function as being to protect the rights and liberties of citizens. This most recent Standing Committee of the Senate continues in the great tradition established by the renowned Senate Regulations and Ordinances Committee, and has brought to its examination of primary legislation the degree of objectivity and bipartisan concern which has characterised that Committee's fifty years of successful operation. The future of the Senate Standing Committee for the Scrutiny of Bills seems assured.

X. THE NEW SELECT COMMITTEES AT WESTMINSTER – AN INTERIM APPRAISAL

BY JOHN SWEETMAN

Second Clerk of Select Committees

The Parliament of 1979 to 1983 may well be cited by future historians as notable for the long term effect it had on the balance of political power in Britain. But even at this early stage soon after the dissolution, it can safely be predicted that one of the most significant changes will eventually prove to be the establishment by the House of Commons of what was virtually a new system of select committees. Proposals for reorganising select committees with a view in particular to giving backbenchers the power to exercise more effectively scrutiny over government departments and the activities of Ministers had been the subject of seemingly endless discussion among politicians, journalists and academics for over twenty years. Finally in 1978 after a detailed inquiry the Select Committee on Procedure produced the blueprint for the system which in June 1979 the House eventually adopted.

Fourteen new committees were created, each of them concerned with one or more departments of state, as follows:

> Agriculture; Defence; Education, Science and Arts; Employment; Energy; Environment; Foreign Affairs; Home Affairs; Industry and Trade; Scottish Affairs; Social Services; Transport; Treasury and Civil Service; and Welsh Affairs.

In addition a number of other committees, for example, the Public Accounts Committee, the European Legislation Committee, and the Committees on Members' Interests, the Parliamentary Commissioner for Administration and Statutory Instruments, continued in being. To the committees as a whole was added in January 1980 the Liaison Committee with a membership consisting of most of the committee Chairmen.

A promising start

The new committees were nominated in November 1979 and began work as soon as possible thereafter. From the outset two factors worked effectively in their favour, first, the choice of Members, and secondly, the appetite of the press, television and radio for news of their activities.

The choice of Members was for the first time given effectively to a group of backbenchers, namely, the Committee of Selection. In their zeal to be seen to be independent of any party line the Committee excluded Ministers, shadow Ministers and parliamentary private secre-

taries from membership of the new committees. This had the effect of producing a high proportion of newly-elected Members whose lack of reverence for established procedures and impatience to get on with the job gave the committees a good start and brought an unexpected sparkle to their public sessions of evidence.

The press liked the new committees and many 'serious' journalists who had argued over the years in favour of parliamentary reform identified themselves with the success of the select committees. Television being essentially an evening event found that the timing of committee meetings during the day enabled correspondents to select topical items for inclusion in later news bulletins. Ministers, at first suspicious of the new committees, quickly appreciated their newsworthiness. By November 1982 there had been 190 ministerial appearances before them.

It is too early to form a considered, detailed judgment of the work of the new committees, but we have the advantage of an interim verdict delivered in the First Report of the Liaison Committee,[1] which was published in January 1983. The source of the verdict may not be entirely impartial but its authority, based as it is on essays personally written by no less than 20 chairmen, is formidable. The essays themselves are well worth reading.

The Liaison Committee's verdict

The assessment by the Liaison Committee begins with some statistics. During the three years from 1979 to 1982 the fourteen departmental committees held 1,710 formal meetings at which the average attendance was about 76 per cent. They issued 172 substantive reports on subjects varying from the government's economic and monetary policy to its proposals for paying sickness benefits and for dealing with perinatal and neo-natal mortality, from the role of Parliament in relation to the British North America Acts to an hotel development in the Turks and Caicos Islands, from the government's housing policies to the vagrancy laws and miscarriages of justice. All this activity, in the Liaison Committee's view, has extended the range of the activity of the House as a whole; it has deepened the quality of its debates and strengthened its position relative to that of the government.

The new committees have gone a long way from the traditional practice of making long reports after long inquiries though these remain appropriate in certain cases. It has become quite common for a committee to take up at short notice a subject of current controversy, for example a threat by the B.B.C. to abolish one of its Scottish orchestras, and to make a short report putting the facts on record for the House. In addition, departmental replies to committee reports are made more promptly, usually within two months. Sometimes the replies are followed up by committees and a fruitful dialogue follows between Members and departments.

In the words of the Liaison Committee, 'the ensuing flow of factual

information to the House is one of the principal services which an effective select committee system provides'. There have been many cases during the last three years when this flow of factual information contained in committee reports has directly affected government policy and parliamentary debate. 'From the amendment of the "sus" law to the sensitive debates on the Canada Bill, from efficiency in the civil service to "misinformation" in the Falklands campaign, from the promenade concerts to Concorde and nuclear technology, and at countless other points, Members' attitudes have been affected by what committees have done'.

The effectiveness of select committees is not to be judged solely on the effect of their reports, still less on the acceptance of their recommendations by the Government. It may take time for Ministers and their departments to appreciate the wisdom of what a select committee says. Nor can one ignore the largely unseen effect of monitoring the work of departments. The eagerness of Ministers to give evidence has already been noted; their appearances have become a valuable feature of parliamentary life. At the same time the civil service has become widely exposed to detailed parliamentary examination, probably more than at any time before. A measure of the change is the memorable comment by one committee Chairman that in three years his committee had examined virtually every officer in its department of under-secretary rank and above. Equally significant is the deterrent effect of the realisation by Ministers and civil servants alike that at any moment and at short notice Members may look into anything that may arise within the administration of their departments.

The new committees have been charged with the task of examining 'the expenditure, administration and policy' of the departments to which they are related. In most cases, however, policy raises questions about expenditure. How well have the committees discharged their financial role? Here the verdict of the Liaison Committee is more reserved. All the committees have done some work in examining the expenditure of their departments whether it be through looking at the annual Public Expenditure White Paper or questioning the estimates. But they have been constrained from doing more by the feeling of a need for more assistance in undertaking additional work of a demanding nature and by the realisation that in practice there existed virtually no opportunities to pursue such investigations effectively on the floor of the House. The new arrangements for the consideration of estimates, adopted by the House in July 1982, which enabled the departmental committees through the Liaison Committee to propose debates on and reductions in the estimates on three days each session, may give Members a greater incentive to probe expenditure by departments. These are early days; we shall have to await possible further changes in the financial procedure of the House before the committees can make a proper appreciation of their own role in this field.

Some improvements proposed

In the expectation that the next Parliament would appreciate advice on ways of improving the select committee system, the Liaison Committee went on to make some detailed proposals for the future.

Three of the new committees (Foreign Affairs, Home Affairs and Treasury and Civil Service) were given the power to appoint a sub-committee; the other eleven were given no such power. This restriction was from the outset strongly resented by most Members and particularly so by Chairmen who remembered the unfettered licence given in this field to former select committees, such as the Select Committee on Science and Technology. In practice the sheer size of the remit given to committees has forced many of them to operate in informal sub-committees, half the committee conducting one inquiry while the other half conducted another. But each group has had to act in the name of the full committee and has needed the quorum of the full committee to validate its sittings.

Despite the protestation of committees in special reports and in correspondence with the Leader of the House, the government have steadfastly refused to extend the power to appoint sub-committees, first, because of doubt about the House's capacity to service more sub-committees and secondly (probably more to the point), because of fears of the increased load they would place upon Ministers and the civil service. The Liaison Committee suggested that the House should decide the issue.

The ability to obtain information is basic to select committee operations but the traditional power to 'send for persons, papers and records', so all-embracing in theory, has been eroded over the years, as the Select Committee on Procedure pointed out in 1978.[2] The undertaking given on behalf of the Government by the Leader of the House in June 1979 was all the more welcome; there need be no fear that departmental Ministers would refuse to attend committees or that they would not make every effort to give them the fullest possible information . . . 'every Minister will do all in his or her power to co-operate with the new system of committees and to make it a success'.[3] A subsequent undertaking was that, if there were 'evidence of widespread general concern in the House' regarding a ministerial refusal to disclose information to a select committee, time would be provided for the House to express its view.[4] The first of the undertakings has been honoured so satisfactorily that the second has not yet had to be invoked. But as the Liaison Committee went on to point out, difficulty has arisen in two specific areas. One committee had trouble in obtaining information on advice tendered to a Minister by a firm of accountants. Although this conflict of interest was resolved by a compromise, the important constitutional question of whether advice given to Ministers by outside consultants is to be given the same cloak of confidentiality as advice given by civil servants is very much open to question and will no doubt

arise again. Secondly, several committees were stopped from seeking evidence on investigations carried out by the Central Policy Review Staff (the Government's 'think tank'), whose inquiries into aspects of government policy often run parallel with the work of select committees. The Liaison Committee recommended that the CPRS should inform the appropriate select committees of the conclusions of their investigations and should be allowed to make available to committees the evidence they had gathered.

Of the reports made by the departmental committees in the last three years only five have been substantially debated by the House (and then usually many months after the report had been published). It is only fair to add that in one way or another – on supply days, during government business or on backbenchers' motions – many more committee reports, perhaps as many as thirty-three, or one in six, have been debated to a greater or lesser extent. Nevertheless, as the Liaison Committee were at pains to underline, the connection between the work of the committees and the floor of the House is of considerable importance and the lack of opportunity to debate committee reports constitutes a major shortfall in the support promised by the Leader of the House. The Committee requested an undertaking from the Government that more days would be available for debates in future and that they would be spaced out regularly through the year.

Publicity has been an important factor in the work of the new committees and Chairmen as a whole have exhibited a flair for taking up topical issues and for conducting lively press conferences on their reports. The Liaison Committee addressed itself to the question of televising committees. While appreciating the deeply felt doubts of some members about the effect of television on debates in the House, the Committee put on record the conviction of the majority that the work of select committees might be considerably enhanced by the presence of television cameras. It recommended that the Sound Broadcasting Committee should be empowered to look into the problems involved. As though to endorse this recommendation, the House in May 1983 gave leave on a free vote by 153 to 138 to a Private Member to introduce a Bill to enable select committees to be televised.[6]

Staffing

Since the start of the new system the permanent staff of the Committee Office has risen from 59 to 83. This has enabled each committee to have its own small cadre of about four staff, headed by a Clerk. Such a small permanent staff still causes many an eyebrow to rise, and it is widely recognised that much of the success of the committees during the last three years has been due to the enthusiasm, initiative and stamina of the permanent staff. The fact that a modest level of staffing continues to be accepted is due largely to the way in which committees have been able to use their unlimited power to

appoint specialist advisers. These are the recognised experts in every conceivable field of activity who are prepared to assist and advise committees, generally for one or two days a week, and whose collective expertise has given each committee a resource fit to challenge the established wisdom of the government departments under consideration. At the dissolution in 1983 there were about 70 specialist advisers on the books, forming as it were panels of experts on which the committees could at short notice call for advice.

The role of the Liaison Committee

The present Liaison Committee has existed as a formal committee since 1980. It comprises the Chairmen from twenty-three committees. Its size makes it too large to be an evidence-taking body or to act as an executive directorate. Of its nature it is a deliberative body and its influence is permissive. Twenty-three independent Chairmen, differing widely in parliamentary experience and in political conviction, have met regularly for over three years to discuss common problems; the result has been a meeting of minds and agreement on many practical issues, a willingness to speak with one voice in advising the House on other issues, and occasionally a healthy difference of opinion reflecting the basic independence of individual committees.

The Liaison Committee has contested the Government's refusal to give committees power to appoint sub-committees and its reluctance in certain cases to provide evidence to committees. On a more mundane level it has discharged with considerable success the invidious duty of allotting the money for expenditure on overseas visits (currently £250,000 a year). It has established an efficient system whereby committees are kept informed of each others' doings, thus avoiding the frustration and annoyance to both Members and witnesses of overlapping inquiries. Most important in the long-term is the arrangement instigated by the Liaison Committee whereby the detailed expenses of select committees are published as part of the annual sessional Select Committee Return.

The Government's Reply

The reply of the Government to the Liaison Committee's report was not long in coming. In a letter dated 27 April 1983 to the Chairman of the Committee, the Leader of the House described the report as a most valuable and comprehensive progress report on the work of the departmental select committees since their establishment in 1979. In the Government's view the committees have established themselves as an important part of the general structure of parliamentary scrutiny and tribute was paid to the work of the Liaison Committee in achieving this object.

The detailed recommendations relating to changes in the structure of the system and in particular to the power to appoint sub-committees was

left for decision to the next Parliament. The Government reserved its right to differ from committees on whether the disclosure of information in certain cases would be in the public interest and it reiterated its refusal to make available the confidential advice given to Ministers by the Central Policy Review Staff. As to the provision of more time for debates on committee reports, the Government considered it to be inappropriate to allocate time in advance each session for such debates; it preferred to offer the possibility of more time in the future as and when the need arose, especially when a report aroused particular interest. As to televising committee proceedings, the Government were in favour of continuing to regard the question more as a House, rather than a Government, matter.

In conclusion the Leader of the House reported his predecessor's undertaking that all Ministers would seek to make the committee system a success and would co-operate fully in the provision of official evidence. It was of great importance that the work of the select committees should, whenever possible, be integrated with the work of the House as a whole and with other procedural changes aimed at strengthening parliamentary powers of scrutiny. The role of select committees in relation to the new Estimates Days and to other possible changes in financial procedure would no doubt be significant.

So far so good. The Government's reply, while negative in some details, is on the whole generous and encouraging. The new select committees have established themselves on the parliamentary scene and, on the evidence of the success they have achieved in the first three years, they are here to stay. Beyond doubt the quality of debate in the House has frequently been improved by the information provided by select committees, and both Ministers and Members have been pleased with the opportunity given by select committee hearings to ventilate and question the political issues of the day. In no other parliamentary forum are Ministers, senior civil servants, representatives of both sides of industry in the public and private sectors, and other witnesses so closely and publicly questioned about their activities, and their replies evaluated so critically. The reputation of Parliament has been improved; it must now be maintained and enhanced.

1. 'The Select Committee System' (H.C. 92 of 1982–83).
2. HC 588 of 1977–78, Chapter 7.
3. HC Deb 25 June 1979, cols. 245–50.
4. *Ibid.* cols. 45–6.
6. Votes and Proceedings, 13 May, pp. 496–7.

XI. ROYAL VISIT TO JAMAICA

BY EDLEY DEANS

Clerk to the Houses of Parliament

Her Majesty Queen Elizabeth II and His Royal Highness the Duke of Edinburgh paid a visit to Jamaica from 13th to 16th February 1983. Included in the Royal Visit was a visit to Parliament on Monday 14th February, when Her Majesty addressed Members of both Houses. The visit and address to Parliament was part of a very exciting programme which was arranged by the Governor General, The Most Excellent Sir Florizel Glasspole, O.N.,G.C.M.G., C.D.

Other highlights of the visit were a cultural display at the National Stadium on the afternoon of Monday 14th February involving 5,000 performers, a State Dinner, followed by a Reception at King's House later that evening.

On Tuesday morning, 15th February, Her Majesty and His Royal Highness visited the second city of Montego Bay, where she was met by the Prime Minister, the Rt Honourable Edward Seaga and other dignitaries. Her Majesty received an address by the Mayor of the City, returning to the capital, Kingston, that afternoon. On Tuesday afternoon, Her Majesty and His Royal Highness visited the College of Art , Science and Technology and toured the Interim Headquarters of the International Seabed Authority.

The visit to Parliament on Monday 14th February was a colourful and impressive affair. Her Majesty the Queen and His Royal Highness were met on their arrival by the Chief of Staff of the Jamaica Defence Force. Her Majesty inspected a Guard of Honour drawn up by the First Batallion of the Jamaica Defence Force. After receiving a Royal Salute, Her Majesty and His Royal Highness were joined by the Governor General and Lady Glasspole, and were escorted by the Clerk to the entrance of the Chamber. At the entrance of the Chamber, the Royal Party was met by the President of the Senate and the Speaker to the House. Her Majesty, His Royal Highness, the Private Secretary, the Ladies in Waiting and the Jamaican Equery, escorted by the Presiding Officers, proceeded into the Chamber and ascended the Dais.

After prayers were offered by the Chairman of the Jamaica Council of Churches, the President of the Senate, Senator the Honourable O. G. Harding welcomed Her Majesty as follows:

> 'Your Majesty
> Your Royal Highness
> Your Excellencies the Most Honourable Sir Florizel
> Glasspole and Lady Glasspole

Rt Honourable Prime Minister
Rt Honourable Deputy Prime Minister
Honourable Ministers
Leader of the Opposition
Honourable Speaker
Members of Parliament

Most Gracious Majesty:
On behalf of the Members of the Senate, the Members of the House of Representatives, and the people of Jamaica we extend to Your Majesty and His Royal Highness the Duke of Edinburgh our affectionate and sincere welcome. We recall with pleasure and warmth Your Majesty's first visit to this Island in the year of your Coronation. Once again it is for us a happy occasion that, in the year 1983, when we celebrate the 21st anniversary of Independence, you have again found it possible to grace us with your presence.

May it please Your Majesty to pause and observe that in celebrating this 21st Year of Independence, we pay special tribute to our National Heroes and Heroine:-

Nanny of the Maroons
Rt Excellent Sam Sharpe
Rt Excellent Paul Bogle
Rt Excellent George William Gordon (after whom this building is named)
Rt Excellent Marcus Garvey
Rt Excellent Norman Manley
Rt Excellent Sir Alexander Bustamante

All of whom have changed the course of our history. It was the Rt Excellent Sir William Alexander Bustamante who, when Her Royal Highness Princess Margaret presented the speech from the throne and the constitutional instruments to this Parliament on the 7th Day of August, 1962, said:

'I look back today with pride and thankfulness to the many Jamaicans who have made it possible for our country to reach this goal.'

and the Rt Excellent Norman Washington Manley in seconding the motion said:

'We here today stand surrounded by an unseen host of witnesses, the men who in the past and who all through our history strove to keep alight the torch of freedom in this country.'

We today echo the thoughts and sentiments of those two great patriots.

We recall with no less joy and gratitude your visits in the year 1966 and again in 1975.

Your Majesty's presence here today is again a source of joy and inspiration to us. An inspiration because in spite of the distance which separates us, we are very much aware of the traditions and ties that bind us – traditions which we hold dear and treasure.

In addition to all of this, Your Majesty's visit serves to strengthen the bonds, freely and mutually enjoyed with other members of the Commonwealth, which we know will continue to grow and prosper.

It is in this spirit that we, as Parliamentarians, on behalf of the People of Jamaica, welcome your Majesty and His Royal Highness the Duke of Edinburgh to this island.

Your Majesty, It only remains for me to report that Members of Parliament are here assembled.

May it please your Majesty . . .'

At the conclusion of the welcome, Her Majesty addressed Members as follows:

'Mr President, Mr Speaker
Thank you for your generous speech. Jamaica and her people occupy a special place in our affections, for Prince Philip and I, and other members of our family, have always received here a warmth of welcome which has only been rivalled by that of your famous sunshine. I am therefore delighted to be with you, as Queen of Jamaica to join in your celebration of twenty-one years of nationhood.

At this time it is right that you should pay tribute to the National Heroes who have shaped your history, and to the achievements of all the people of Jamaica. But this special year is also a time for looking forward and I was glad to hear that dancers, musicians, painters and playwrights will be producing commissioned works to mark the occasion. In the light of history, twenty-one years may be only a moment, but in this century so furious has been the pace of change and shifting values, that young nations have been denied the luxury enjoyed by the older countries of coming to maturity in slower moving ages.

Since your independence, the world has seen sensational advances in technology and in the weapons of war, but few in the arts of good government and peaceful social change. I am aware that during these years, Jamaica has endured pressures and strains that have stretched its social fabric and I have therefore been all the more impressed by the resourcefulness and good sense with which you have surmounted these difficulties.

Most important, you have been able to maintain the principles of parliamentary democracy. This system has been evolved to give the individual the maximum freedom that is compatible with the interest of the society as a whole. But it is not always easy to operate and, like all systems, can be abused or subverted. Here in Jamaica, you have succeeded in making it work, enabling stable transitions of elected Government and allowing opposing views to be freely expressed.

For it is these political institutions which give a country a platform from which to attack their economic problems. Your economy was already facing serious difficulties before matters were made worse by the international recession – the worst since the thirties. It is therefore all the more remarkable that Jamaica is managing to make headway and I have admired your courageous efforts to recover economic health. Already you have achieved notable successes in restoring growth, reducing inflation, rebuilding services and generating new investments.

Above all the challenge of the recession has led you to make fundamental financial adjustments and to develop more quickly the manufactured and agricultural exports on which the future economic prosperity of Jamaica must depend. Ultimately, economic progress will depend on the quality of work force and I have been impressed by the determined efforts you are making, through projects such as the Human Employment and Resource Training Programme, to equip young people with the practical skills they need to lead productive and useful lives. I am also glad that so much is being done both to encourage the contemporary and traditional arts and crafts and to research and preserve the cultural and historical heritage of Jamaican people – this is helping to strengthen and enrich national life at every level.

Prince Philip and I are greatly looking forward to seeing some of these developments.

My last visit to Jamaica was for the meeting of the Commonwealth Heads of Government in 1975 and since then Jamaica's contribution to the Commonwealth has continued to be outstanding and deeply valued. It is reassuring that as a Commonwealth, we have stood together in recent times, as in the past, to face dangers and also to solve problems. The unique strength and wisdom of the Commonwealth have derived from the rich diversity of races, people and cultures which have united to serve ideals and principles and common causes that outweigh individual differences. Likewise it seems to me that perhaps some of Jamaica's own strength has come from the unity in diversity enshrined in the national motto "Out of Many, One People", which underlines a commitment to tolerance and to finding those things which bring men together, rather than keep them apart.

In looking back at the steadfastness of will and resilience of spirit with which Jamaica has made its journey from 1962 to this moment, we can well look forward with confidence to the next stage in the unceasing task and endless challenges of building the kind of nation that enshrines the best of our values and will endure through the generations.'

On completion of the Addresses, Her Majesty and the Royal Party were escorted by the President and the Speaker to the Bar of the House.

Both Presiding Officers joined the Royal Party in the Lobby where

they were presented to Her Majesty and His Royal Highness by His Excellency the Governor-General.

The Members of Parliament proceeded to the Lobby where they were presented by the Prime Minister and the Leader of the Opposition.

At the end of the presentations, Her Majesty and His Royal Highness re-entered the Chamber and talked informally with members.

The ceremony ended with Her Majesty and His Royal Highness signing the Visitors' Book.

XII. TELEVISION IN THE LEGISLATIVE ASSEMBLY OF SASKATCHEWAN

BY GORDON BARNHART

Clerk of the Legislative Assembly

March 17, 1983, marked not only the Opening of the Second Session of the Twentieth Legislature, but it was the beginning of television broadcasts from the Legislative Assembly of Saskatchewan. Television in Canadian parliaments is not a new concept. The idea has been debated at several Commonwealth Parliamentary Association conferences and television systems have been in place in several legislatures and the Canadian House of Commons for some time now. The uniqueness of the Saskatchewan experience is that the televising is being done by an automated computer driven television system of five remote control cameras located unobtrusively in the Chamber. Three cameras are controlled by pre-set camera shots stored in the computer. Most of the switching is done by the computer, activated by the sound system witcher.

The Saskatchewan Legislature is the first parliament in the world to se an automated switching system for television. Innovation and xperimentation in the field of electronics is not new to the Saskatchewan Legislature. In 1946, the Saskatchewan Legislature was the first in Canada and second only to New Zealand in the Commonwealth to broadcast their proceedings over radio. At first, there were only two microphones used which were passed from speaker to speaker by the Pages.

In 1947, the Legislative Assembly became the first Legislature in the Commonwealth to produce an 'electronic Hansard'. Rather than having shorthand reporters record the proceedings, a dictaphone recorder with wax belts was used with great success. (See article by George Stephen in *The Table*, Vol. XV, 1946).

In each of these examples, necessity was the mother of invention. Since the population of Saskatchewan in the forties was sparse and thinly spread over a vast distance, it was felt that radio could bring the parliament to the people if the people could not come to the parliament.

Likewise, shorthand reporters in Saskatchewan were hard to find in sufficient numbers and on a part-time basis to cover the Legislative Sessions. This difficulty led to a will to experiment with the new technology – the forerunner of our current tape recorders.

The automated television system also grew out of a need to provide coverage on a sessional basis (less than six months of session time per year) at a reasonable cost. One way to accomplish this was to devise a

method which required few personnel and minimum operating costs. The end result was a system which requires a total of three people to operate it – a Director of Television Services, and two technician/operators. If a staff complement of thirty or forty people was required on a year-round basis to provide six months of service, the concept of a television service, operated by Legislature employees, would not have been practical.

The decision to proceed with 'computerised television' was not made quickly. Television in the Legislature was debated and considered frequently over the last decade. The first formal study of the concept was initiated by the Legislature in 1975. A Legislative Committee on Rules and Procedures was established and instructed to 'review the feasibility of televising the proceedings of the Legislative Assembly'. The Committee reviewed the system used in Alberta where the media were invited into the Chamber to record on film or tape, proceedings as selected by the media. At this time, the Canadian House of Commons was initiating an experiment in televising its proceedings by means of a parliamentary television system. The Saskatchewan Committee favoured the Ottawa model in principle and favoured prohibiting the media from coming onto the floor of the House with their cameras. A Legislative-owned and operated television system had very definite disadvantages – a high initial capital cost and with the prospect of having approximately twenty or thirty personnel – a high annual operating cost. There was also a lack of cable companies in existence in the province at that time and thus no means of distributing the Legislative proceedings to the public on a daily gavel to gavel basis. These obstacles caused the Saskatchewan Committee to recommend that the Legislative Assembly not proceed with television 'at this time'. The Members of the Committee favoured a Legislative-owned and operated system which would provide gavel to gavel coverage but recommended delay until this was technically and economically feasible.

The Legislative Assembly renewed its study of the television question in 1979. By this time, the Legislative Assembly had been refurbished and a new sound system installed. Much of the refurbishment and the sound system was done with an eye to the coming of television cameras. The 1979 Committee noted that since the 1976 Committee report, cable companies in Saskatchewan cities had been established and thus provided a means of distribution. The new models of television cameras required much less light (approximately 35 foot candles as compared to the previous requirement of 120 foot candles) which eliminated the need for bright hot lights and the disruption of the historic atmosphere of the Legislative Chamber. The biggest breakthrough, however, was that technology was now available to provide an automated system thus drastically reducing the annual operation costs. In December 1980, the Rules Committee recommended that the Legislative Assembly proceed with an in-house television system modelled on the Ottawa system but

with the computer option added. In agreeing to this recommendation, the Legislative Assembly opted for recording and broadcasting the complete proceedings and not just the highlights thus offering coverage of all Members of the Legislative Assembly. This decision was not a unanimous one and in fact many of the Cabinet Ministers of the day, ones who would get the most coverage, opposed television in the Legislature. The decision was carried by the private Members of both sides of the House.

Once the decision was made to proceed, three projects were begun immediately. The lighting was upgraded. Previously, most of the lighting in the Chamber came from a skylight above the Chamber which consisted of banks of fluorescent tubes. This means of lighting was costly to maintain and provided insufficient lighting. The fluorescent system was replaced with metal halide lamps thus increasing the light levels in the Chamber to approximately 35 foot candles (still a very acceptable and comfortable level) without affecting the physical appearance of the Chamber.

The second project was to fit five cameras into the walls of the Chamber without affecting its historic appearance. One camera was recessed into each of the four corners of the Chamber and one was recessed into the woodwork over the main entrance to the Chamber facing the Speaker's dais. The cameras move silently and are without tally lights. To the casual observer, the cameras are not obvious.

The third project was to design the equipment and a television control centre (TCC). A team of local engineering, electrical and acoustical consultants were contracted together with the firm of Applied Electronics in Toronto. This team designed the system by using Ikegami cameras (Japanese), Schneider lenses (West German), Vinton computer and servo units (British) and Canadian electronic equipment. A former broom closet adjacent to the Chamber was converted into a well lit, environmentally controlled and the aesthetically pleasing control centre large enough to hold all of the television and audio equipment and three personnel.

By the fall of 1982, the system was in place and ready for testing and operator training. The fall portion of the Session served as a necessary test and training period. The performance of the equipment exceeded our original expectations. In the design stage, we felt that a five to seven second time lag for the automated cameras to get into position would be acceptable. In practice, the servo cameras are into position and focused in less than two seconds, a performance that has silenced the critics who claimed that an automated system would not be as fast as a manually controlled camera.

The camera facing the Speaker and the two cameras in the corners to his immediate left and right are microprocessor controlled cameras. When the Speaker is on his feet, the camera facing him is on. When the Speaker recognises a Member, the audio switcher activates that Mem-

ber's microphone. The fact that a certain microphone is active automatically stimulates the appropriate servo camera to tilt, pan, zoom and focus on the Member on his feet. When the camera is ready (usually within one second), the computer automatically switches to program the camera which is trained on the Member who is speaking. The name of the Member and the constituency he represents is automatically brought onto the screen for five seconds. This process is repeated as different Members rise to speak. The two remote control manual cameras are used for alternative shots for variety, for broad applause shots and for divisions. The system is capable of keeping up with the fast pace of the House during Oral Question Period.

With all of this automation, why are even three people needed to operate the system? Fine adjustments of the cameras as the speaking Member moves in his place, selection of manual shots for variety for the viewer and replacement of audio video tapes each hour keep the operators busy. The operators who are qualified electronic technicians are also responsible for maintenance and repair of the equipment. The time of the Director is consumed by his daily duties and liaison with Members, caucus staff and news media.

Since the Saskatchewan telecast does not have a broadcaster/host like the Quebec or Ottawa broadcasts, factual information concerning the proceedings of the Legislative Assembly is shown in print across the bottom of the screen from time to time, eg. 'Consideration of Estimates of the Department of Education – Committee of Finance'.

The total cost of the television system and necessary renovations was approximately $1.5. million with a projected operating cost of $100,000 per year to cover salaries and the cost of the video cassettes.

The Legislative Assembly has established a set of guidelines for the broadcasts. Only the Member who is on his or her feet is to be shown with a head-and-shoulders or a medium close-up shot. Some of the Members who are seated around the Member speaking can also be seen. Split screen shots are not permitted. 'Applause' shots may be used as long as they are 'in good taste and reflect the decorum of the Chamber'. One complete set of audio video cassettes for the Session is to be stored permanently in the Provincial Archives. Audio video tapes cannot be used during a general election or by-election in the province. Members may take copies of their own speeches but if they wish to use a copy of another Member speaking in the Legislative Assembly, they must have the permission of that Member.

The media have access to recording facilities in the press gallery or copies of tapes can be made later by the television personnel. The Legislative Assembly has installed a fibre optic link to Sask Tel Television Operations Centre in Regina and a microwave link to Saskatoon. The media, either broadcaster or cablecaster, may pick up a live feed from Sask Tel's Television Operations Centre.

Now that we have been telecasting for almost a month, the cable

casters in Regina and Saskatoon have shown each complete sitting of the Legislature. Four more cable companies in other cities will be connected on April 11, 1983. The present distribution cost of this signal, paid by the Legislative Assembly, will be approximately $21,000 per month during the Session. In the not too distant future, it is reasonable to believe that all cablecasters in Saskatchewan will be carrying the complete Legislative proceedings.

For special events such as the Speech from the Throne and Budget Speech, the broadcast networks have shown live coverage and indicate a keen interest to continue to do so, thus giving the entire province an opportunity to watch the Legislative Assemby in action. Most broadcasters in the province have access to a daily feed in order to prepare news clips for the evening and late night newscasts. One broadcaster has begun a weekly report on the legislative proceedings.

The telecasters are pleased with the signal they are receiving and with the positive public reaction to the Legislative coverage. It is hard yet to accurately assess the public reaction or to know how many viewers are watching the Legislative proceedings. I have heard a few viewers say that the Legislature is a 'Zoo' – wild, exciting but frivolous. Others have shown appreciation on being able to watch first-hand, Saskatchewan's elected Members debate public issues without depending on any interpretation from the press. The Saskatchewan electorate have traditionally been well informed and interested in public issues. An average turn out at the polls of over 80% of the registered voters confirms this keen interest. Television will offer the electorate another means of following the debate in the Legislature.

What has the reaction of Members been to having television cameras in the Assembly? The introduction of the cameras and the test period without broadcasting was spread over several months. By the time the broadcasts began, most Members were not conscious of the cameras. It is too early to assess what effect television will have on the proceedings. Many Members (but not all) have begun clapping instead of pounding their desks to show approval. Members have been moving around to fill empty desks surrounding a speaking Member thus creating a 'full House' effect at all times. Other than these cosmetic changes, the heat and flavour of debate has not changed. The business of the Assembly goes on. Since the cameras are constantly in operation, it is less tempting to play to the audience than with radio which is on for only a portion of the daily proceedings (75 minutes each day of the two major debates Address-in-Reply and Budget Debate).

Some Members are still apprehensive about television in the Legislative Assembly and a few still oppose the concept. By and large, Members have already accepted television in the Chamber and value the opportunity to speak more directly to their electorate. A common philosophy has developed – 'Just forget that the cameras are there . . . but don't forget that the cameras are there.'

The installation of the television system is not the final step in a project but in itself will lead to further steps. Already the Legislative Assembly is considering broadening its distribution throughout Saskatchewan and extending the coverage to some of the Standing Committees. At the time of writing, no decisions have been made in these fields but it is conceivable that our present system will be expanded over time.

The television system in the Saskatchewan Legislature has taken advantage of the 'state of the art' in electronics and is operated with a minimum of personnel who can be productively occupied even while the Legislature is not sitting. The need to bring the Legislature to the people spread throughout the province at a minimum of cost lead to the development of the system now in place. The Legislative Committee concluded its report on television by stating that the 'television installation . . . will offer a good quality audio and video tape of the proceedings for use by the conventional television stations in their news broadcasts and current affairs programs and will provide the opportunity for many of the citizens of Saskatchewan to watch the proceedings of the Legislative Assembly thus serving to strengthen the bonds between the electorate and their representative body'. The first part of this prediction has been achieved. The goal of strengthening the bond between the elected and the electorate is one that must always be pursued. A combination of radio and television broadcasts will help to achieve that goal.

XIII. TAKING EVIDENCE IN THE SOUTH ATLANTIC

BY W. A. PROCTOR

A Deputy Principal Clerk in the House of Commons

Introduction

Visits overseas by Select Committees of the House of Commons at Westminster are commonplace these days. Previously subject to approval by the House as a whole, the authorisation of such visits was made the responsibility of the informal Chairmen's Liaison Committee in 1968, and in January 1980 became one of the principal responsibilities of the formal Liaison Committee, comprising the Chairmen of all the permanent Select Committees appointed following the Report of the Select Committee on Procedure in 1978.[1] In recent financial years the House of Commons Commission has budgeted £250,000 for expenditure on overseas visits by Select Committees, and in the last financial year (1982–83) the whole of this budget was allocated.

The nature and purpose of Committee visits overseas have, however, changed. Formerly, most Committees paid visits overseas only when the nature of their inquiries required them to take formal evidence from, for instance, colonial administrations, British armed service commanders overseas, or United Kingdom diplomatic missions. More recently, Select Committees have found it helpful to their inquiries to visit other countries in order to acquire information about the policies and practice of other governments in the policy fields under examination, and as a result most overseas visits by Committees have been of an informal nature, involving private, off-the-record, discussions with Ministers and officials of overseas governments and representatives of interest groups, and informal visits to government and industrial establishments in other countries. The practice of taking formal evidence outside the United Kingdom has, therefore, declined, but it has become the rule, rather than the exception, for a Select Committee to consider, at the start of a new inquiry, what informal visits overseas it may need to undertake in order to flesh out the evidence it proposes to take in the United Kingdom. Informal visits overseas have consequently flourished.

Committee inquiries following the Falklands conflict

In the wake of the Argentine invasion of the Falkland Islands and the subsequent conflict in the South Atlantic in the summer of 1982, two of the Select Committees at Westminster – the Defence Committee and the Foreign Affairs Committee – decided to undertake inquiries into aspects of the problems arising from the war, the Defence Committee looking at the Future Defence of the Falkland Islands, and the Foreign

Affairs Committee examining the future of British foreign policy in relation to the Falkland Islands and Dependencies, Antarctica and adjacent South American states. Both Committees embarked on extensive programmes of evidence in London, but it became clear to them that a full picture of the problems in both the foreign policy and the defence fields could only be obtained by direct experience of conditions in the South Atlantic and direct evidence from civilians and British military personnel in the Falkland Islands.

The two Committees therefore decided last autumn to undertake the still hazardous journey to the Falkland Islands in order not only to see for themselves the progress being made in the rehabilitation of the Islands and the establishment of British military forces there, but also to take formal, on-the-record evidence from the Islands' Government, the British military commanders and representatives of the Islanders themselves. Although much of the Defence Committee's evidence was, on grounds of security to be taken in private, the Foreign Affairs Committee decided from the outset that as much of their evidence as possible should be taken in public, in conditions as near as possible resembling those in a Committee Room in the Palace of Westminster. It was, the Committee believed, important that the Islanders should be provided with an opportunity to express their views formally to the House of Commons in much the same way as other British citizens are able to do so on matters directly affecting their lives in Westminster, before the Committee made recommendations to the House about possible diplomatic solutions to the dispute with Argentina.

After some discussion about the now unusual requirement to provide an official shorthand writer to accompany the Committees, approval for the visits by the two Committees was given by the Liaison Committee in January, and at the end of the month nine Members of the Foreign Affairs Committee, led by their Chairman, Sir Anthony Kershaw (the Conservative Member for Stroud, in Gloucestershire) set out for the Falklands in the company of their Clerk, their Executive Assistant, a Specialist Adviser, and a shorthand writer. The Foreign Affairs Committee spent five days in the Falklands in early February, and on the day following their return to the United Kingdom eight Members of the Defence Committee, accompanied by their Clerk and an Adviser, and led by their Chairman, Sir Timothy Kitson (Conservative, Richmond, Yorkshire), embarked from RAF Brize Norton for a visit of similar length in the South Atlantic. In agreement with the Liaison Committee, the shorthand writer and the Foreign Affairs Committee Assistant remained in Port Stanley to provide the necessary support services for the Members of the Defence Committee.

The journey to the Falklands

Even in these days of extensive Select Committee travel, the journey to the Falklands presented new experiences for Members and staff

alike. Cossetted by RAF Transport Command on the journey from snow-covered England to the tropical heat of Ascension Island, with a short staging stop in Dakar, in Senegal, Members experienced, probably for the first and last time, the dubious privilege of residing for one or two nights at the Reknown Transit Centre, a 24-berth Portakabin in Concertina City, the air force accomodation area attached to Wide-awake Airbase on Ascension Island. The Airbase, managed by Pan Am on an agency basis under the control of a single USAF officer, owes its existence to the 'Cruisers for Bases' deal between the United States and United Kingdom Governments during World War II, and in peacetime receives only a handful of flights each month to service the NASA satellite tracking station and other users of the Island, including the BBC External Services and Cable & Wireless.

Since April 1982, Wideawake Airbase has become an extremely busy Royal Air Force staging post between the United Kingdom and the Falklands, and the quiet tempo of the Island is now interrupted daily by VC 10 airliners from Brize Norton and C 130 Hercules from Lyneham and the departure of Vulcan tankers, Hercules transports and other RAF aircraft for the South Atlantic. Around the Island, large temporary encampments – soon to be replaced by more permanent facilities – provide accomodation for the British troops staging on Ascension en route for the Falklands, and passenger and freight vessels in the coastal waters await the embarkation of troops, freight and fuel.

The two Committees achieved notable 'firsts' on Ascension – the Foreign Affairs Committee holding the first formal Select Committee meeting in the lounge of the UK Residency, and the Defence Committee subsequently hearing evidence on the Island from the UK miltary authorities. Both Committees also profitted by visits to the NASA base and other installations on the Island, by swimming in the shark-infested seas off English Bay, and by temporary membership of the Exiles Club in Georgetown and the aptly-named Volcano Club.

Woken at four o'clock in the morning, and provisioned by a bacon and egg breakfast in the RAF field kitchen, the Committees then embarked for a day of solitude and quiet on board the RAF Hercules from Ascension to RAF Stanley. Massaged by the vibration of the aircraft, and prevented by the aircraft's noise from communication with even one's closest neighbour, the Hercules offers the most perfect holiday for politicians: unable to hear oneself speak, unable to read in the inadequate light, and dehydrating faster then the RAF's fruit juice can compensate, the passenger can, for one day in his life, be entirely his own man, living with his own thoughts and incapable for once of making a speech or raising a point of order.

After this strangely attractive journey, arrival in Stanley required some adjustment. The bumpy ride by landrover from the airfield to the town ended outside the Upland Goose, a quintessential English seaside hotel by a waterfront more reminiscent of Morecambe Bay than the

Southern American cone. Close to Jubilee Villas, and surrounded by English churches, the hotel tended to deny the fact that we were eight thousand miles from home and made a mockery of claims that the Falkland Islands were anything other than British.

Formal evidence in Stanley

And so to work. After the official cocktail party on the night of their arrival at Government House, the Foreign Affairs Committee set up shop in the upstairs meeting room of the Stanley Town Hall to take formal evidence. During the next two days the Committee heard evidence, in public, from the Civil Commissioner, Sir Rex Hunt, CMG, the Falkland Islands Legislative Council, representatives of the Falkland Islands Company, and about 20 other individuals, including, in particular, several of the defeated candidates in the most recent elections to the Legislative Council. The atmosphere was a strange one. On the one hand, the formal rules of the House of Commons were enforced: every time a cigarette lighter appeared the Committee Clerk left his seat to advise the owner that smoking was not permitted during public meetings of the Committee. On the other hand, the evidence given was frequently drowned by the roar of Phantom jets and Army Air Corps helicopters outside the windows, a less than usual experience on the Committee Corridor at Westminster, or by the enthusiastic applause of the small audience.

With the agreement of the House of Commons Select Committee on Sound Broadcasting, all the public proceedings of the Foreign Affairs Committee were recorded by the Falklands Islands Broadcasting Service, and relayed, in hourly instalments, during the following days to the residents of the Islands. The Committee achieved another 'first' as a result: their evidence was listened to each night by almost every adult in the Falkland Islands, thus achieving something approaching a 100% audience for their broadcast proceedings: compare this with the tiny audience for the BBC's domestic 'Inside Parliament' programme, which includes extracts from the previous week's proceedings of all Select Committees at Westminster, but is broadcast at 11.15 p.m. on Sunday evenings! Several Islanders subsequently told Members that the broadcasts provided temporary compensation for the recent withdrawal of 'The Archers' from the FIBS schedules, with the added advantage that the main actors were their near neighbours.

At the end of their stay in the Falklands, following a weekend of visits around the Islands (described below), the Foreign Affairs Committee took further evidence, in private, at Government House, Stanley, from the Civil Commissioner and from the Military Commissioner and Commander British Forces Falkland Islands, Major General D. C. Thorne C.B.E. The Defence Committee devoted much of their time in the Falklands to visits to British military installations, and private evidence from General Thorne and other British officers and officials,

but also spent one afternoon in Stanley Town Hall to hear public evidence from leading representatives of the local population.

Consulting the people

From the outset, the Foreign Affairs Committee believed that as large a proportion as possible of the Islands' population should be given an opportunity to put views to them about the war, and about the future status of the Islands, and that, in addition to the extensive formal evidence arranged in Stanley, this would best be achieved by visits to as many settlements in the Islands as could be arranged in the limited time available.

The Committee therefore asked the Civil Commissioner to arrange a suitable programme of visits to as wide a cross-section as possible of the farming settlements, including those managed by the Falkland Islands Company and other overseas-owned farming companies, those managed by the old-established owner-occupiers, and the smaller farms created by the recent sub-division of some larger farms.

The Civil Commissioner's response to this request more than adequately met the Committee's requirements. During the weekend of 5 and 6 February, the Foreign Affairs Committee divided into four small groups, which between them visited 22 of the 42 farming settlements outside Stanley. One group, conveyed by Army Air Corps helicopter, concentrated entirely on the settlements in East Falkland, two groups, also conveyed by helicopter, divided their time between East and West Falkland, and a further group, travelling in the only serviceable Beaver float plane of the Falkland Islands Government Air Service, visited the outlying settlements and islands off West Falkland.

As requested by the Committee, these visits were not merely tours of inspection and conversations with the farm managers. In many settlements, a half-day holiday was proclaimed to enable all the population, including wives and children, to meet the visiting Members of Parliament, and in some a party atmosphere predominated as the local social clubs offered warm hospitality to their visitors from the United Kingdom. But on both sides the serious intent of the visits was recognised and respected. Members learned at first hand of the experiences of the population during the Argentine occupation and were left in no doubt about their views about the future government of the Islands and the Islands' relations with the United Kingdom and with Latin America. Fortified by innumerable cold mutton salads in farm houses throughout the Islands, the Committee were able to gain direct experience of the way of life of the Island farmers, and were overwhelmed by the directness and sophistication of their views.

Although less directly involved with the civilian population, the Defence Committee were concerned that the long term arrangements for the defence of the Island should not destroy the way of life they were intended to protect. The Committee therefore concentrated their

attention in their formal evidence from Islanders on the impact of the defence measures on the civilian population, and also discussed these matters informally with local people whom they met during their visits to army encampments in the countryside.

Conclusions

On their return from the South Atlantic, the Defence and Foreign Affairs Committees set about the task of preparing reports to the House of Commons, following further evidence sessions in London. Both Committees were occupied with this task when, on Monday 9 May, Mrs Thatcher announced a General Election and the Dissolution of Parliament on Friday 13 May. After three lengthy meetings on 9 and 10 May, the Foreign Affairs Committee concluded that they would be unable to complete consideration of their draft Report before Dissolution, and handed the task over to their successor Committee in the new Parliament. The Defence Committee, however, finally agreed their Report on the Future Defence of the Falkland Islands on the day before Parliament rose.[2]

The Falklands conflict aroused strong passions in the United Kingdom and, despite the virtual unanimity of the parties in support of the Government's handling of the conflict, deep divisions remain, and will persist, about the most appropriate means of securing a long-term resolution of the dispute with Argentina. Inevitably, much of the debate within the United Kingdom is conducted in terms of Britain's relations with the United Nations, its overall responsibilities towards its remaining dependent territories, and its overall defence commitments, particularly within NATO. In the midst of the heated debate on these wide issues, it would have been all too easy for the views of the Falkland Islands to have been less than adequately assessed.

The visits by the two Commons Committees to the Islands have ensured, if nothing else, that the Islanders' views are firmly on the record, and fully understood by the House of Commons, and that subsequent decisions taken by the sovereign Parliament about their future cannot be taken in ignorance of those views. Taking account of the high proportion of the Islands' population consulted by the two Committees, the visits may be regarded as an unusual public consultation exercise which may set a standard when and if similar constitutional problems arise in relation to other United Kingdom Dependent Territories.

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1. See 'The House of Commons Select Committee on Procedure, 1976 to 1979', in *The Table*, Volume XLVII (1979), pp. 13–36.
2. Third Report from the Defence Committee, Session 1982–83 (HC 154) (published 14 June 1983).

XIV. TRAINING FOR MEMBERS AND CLERKS: THE EXPERIENCE OF VARIOUS LEGISLATURES

For more than a quarter of a century the House of Commons Overseas Office has been responsible for offering attachment programmes at Westminster to Commonwealth Clerks. Last year The Table included an article about the training of legislators and parliamentary officials in India. It is now apparent that more and more Commonwealth Parliaments are involved in this work, and are offering attachments similar to those at Westminster.

The Editors have decided to bring together under one heading various notes contributed on this subject this year. Michael Ryle, the Clerk of the Overseas Office at Westminster, has written a note giving an up-to-date account of the work for which his office is responsible. The three other contributions deal with the developments which have occurred in this field in various Commonwealth legislatures.

Westminster

Contributed by Michael Ryle

The planned and careful training of parliamentary staff is something to which serious attention should be given in the years ahead. It was the subject of a useful discussion at the Society of Clerks-at-the-Table meeting in the Bahamas in 1982 and this note refers to some of the suggestions made then.

A major part of the work of the Clerk of the Overseas Office in the UK House of Commons is the organisation of courses for Clerks from Commonwealth (and some other) Parliaments, and advice on training in various parts of the world.

All Parliaments, and the circumstances they find themselves in, are different, and training schemes appropriate to some may be less satisfactory for others. Larger Parliaments can no doubt arrange good training schemes for their staff within their own resources; smaller assemblies, particularly where staff are part of the wider public service and only spend part of their careers working for Parliament, probably have to rely more on training outside Parliament itself. Long-established Parliaments, manned by highly experienced staff, can arrange for new staff to learn at the feet of their seniors; other assemblies may have greater need to send promising young staff on attachments to other Parliaments to learn from their experience.

The training requirements of staff also vary according to the work they do. Procedures and practices vary greatly and some skills – for example the detailed duties of Clerks-at-the-Table – can only be learned from those with the relevant experience in the country concerned. As Mr Omofuma, of the National Assembly of Nigeria, said at the meeting

of the Society 'There is no university where you can teach anybody how to be a Clerk-at-the-Table. You have to be a Clerk-at-the-Table in order to learn to be a Clerk-at-the-Table'. In other areas – for example librarianship or parliamentary reporting – the skills required are perhaps more standard and can be learned outside the Parliament or country where the man or woman is going to work.

Training must therefore be considered under a number of heads, and may be provided at four levels – internal, within the Parliament itself; national, at training centres within each country; regional, by pooling the resources of several assemblies with similar background; and international, by attachments to, or exchanges with, other Parliaments. While avoiding technical details in areas, such as the reporting of debates, with which I am less familiar, I would like to make a few observations on our experience under each of these heads.

(a) *Internal Training*

At Westminster we give very little – some may think surprisingly little – formal training to new Clerks and other staff entering the Clerks Department. Apart from a short introduction course to acquaint them with the work of the various offices and other Departments, we leave them to learn the job from others who have been longer in the service. As Sir Charles Gordon, the Clerk of the House of Commons, put it at the Bahamas meeting, 'in the cotton mills in the north of England, when a new girl joins and does not know what to do, she is told by the foreman, go and sit next to Nellie, Nellie being an experienced operator on one of the looms'. Similarly we learn our work by 'sitting next to Nellie'. In other Parliaments, there may be fewer highly experienced Nellies, and more formal training for those needing to achieve the broad and varied skills of procedural Clerks – in particular, how to handle Members of Parliament wishing to table questions, bills, motions or amendments – may be necessary before they can be entrusted to work without supervision. This can best be provided by one of the more senior members of the Department who should be given the special responsibility of training, guiding, advising and generally 'keeping an eye on' new staff. Other more specialist staff, such as Hansard reporters or accountants, may come with some basic skill acquired elsewhere, but will need to spend a period of apprenticeship, working under supervision, for a period of several months.

(b) *Training at national level*

The above comments relate to training of new staff. Some refresher training, or introduction of new skills, may also be desirable for staff who have been in a post of several years. This is important to stimulate original thinking, to broaden experience, to encourage wider contacts with people working in the civil service, to give parliamentary staff a better understanding of the executive's point of view (and vice-versa),

and generally to keep people fresh in their outlook. At Westminster we have done this by sending Clerks and Library Clerks, from time to time, on courses run by the Civil Service College. Such courses have either been general courses on government or public administration for people at middle-management level, or have introduced staff to knowledge of new fields, such as the ways of working in the European Communities, financial and budgetary control or the application of computer technology.

Mr Tembo of Zambia spoke in the Bahamas of the difficulty of smaller Parliaments offering training facilities as good as those provided by the civil service, and Mr Temane, the Clerk of the National Assembly of Botswana, said that nationally centralised training tended to be conducted with little regard to Parliament's needs. These are very real problems, and certainly national training outside Parliament will rarely (except perhaps for specialist skills such as reporting or computer techniques) be directly relevant to Parliaments needs, but 'if you cannot beat them, join them', and the value of parliamentary staff broadening their experience at national level – and possibly on university courses as well as civil service courses – should not be under-rated.

One other area of national level training may prove increasingly important. As Mr Barnhart, Clerk of the Legislative Assembly of Saskatchewan, Canada, reminded us in an article, 'Administration – a Threat or a Challenge', in the 1981 Volume of The Table, and as Mr Mitchell, Clerk of the House of Assembly of South Australia said in our meeting in the Bahamas, administration is becoming an increasingly important part of a Clerk's work: we can no longer rest on our procedural laurels, but must master all the skills of financial and personnel management. Here again national courses outside Parliament for more senior staff could be valuable.

(c) *Training at regional level*

A particularly interesting idea that was first suggested by Mr Tembo and then taken up by Dr Kurewa, Secretary to the Parliament of Zimbabwe, Sir Charles Gordon and other speakers, was that a central training unit should be established in each region of the Commonwealth so that, on a rotational basis, staff could be exposed to the procedures of other Parliaments that were similar to their own. Such a unit would also be most helpful in pooling resources for training in special skills – e.g. transcribing or security control – which could less easily be afforded at national level.

These ideas attracted me because they reminded me of the work of the Bureau of Parliamentary Studies and Training which has been established by the Lok Sabha Secretariat in India, and which I was fortunate enough to visit briefly in 1981. This Bureau provides advisers at every level on parliamentary procedure, administration and practices not only for parliamentary staff but for civil servants as well (who should

also be aware of the role and functioning of the legislature). It also holds seminars etc. for new members of the Lok Sabha and Rajya Sabha. The Bureau operates on an all-India level, serving all the State legislatures as well as the national Parliament. It also accepts Clerks from other Commonwealth countries.

Similar developments are planned in Nigeria. I was honoured to be invited in June 1982 to attend a Workshop in Legislative Studies organised at the Administrative Staff College of Nigeria (ASCON), jointly with the National Assembly, to plan a series of courses in legislative studies for parliamentary staff (and also seminars for members) of the National Assembly and of the State Assemblies. Courses were specially designed at a number of levels – for new staff, for middle seniority staff, for senior staff, and for various specialist staff, including legislative draftsmen, librarians, accountants, etc. as well as for procedural Clerks. Following the successful planning meeting, a group of staff – partly from the various Assemblies and partly from ASCON – were appointed to train to be trainers. Some 30 members of this group recently spent two weeks in the UK, under the auspices of the Royal Institute of Public Administration studying the British Parliamentary system and training methods; from here they went for a further two-weeks study in the USA. The foundation has thus been laid for systematic parliamentary training on a regional basis (though in this case the 'region' is one federal state) in Nigeria.

Another, though rather different, application of the regional approach was the Seminar for staff of East, Central and Southern African Commonwealth Parliaments, which was held in Zambia in May 1982. Again I was honoured to be invited to attend, as was Mr Philip Laundy, of the House of Commons of Canada. We met for one week and had a fascinating series of discussions on different aspects of the work of Parliaments in that region, and a most valuable exchange of views and experience. Those present really learnt from each other, and I believe it was especially helpful for Clerks from some of the most recently established African Parliaments (such as those of Uganda and Zimbabwe) to pick the brains of those who had somewhat longer experience such as their colleagues from Kenya and Zambia. In many ways their experience was much more analogous and relevant than the experience of the Westminster or Canadian Houses. And I too learned a lot from my African colleagues.

In various ways, therefore, and at various levels, some of the best 'comparative experience training' may be achieved at regional (or federal) level. As Mr Omofuma said to the Society, in this way we can 'pool common experiences'. It may also be cheaper than travelling to other continents!

(d) *International attachments and exchanges*

However much training may be done 'in House' or at national or

regional level, there will remain a need to send staff, from time to time, on a course of attachment to other Parliaments or for international exchange visits. Sir Charles Gordon reminded the Society how we have progressively developed these attachments at Westminster since the last world war. The first recorded attachment of this kind was that of Mr C. Hart, of Jamaica, in 1944; he was soon followed by such distinguished Clerks as Shri Kaul and Shri Shakdher of India, and Mr Alan Tregear of Australia. By 1951 a regular scheme for three or four attachments a year had been established. This was soon increased so that up to four Clerks at a time were received on attachments. And up till June 1983 a total of 292 clerks (mainly from Commonwealth countries, but including a few from the Sudan, Ethiopia, Nepal, Korea, France and Germany) have served attachments at Westminster.

Today the Westminster attachment scheme is almost infinitely variable. The standard 'full attachment' is for a period of up to three months (depending on the intervals between parliamentary recesses). It is recognised, however, as pointed out by Thiru Alagarswamy, Secretary of the Tamil Nadu Legislative Assembly, and by several other colleagues in the Bahamas, that it is not always convenient for smaller legislatures to spare someone for as long as that, and it may also be difficult for senior staff to be away so long. We are therefore happy to arrange shorter attachments, say four to six weeks, for those who so prefer. And even shorter stays of one or two weeks are possible for those who come to study a particular aspect of our work. For example we have arranged two week attachments for committee Clerks of the National Assembly of Nigeria.

Our resources, however, are severely limited, and all our offices are busy. Some constraints are therefore inevitable. On numbers, we cannot accept more than four people at a time on the larger attachments, or exchange visits. Because of the heavy demand, we do not normally accept more than one person in any one year from any one legislative chamber. Financially, apart from some hospitality expenses, we cannot incur any expenditure (those wishing to come must therefore be funded from other sources), although, equally, we make no charges for our courses! And we cannot be responsible for arranging accommodation in London. I am sure these inevitable restrictions will be understood.

The nature of attachments also varies. Some visiting staff are very senior officers of their Parliaments, and often have long experiences of parliamentary service; they may wish to study particular aspects of privilege or procedure, to bring themselves up-to-date with the latest developments at Westminster (our new committees have proved of considerable interest), or to renew contacts with old friends. Others are less senior or experienced; for them more specific training courses may be arranged, which enable them to see something of the work of each office of the Clerks Deparment and, more briefly of the House of Lords

and of other Departments in the Commons. Others may be almost beginners (though some experience of their own Parliaments is highly desirable) and may wish to be taught some of the basic crafts of a Clerk. We try to satisfy all tastes!

Attachments can also be arranged, on a more limited scale, to the Official Report (Hansard) for editorial staff, to the Library or to the Administration Department of the House of Commons. Applications should be sent to the Heads of those Departments.

A word of warning, however, the attachments to the Clerks Department have proved extremely popular and are in great demand. We are at present (June 1983) fully booked for the remainder of this year, and for the whole of 1984, and partly booked for 1985. So Clerks of Parliaments who wish to send one of their staff on one of these attachments are advised to write well in advance to the Clerk of the House of Commons (or the Clerk of the Overseas Office) to stake their claim. Having said that, I hope to greet many clerks, here at Westminster, in the years to come.

Australia

Contributed by Doug Blake

The House of Representatives Department has in recent years sought to develop a more active role for itself as a training institute. It has always recognised a responsibility to provide on the job training for colleagues from Parliaments within the Westminster traditions. Its own officers have enjoyed similar opportunities with reciprocal exchanges between Parliaments. Officers of the House have been consulted in the establishment of incipient legislative bodies within the Northern Territory, the Australia Capital Territory, Nauru and Norfolk Island.

One area that has seen considerable development is the induction of members of the House. After the 1980 general election the Department conducted a seminar for newly elected members. This was arranged by the Department with extensive support from the Speaker, Chairman of Committees, the Whips and long serving members of all parties. Sessions were held on –

- the member's office and entitlements, electoral offices, personal staff, salaries and allowances;
- procedural matters, including the roles of the occupant of the Chair and the Whips, the Chambers, the rules of debate and a description of a typical sitting day;
- the running of the electoral office;
- Parliament's support service such as Legislative Research and the services of the Parliamentary Library.

This initial seminar provided a base of information to aid in the induction of members elected at by-elections.

The Department recognises its responsibility as a disseminator of

information concerning the system of parliamentary government at the federal level in Australia. A landmark in the development of this function was the publication in 1981 of *House of Representatives Practice*. This publication filled a gap by providing an authoritative text on practice and procedure, the role and functions of the House, its structure, the basis for its election and the place of Parliament within the framework of the Constitution. As an adjunct to the production of the book various wall charts were created which can be made available to schools and educational institutions. Work is now proceeding on the development of a curriculum kit on the federal parliamentary system for schools.

The desirability of providing information to young people about our system of government is being increasingly recognised. The Department has been instrumental in establishing the National Capital Seminar. Sponsored by the Queen Elizabeth II School Jubilee Trust for young Australians, it is held each year in Canberra. One hundred students from a variety of schools throughout Australia are selected in proportion to the population of each State and Territory. Even numbers of boys and girls are chosen to represent the state, private and technical school systems. Students have to be year 11 grading with sound academic standing and leadership potential.

Under the Seminar arrangements, students spend a week in Canberra in August and are given thorough briefings into the process of shaping law and administration in Australian society, the planning and development of the National Capital, the existing trade and diplomatic relations with other countries.

New Zealand

Contributed by Charles Littlejohn

Members and staff of the New Zealand Parliament have been increasingly involved in training programmes in the Region over the last few years. Local Seminars have been held with the financial support of the Working Capital Fund, and the encouragement of the Headquarters Secretariat and the Executive Committee of the Commonwealth Parliamentary Association, in the Solomon Islands and in Kiribati. It is also proposed at some time to hold a similar Seminar in Tuvalu and possibly also in Vanuatu.

I made an initial visit to Honiara and to Tarawa to establish the framework for the Seminar and to co-ordinate the arrangements. In Tarawa I spent a week with members of the Parliament going through a paper that had been prepared as a basis for the Seminar. Two members of the New Zealand Parliament visited Honiara and Tarawa in accordance with the arrangements I had made and spent almost a week in each place discussing with the members details of parliamentary procedures. They worked through the Standing Orders in each case and made comparisons between the local rules and the practices in the New

Zealand Parliament. They also discussed with the members the duties of members of Parliament and explained their own methods of handling the many problems that come before them. These short Seminars have been in the nature of on-the-job training and have been very much appreciated by the Members of the Parliament of Solomon Islands and Kiribati.

We have also had the pleasure of receiving on attachment in Wellington some of the Clerks of the Parliaments, not only of the Pacific Region, but from as far away as Uganda. Most of these attachments have been for a period of from four to six weeks and in that time we have been able to show our visitor something of all the services that we provide for the Parliament to give him a detailed understanding of the professional duties expected of a Clerk and to make a study of our Standing Orders in comparison to his own.

These attachments have proved to be very successful for two reasons; first, all the Clerks who have come here have been determined to learn as much as possible during their stay in Wellington. Secondly, the warm friendships we have developed have made it very easy for us to maintain contact and provide further advice in the future if it is required.

From the practical point of view in most cases we have found it most convenient to attach the trainee to a senior officer of the various sections of the Department for a period of a few days, so that he may see the work of the section being carried out. A good deal of time is spent in each section discussing the responsibilities of the section and covering the working procedures. All sections of the Department are covered, together with the General Assembly Library. Particular attention is paid to the Table office and to the section that deals with the work of select committees. In most cases the trainee has kept a note of all his discussions for his own purposes and has discussed the contents of the note from time to time with the training officer responsible so as to ensure that the notes he takes home are accurate and comprehensive.

On one early occasion we actually appointed a trainee to the staff of the Department to fill a vacancy that had suddenly arisen. It is proposed that something similar will be done with another trainee from the same Parliament in the near future. This is only possible in the case of a trainee from a Parliament with Standing Orders and practices similar to our own. It is not appropriate in the short attachments, but in these two cases of rather longer duration there is considerable value in giving the trainee some positive work to do and there is also the additional advantage that it tends to relieve the boredom that can affect any person who is merely observing others at work.

Another attachment of some interest but with greater technical difficulty concerned a group of three Hansard reporters from the Solomon Islands. They were attached for a period of some three months and a recently retired reporter from our own staff was re-engaged specifically for the purpose of overseeing their training. There are real

technical difficulties in an attachment of that kind. While it might be perfectly appropriate to give instruction and advice on the administrative procedures and on the principles that govern the editorial processes used in our Hansard reporting section, it is far beyond the scope of a short attachment to engage in a programme of training in shorthand or any other recording technique.

Attachments of staff from other Parliaments place quite a strain on the staff to whom they are attached for training, and it is important that there should be a reasonably close relationship between the procedures of the two Parliaments, otherwise it will be difficult to ensure that the training is relevant to the needs of the trainee.

I am satisfied that the training attachments we have had in New Zealand have been of great value and have fully justified the relatively small amount of expenditure involved in each case.

Saskatchewan

Contributed by Gordon Barnhart

Orientation Seminars for Members

When Members are elected to a Legislature or a Parliament, they come with credentials recognised by the majority of their constituents and skills in the political realm. Yet in most cases, newly elected Members have little or no parliamentary experience. The temptation, for Clerks with many years of parliamentary experience, is to 'teach' Members about Parliament. This temptation should be resisted – seminars can be offered but given only on invitation from the Members.

The history of Member orientation in Saskatchewan goes back many years. After each election, the Clerk has traditionally written to each caucus offering a seminar on parliamentary procedure. In each case, short seminars were given once to each caucus after each election.

In 1975, we experienced the election of Members of a political party who had not had Members in the Legislative Assembly for over forty years. Because these new Members had no procedural experience nor colleagues with parliamentary experience, their caucus requested the Saskatchewan Table officers to meet with them frequently (four mornings per week for several weeks) during their first Session in order to orientate them procedurally. This new intense interest in parliamentary procedure by one caucus prompted the other two caucuses to request further procedural seminars for themselves. The tie in opposition and the resulting 'privilege case' during this Legislature stimulated even greater interest in parliamentary procedure amongst the Members. (See articles in *The Table*, Vol. XLVI, 1978)

In March 1980, the Special Committee on Rules and Procedures recommended that the Saskatchewan Branch of the Commonwealth Parliamentary Association be encouraged to sponsor an annual seminar

on parliamentary procedure for Members of the Legislative Assembly. The committee noted that the role of the elected Member has become even more complex. The need for such an annual seminar for new and experienced Members became apparent. The Members expressed a desire to keep themselves abreast of new developments within the parliamentary field.

As a result of this Committee report, the first annual Commonwealth Parliamentary Association seminar was held in February 1982. Speaker Brockelbank hosted the seminar which was attended by approximately one-third of the Legislature from both sides of the House. Honourable Jack Stokes, former Speaker of the Ontario Legislature, was a guest speaker. Panels of former and present Members led discussions on the role of Private Members. Since the seminar was not open to the press or public, Members were able to roll up their sleeves and forcefully debate their roles as Members.

After the 1982 general election, with forty new Members elected (out of a Legislature of sixty four Members), the need for regular seminars was even more apparent. Within a month after the election, separate seminars were held for the Government private Members, Cabinet and the Opposition. The emphasis of each seminar was adjusted to suit the needs of the particular group of Members being addressed. Since the Cabinet Ministers had no experience in government, they were particularly interested in studying the procedural scripts for handling legislation and estimates. The private Members wanted not only a procedural orientation but a thorough briefing on administration and Members' services. The seminars were also an opportunity to brief the Members on the Commonwealth Parliamentary Association, the Legislative Library and the role of Legislative Counsel and Law Clerk. Members received comprehensive briefing books and a Members' handbook for future reference.

As a result of the introduction of television coverage of legislative proceedings in February 1983, seminars on this topic were held for Members early in 1983. The television personnel had been able to create sample tapes of the Members during a test period before broadcast. During the seminar, Members were able to view the Legislature in action. The operation of the Legislative-owned and operated television system was explained to the Members and the procedural implications of television were debated. This series of seminars was expanded to cover a separate session for the press. They had an opportunity to familiarise themselves with the system and learned how to obtain live feeds and clips of the proceedings.

If the present trend continues, it would appear that the Saskatchewan Members will request an annual seminar on a particular procedural point together with more frequent seminars on Members' services, television and other topics which affect their daily lives as elected Members.

As the role of a Member becomes more demanding and complex, the Members are requesting more opportunities for in-service education. The seminars also offer the Members an opportunity to evaluate the Legislature as an institution and their role within it. Too often, Members become all involved in representing their constituents and running the government (as Cabinet Ministers) and forget their role as parliamentarians. The seminars hopefully help the Members restore that balance.

The seminars prove to be stimulating to the Table officers as well. It is an opportunity to become acquainted with new Members and to help them feel at home in the Legislature. The seminars also make the Members more familiar with a part of the Legislature which is apolitical and yet there to serve them.

Saskatchewan's Attachment Programme

Every Clerk of a Parliament knows that the only way to become a proceduralist and a competent Table Officer is to read books written by parliamentary authorities or to talk with and work with other Table officers. No university course is offered, that I am aware of, on parliamentary procedure or on the 'science' of parliamentary administration or the 'art' of working well with elected Members. These skills are acquired through experience.

In preparation for my appointment as Clerk of the Legislative Assembly of Saskatchewan, I spent two weeks studying at the Table of the Canadian House of Commons. Further, I spent six months understudying with my predecessor before the plunge – being at the Saskatchewan Table on my own. I can attest to the merits of learning from experienced parliamentary officers. The advent of the Association of Canadian Clerks-at-the-Table and the periodic opportunity to attend a meeting of the Commonwealth Parliamentary Association offers a Clerk a further opportunity to learn parliamentary procedure from others.

The Saskatchewan Table has been fortunate to have Clerks from Alberta and two from the Yukon Legislative Assembly sit at the Table and study with its officers. In 1979, I was fortunate to be able to participate in a short attachment at Westminster.

The idea of Saskatchewan hosting regular attachments actually began with Jimmy Aggrey Orleans, our colleague from Ghana. Jimmy noted the need in many smaller parliaments to have a chance to send junior Clerks to other smaller parliaments. The similarity in size and resulting procedural problems offered an advantage that often couldn't be covered by larger Houses. The Ghanian and Saskatchewan Tables began preparations for a Ghanian Clerk to study at the Saskatchewan Table but unfortunately, due to events in Ghana, this attachment had to be deferred.

The Parliament of Zimbabwe accepted our invitation, and as a result,

Austin Zvoma, Assistant Secretary spent approximately two and one-half months with us in the spring of 1982. Due to a general election in April, Austin not only had an opportunity to watch our Legislature in action, but watched an election which resulted in a change of government and a substantial change in the membership of the Legislative Assembly. During the attachment, Mr Zvoma spent some time at the Table, met with our Committees branch, the Journals branch, Hansard, Legislative Counsel and Law Clerk, Legislative Librarian, Ombudsman and other agencies closely related to the Legislative Assembly. Due to the election, Mr Zvoma did not see as much of the Legislature in action as we would have liked but this period of dissolution did provide an opportunity for the Table officers to spend more time with him than otherwise would have been possible.

The attachment, not surprisingly, proved to be a two-way learning experience for Table officers and Members as well. Saskatchewan Members and Table Officers learned a lot about Zimbabwe, its parliament and its way of life – an opportunity that is not easily available. We also benefited from the firsthand observations of our guest Clerk on our own practices and procedures.

Due to the positive reaction from the first Commonwealth attachment, it was decided to continue the experiment on a regular basis. I am happy to report that Mr Tittawella, Deputy Secretary-General of the Sri Lanka Parliament, will study at the Saskatchewan Table in April-May 1983. We are looking forward to sharing parliamentary experiences with such a knowledgeable and experienced Clerk from Sri Lanka.

To date, we have been able to pay local costs of the attachment such as meals, hotel and local transportation for our guest. Airfares to and from Saskatchewan have been paid by the visiting Clerk.

At the end of each attachment, the visitor is requested to prepare a paper on the points learned during the attachment and an outline of the points of similarity and difference between Saskatchewan and the country of our visitor. The collection of such papers over the years should prove to be a wealth of comparative information on the various Commonwealth countries.

We are only beginning our second year of our Commonwealth attachment program. The frequency of the attachment will depend to a large extent on the need and interest expressed by other parliaments and on the extent of our resources at the Saskatchewan Table. The positive results achieved thus far indicate that the program will continue. The opportunity for Clerks to share their experiences with colleagues will strengthen the collective knowledge of parliament.

XV. SUPPLY PROCEDURE: ANSWERS TO THE QUESTIONNAIRE

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

Please give details of your Parliament's supply procedure, for instance:

(i) Do the estimates cover all public expenditure?
(ii) Can Parliament increase this expenditure?
(iii) Do Committees with responsibility for particular areas have a role in making financial decisions?
(iv) Does supply have to be granted by a certain date?
(v) Are supply days set aside in each session? When do they occur and what is their purpose?
(vi) Can supply debates be guillotined?
(vii) Has your Parliament any plans to change supply procedure?

The replies to the Questionnaire show that practice throughout the Commonwealth is similar. Very few of those Parliaments which replied to the Questionnaire mentioned any proposals to change supply procedures; but changes may follow those made in the United Kingdom House of Commons, which were the subject of an article in Volume L of The Table.

The replies are set out alphabetically, with provincial or state assemblies following the entry of the central legislature. Lower Houses are placed before Upper Houses.

Australia: House of Representatives

The Budget estimates cover approximately 30% of public expenditure. The remaining 70% is covered by special appropriations.

Standing Order 292 provides that no proposal for the appropriation of any public moneys shall be made unless the purpose of the appropriation has in the same session been recommended to the House by the Governor-General. The Standing Order goes on to provide that no amendment of such proposal shall be moved which would increase or extend the objects or purposes or alter the destination of the appropriation so recommended unless a further message is received.

Parliamentary Committees and House Estimates Committees may influence financial decisions but do not have a role in the making of them.

Appropriation Acts (Nos 1 and 2) provide funds for the financial year 1 July to 30 June. Appropriation Acts (Nos 3 and 4) passed in April/May provide supplementary appropriations for the remainder of that financial year to meet unforeseen requirements. Supply Acts (Nos 1 and 2) are passed in April/May and make interim provision for expenditure for

the first 5 months of the forthcoming financial year, i.e. from 1 July. It is essential that the Supply Acts are passed before the commencement of the financial year but not by any particular date.

In the House of Representatives there are no 'supply days' as such. The Budget debate occurs on the second reading of Appropriation Bill (No 1). The proposed expenditures for Departments and services are considered either at the Committee of the Whole stage or are referred to Estimates Committees for detailed consideration. Similar arrangements apply in respect of the supplementary Appropriation Bills (Nos 3 and 4) and Supply Bills although the proposed expenditures are not normally referred to Estimates Committees.

Opportunities are available for wide-ranging discussion during Grievance Debates which occur on each alternate sitting Thursday morning. General Business has precedence on the alternate sitting Thursday mornings.

The guillotine may be applied to Appropriation or Supply Bills.

Australia: Senate

The Parliament in Australia has at least three opportunities each year to consider Supply, with the main procedure occurring in the latter half of a Parliamentary year. Three Appropriation Bills are introduced into the House of Representatives, usually in mid-August. These bills comprise:

Appropriation Bill No 2, which encompasses proposals for capital works and services, grants by the Commonwealth to or for the States, and new projects not authorised by special legistation; and

Appropriation (Parliamentary Departments) Bill, which covers proposed expenditure for the five departments of the Parliament.

For constitutional reasons, the expenditure for capital works and services, etc., is introduced to the Parliament separately from the Bill for the ordinary annual services of the Government, as this second bill is a bill which the Senate has power to amend. The bill for ordinary annual services of the Government is specified in the Constitution as a Bill which the Senate may not amend, although the Senate has the power to request the House of Representatives to make amendments, and has a capacity to press those requests. The Appropriation (Parliamentary Departments) Bill, which was first introduced for the year 1982–83, emphasises the independence and authority of the Parliament, and is a Bill which may be amended by the Senate.

When the Treasurer introduces the Bills into the House of Representatives, he presents the Government's Budget. Simultaneously, the Treasurer's representative in the Senate makes a Budget speech on the Treasurer's behalf and tables for the information of the Senate Budget papers which include the Schedules to the Bills, giving a breakdown of

proposed expenditure. These schedules, together with details of expenditure for the preceding year under the Advance to the Minister for Finance are referred, usually within a day of tabling, to the Senate's Estimates Committees. Detailed Explanatory Notes of all Departments and statutory authorities seeking appropriations under the Appropriation Bills are also tabled, and these explanatory notes form the basis of line-by-line Committee examination of proposed expenditure. The Committees conduct public hearings at which Departmental officers, nominated by the relevant Minister, appear before them to answer questions on any aspect of expenditure proposed for Departments and Authorities which are funded by the Appropriation Bills.

Specified times are set aside for Estimates Committees' consideration of the estimates, and they are required to report to the Senate by a specified date.

Following the passage of the Appropriation Bills through the House of Representatives, the Bills are considered by the Senate in accordance with normal legislative processes. Estimates Committees' Reports are taken into account during Committee of the Whole examination of the Bills.

In about April or May of the next calendar year this process is usually repeated, although on a smaller scale, for additional appropriations which may be required to authorise expenditure for the balance for the financial year. In addition, to ensure that funds are available between 1 July and 30 November of any given year, Supply Bills, based on 5/12ths of the previous financial year's expenditure, come before the Parliament. The passage of these Bills permits Departmental and Authority spending pending the passage of the Appropriation Bills.

The answers to the specific questions are as follows:

(i) No, only about 30%.
(ii) The Senate may request the House of Representatives to increase expenditure, on motion by any Senator.
(iii) Senate Estimates Committees may make recommendations to the Senate that action be taken. The Senate Standing Committee on Appropriations and Staffing has a role in relation to financial decision-making in respect of the Department of the Senate itself.
(iv) Not formally, although carry-on Supply must be granted by Parliament before 1 July each year.
(v) Supply days are not set aside formally in the Senate Chamber but specific dates are set aside for Estimates Committees to consider the estimates.
(vi) Technically, Supply debates can be guillotined but nowadays this rarely occurs in the Senate.
(vii) Not specifically at present.

New South Wales: Legislative Assembly

In 1982 the former Appropriation Bill and the General Loan Account Appropriation Bill merged into the Appropriation Bill, to cover appropriation from the newly established Consolidated Fund. The Bill included both recurrent services (the ordinary annual services of the Government) and capital allocations, and was drafted in two parts, so that the appropriations proposed for each purpose could be clearly identified. The consolidation was designed to improve the presentation of financial information to the Parliament and the public. Further reforms are planned of which programme budgeting is the key component. The allocations of the 1982 Appropriation Bill set targets for improvement in efficiency of Government departments. The Bill introduced new procedures to give departments the ability to rearrange their expenditure plans to ensure that programmes of highest priority and greatest community need continue. The intention is that this flexibility will give Ministers and departments the responsibility of ensuring that any changes in expenditure are implemented in ways that cause minimum disruption to services to the public. In summary the new procedures will mean: Budget control by the Treasury will concentrate on keeping total departmental expenditure within approved limits, and the responsibility for using the allocations in the most effective way will pass to Ministers and departments and they will have discretion to reallocate expenditures within and between the Salaries and Maintenance and Working Expenses items, subject to general Treasury control.

This flexibility will be subject to two restrictions: The reallocations can occur only if they are the result of genuine savings in expenditure on a particular item rather than a deferral of expenditures until later years; and the reallocations must not result in passing responsibility for certain expenditures back to the Treasury or another department.

Parliament only has the power to decrease expenditure.

Committees do not have a role in making financial decisions, although the Public Accounts Committee now has been charged with wide-ranging powers to enquire into and report upon the Public Accounts.

Provision is made in the Audit Act for the payment of money during the first three months of the new financial year. Such expenditure can be incurred only at the same ratio authorised under the Appropriation Act for the preceding year and in respect only of all normal services. Should the Appropriation Bill be passed before the end of three months, it replaces the authority under the Audit Act.

If the Appropriation Bill has not received the Royal Assent before 30 September, or if it appears likely that Parliament will not have passed the bill before that date, it is necessary for Parliament to pass the Supply Bill which authorises expenditure for a stated period. If the estimates are then before Parliament, the money appropriated under the Supply Bill is at the rates set out in the Appropriation Bill. Should the Supply

Bill be introduced before the presentation of the estimates the rates are based upon those of the preceding year. There is no limit to the number of Supply Bills which may be passed in any one year. During the financial year 1930–31, four such bills were passed before the Appropriation Bill was passed in June, 1931.

Supply debates can be guillotined both in the House and in Committee of the whole.

New South Wales: Legislative Council

During 1982 an amendment was made to the Constitution Act, 1902 by the Constitution (Consolidated Fund) Amendment Act, 1982, which provided that the public monies of the State shall form one 'Consolidated Fund' in lieu of the two previous funds – 'Consolidated Revenue Fund' and 'General Loan Account'.

The estimates cover all public expenditure from the Consolidated Fund of departments, authorities, boards, commissions, etc., under the control of Ministers. There are independent statutory bodies which raise their own revenue and which is not included in the annual estimates.

Parliament may increase expenditure but if the Legislative Council rejects, fails to pass or suggests an amendment to which the Assembly does not agree, the Bill may become an Act notwithstanding that the Council has not consented to the Bill.

Supply must be voted by 30th September in each year. Under the Audit Act, 1902, departments and authorities can expend at rates not exceeding the equivalent amount for the first three months of the immediately preceding financial year. If the Appropriation Act has not been passed by 30th September, it is customary to pass a Supply Act to allow for expenditure to 30th November at the same rate as the immediately preceding year's appropriations. The Appropriation Bill must then be passed by 30th November each year.

No fixed supply days are set aside. The Supply and Appropriation Bills are usually dealt with during the first three months of the Budget sittings commencing in August each year.

Supply debates cannot be guillotined in the Council. The 'closure' can be exercised if desired, but this method of curtailing debate in the Council has not been exercised for many years.

Queensland

Procedure for Supply is based on Standing Orders, principally Standing Order No 307 as follows:

307. As soon as the Debate on the Financial Statement has been concluded, the business of Supply shall, until disposed of, be the first Order of the Day, other than the Third readings of Bills which shall have been declared 'Formal', on at least one day in each week.

Not more than seventeen days shall be allotted for the consideration of the Estimates for the year, the Supplementary Estimates for the previous year, and the vote on account

for the ensuing year. On a day allotted for the business of Supply, Formal Motions and Government Business, other than Supply, may be proceeded with until 12 o'clock noon, at which hour the proceedings on such other business shall be interrupted and the business of Supply proceeded with. Business so interrupted shall stand as an Order of the Day for the next Sitting Day: Provided that if such other business shall continue after 12 o'clock noon such day shall not be counted as an allotted Supply day.

On motion made after Notice, to be decided without Amendment or Debate, additional time, not exceeding three days, may be allotted for the business of Supply.

On the days so allotted for the business of Supply no business, other than that specified in the second paragraph of this Standing Order, shall be taken until after the consideration of Supply, and no Motion for Adjournment under Standing Order No 137 shall be entertained.

On the days so allotted, at 5.25 o'clock p.m. the Chairman shall leave the Chair without question put to report progress and ask leave to sit again. Provided that if a Question on any vote is then being decided by Division, or a Motion of Closure has been moved on any Question, the Chairman shall not leave the Chair till such Division has been taken, or the Motion of Closure and any subsequent Questions that may arise thereon have been decided.

At 5 o'clock p.m. on the last but one day of the days so allotted, the Chairman shal' forthwith put every Question, to be decided without Amendment or Debate, necessary tc decide the Vote then under consideration, and shall then proceed to put the Question tha the total amount remaining unvoted for the Department under discussion (if any) be granted for the Services defined in the Estimates, and a similar Question for the total amount of each Department, or Supplementary Estimate, or Postponed Vote in any Department partly dealt with, and the Vote on account for the ensuing year, all such Questions to be decided without Amendment or Debate; and shall then leave the Chair without Question put, to report that the Committee have come to certain Resolutions, whereupon an Order for the reception of the Resolutions of Supply shall be made, and such Questions shall be put by Mr Speaker without Amendment or Debate.

At 5 o'clock p.m. on the last of the days allotted, not being earlier than the seventeenth day, Mr Speaker shall forthwith put every Question, to be decided without Amendment or Debate, necessary to dispose of the report of the Resolution then under discussion and every Question, to be decided without Amendment or Debate, necessary to dispose of all other Resolutions of the Committee not already agreed to by the House.

It shall be within the discretion of the Leader of the House to extend the Sitting on the last day allotted for Supply for the purpose of dealing with and bringing to a conclusion all the necessary proceedings for the founding and passing of the Appropriation Bill through all its stages. At 8 o'clock p.m., subject to the following proviso, the Question under consideration and every Question necessary to bring to a conclusion the proceedings of the Committees of Supply and Ways and Means, and the passing of the Bill through all its stages, shall be put by Mr Speaker or the Chairman of Committees, as the case may be, without Amendment or Debate: Provided that if, at 8 o'clock p.m., the Question for the Second reading of the Bill is under consideration the Sitting may be further extended to enable the Mover of the Motion or his Deputy to speak in reply.

A Sessional Order is passed to allow for 'Double Days' to apply; each sitting day being divided into two 'days', the first from 11 a.m. to 4 p.m. and the second from 4 p.m. to 10 p.m. The passing of this alters the debate times in Standing Order No 307 and allows the seventeen 'days' to be covered in nine sitting days.

In practice, only about eight departmental Estimates are debated each year, out of a total of eighteen Ministerial portfolios. Only limited debate in the House may be had on the final day when the Resolutions are received from the Committee of Supply.

Standing Order No 316 precludes any increase of the charge upon the people 'unless the charge so increased will not exceed the charge already existing by virtue of some Act of Parliament'.

No special Committees are appointed to assist in making financial decisions.

It is usual that Committees of Supply and Ways and Means are set up in late August as soon as the Address in Reply Debate has been concluded. The Budget is generally presented late in September, with a debate of usually 4 or 5 days. The seventeen allotted Estimates days then follow, and conclude with the Appropriation Bill (No 2), which is passed by late November.

Budget and Supply debates are held on Tuesdays and Thursdays. They may be guillotined by motion reducing the number of allotted Supply days for the Estimates Debate. There are no set time limits for the debate on the Financial Statement.

South Australia

The major appropriation of monies for the provision of the normal services of Government is provided in the annual budget, given effect to in an Appropriation Bill.

This Bill provides for both capital and recurrent expenditure and covers more than 80% of the total public expenditure. The balance of public expenditure is provided under special Acts (Governors', Members', judges' and senior public servants' salaries and superannuation, interest payments on loans and the like).

The Appropriation Bill is treated as a normal bill in its passage through both Houses, except that Committee of the whole in the House of Assembly is replaced by two Estimates Committees each of 9 Members, who examine the expenditure in detail by questioning Ministers. They may not alter the purpose of the expenditure. Ministers are assisted by departmental advisers, who may supply administrative detail if requested by the Minister.

A private Member may move to reduce any item of expenditure (and they often do so as a protest at some particular policy) but an increase can only be made if it has been previously recommended by the Governor – effectively meaning only on the motion of a Minister.

The Appropriation Bill is not usually passed until late October. Since the financial year commences on 1st July, a Supply Bill is agreed to late in the previous financial year to provide expenditure at the same levels as approved in the previous Appropriation Bill. This enables Government services to continue in the new financial year until the Appropriation Bill is passed.

Supply days are not set aside but debate on the Appropriation Bill is wide ranging. In addition each Member has the right to grieve prior to the Bill going to Estimates Committees and a further debate takes place

on the noting of the Committees' reports. In total some 5 sitting weeks are devoted to the passage of the Bill.

Supply debates can be guillotined but this rarely occurs.

The Estimates Committees have been operating for 3 years and after some teething difficulties are well accepted. There are no plans to change the procedure.

Tasmania: Legislative Assembly

Approximately 70% of revenue is appropriated in supply legislation. The remaining 30% is reserved by law.

Approximately 50% of loan fund expenditure is authorised by Parliament. The remaining 50% is borrowed by Government bodies on the open market after obtaining authority from the Federal Loan Council.

The overall expenditure cannot be increased. Allocations within the amount can be altered, and the total can be reduced.

All financial legislation is dealt with by the House and a Committee of the whole. There are no Select or Standing Committees established to scrutinise estimates.

Authority for expenditure is given from the beginning of the financial year (1 July) until 31 October, by which time the main Appropriation Bill has normally received the Royal Assent. If that date cannot be met, legislation can be passed appropriating an amount for a further period.

Currently there are no specific dates and/or minimum or maximum time periods allocated.

No form of closure currently exists.

A Report on the S.O's Committee has recommended that the main appropriation bill have no less than 20 hours debate at the 2nd Reading stage and no less than 40 in the Committee stages, and that the debate be held over no less than 9 separate sitting days. The Report also refers to the Loan Fund Appropriation Bill and allows for a minimum of 15 hours over 3 days. The report of the Committee has yet to be considered by the House.

Tasmania: Legislative Council

Estimates cover only a section of public expenditure. The use of Loan Funds to replace outgoings traditionally considered in the main Appropriation Act is increasing. Whereas Parliament (both Houses) can increase appropriation, the Legislative Council, by the Constitution Act, is barred from amending appropriation to increase expenditure.

Committees of the Legislative Council to consider appropriation do not exist, but consideration is currently being given to creating such.

Supply traditionally extends from 1st July to 30th June. The main Appropriation Act normally receives Royal Assent about the end of October/early November, a supplementary Bill being passed (tradi-

tionally without demur) in May/June to provide supply from 1st July to early November.

Victoria: Legislative Assembly

The estimates do not cover all public expenditure. The annual Appropriation and Supply Bills apply principally to Government departments and not all Government authorities and instrumentalities.

The Assembly may increase expenditure, subject to a message from the Governor recommending a further appropriation.

One or more Supply Bills are passed prior to 30th June providing expenditure for the months of July to November. The Annual Appropriation Bill is introduced in September/October and is required to be assented to on or before 30th November to allow the continued operation of the Public Service in general.

Supply days are not set aside in a session. Supply debates can be guillotined.

Major changes to the Financial Procedure Standing Orders were adopted in 1973, which included the abolition of the Committees of Supply and Ways and Means. No further changes are foreseen in the immediate future.

Victoria: Legislative Council

All Bills for appropriating revenue or for imposing taxes, imposts, &c., must originate in the Assembly and may be rejected but not altered by the Council. The Council may, however, suggest amendments to the Assembly (providing the suggestion does not have the effect of increasing the burden on the people) once only at each of the following stages during the passage of a Bill:

- on consideration of the Bill in Committee;
- when the report from the Committee of the whole is being considered; and
- on the consideration of the question for the third reading.

Bahamas

The estimates cover all public expenditure and the legislature can increase the expenditure. The budget is debated on set days, usually in December.

Belize

The estimates cover all public expenditure. Parliament may increase this expenditure. Supply does not have to be granted by a certain date and nor are supply days set aside in each session. However supply debates can be guillotined.

Bermuda

The estimates cover all public expenditure. Rule 57 (2) of The Rules of the House of Assembly states:

'Any amendment to any head of expenditure to increase the sum allotted thereto in respect of any programme may only be moved by a Minister who shall signify the consent of the Governor to the increase in accordance with Rule 32 (5). Every such amendment shall take the form of a motion 'that Head . . . be increased by . . . in respect of programme . . .'

With a Lower House (House of Assembly) of only forty Members it is not considered necessary to appoint Committees with responsibility for particular areas. There is a Committee of the whole House which is called 'the Committee of Supply'. It is the duty of this Committee to consider the Estimates of revenue and expenditure and any supplementary Estimates.

Unless the House otherwise decides, a maximum of thirty-five hours shall be allowed for the consideration of Estimates in the Committee of Supply. An Appropriation Bill is introduced in the House by the Minister of Finance after the estimates of expenditure have been approved. The Appropriation Bill provides for the issue from the Consolidated Fund of the sums necessary to meet the appropriation of those sums for the purpose therein specified. After the Appropriation Bill has been introduced the Minister of Finance may without notice move that the remaining stages be taken forthwith. No debate shall take place on the motions for the second reading and the third reading of the Appropriation Bill, and the Bill shall not be committed. The question for the second reading and the third reading shall be put without amendment or debate. The Appropriation Bill must be passed by the House of Assembly and the Senate (the Senate debates the estimates but cannot amend them and must pass the Appropriation Bill) not later than the 31st March as the new Financial Year commences on the 1st April.

Six supply days are set aside in each session during March. The Opposition has the right to determine the order in which the heads of expenditure are considered. On consideration of the Estimates each head of expenditure is considered. The Member in charge moves each head of expenditure in the order chosen by the Opposition. A debate may take place on that motion and the debate must be relevant to the head or programme under consideration. Supply debates can be guillotined and frequently are.

Canada: House of Commons

About 60% of all government spending is for ongoing programs under existing statutory authority. However, most of these programs are included in the Estimates as Information items, not as votable items.

Private Members of Parliament have no method of increasing either items in the Estimates or of introducing bills in the House which would require a charge on the public treasury.

Parliament, as a whole, which includes the government, can, of course, introduce Supplementary Estimates and can introduce bills

which require a charge on the public treasury. Both would have to be accompanied by a Royal Recommendation from the Governor General, which traditionally is only granted to Ministers of the Crown.

Section 54 of the Constitution Act 1982 reads:

'It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.'

In the Standing Committee system there are thirteen Standing Committees whose areas of interest correspond to one or more of the Government Departments. When the estimates (Main or Supplementary) are tabled in the House, on a motion from the Government House Leader, each item is referred to the appropriate departmental Standing Committee. Thus the estimates for the Department of External Affairs and the Department of National Defence are referred to the Standing Committee on External Affairs and National Defence. The items of the departments that are concerned with government operations such as Treasury Board, are all referred to the Standing Committee on Miscellaneous Estimates.

There are three supply periods during the year. One ends on or before December 10, one on or before March 26 and one on or before June 30. The Supplementary estimates are usually tabled early in November and by S.O. 62 (15) are immediately referred to the Standing Committees. They are reported or are deemed to have been reported back to the House not later than three sitting days before the last allotted day in that supply period (S.O. 62 (15)).

Usually at the beginning of March additional Supplementary Estimates as well as Interim Supply are presented to the House. The estimates are referred immediately to the Standing Committees and are reported or deemed to have been reported back to the House not later than three sitting days before the final Allotted Day in that supply period which ends on March 26 (S.O. 62 (15)).

By S.O. 62 (14) the main estimates 'shall be referred' to the Standing Committees on or before March 1. The Standing Committees 'shall report or shall be deemed to have reported' the estimates back to the House not later than May 31.

By S.O. 62 (10) all the questions on the estimates and the appropriations bills must be put to the House on the last allotted day in each period which is not later than the last sitting day in each period.

A certain number of supply days (allotted days) are set aside for the use of the Opposition in each supply period described in LI 6. (iv). These days are not allotted by session but by supply period. For the supply period ending not later than December 10, five sitting days are allotted; for the supply period ending not later than March 26, seven

days are allotted; and for the supply period ending not later than June 30, thirteen days are allotted. This is a total of twenty-five allotted days (S.O. 62 (5)). By S.O. 62 (9), no more than two opposition motions shall be no-confidence motions against the government in any one supply period.

During Allotted Days opposition motions may be moved on any matter within the jurisdiction of the Parliament of Canada (S.O. 62 (3)). Allotted days may also be used for considering reports from Standing Committees relating to the estimates (S.O. 62 (3)).

By S.O. 62 (9), on the debate of a no-confidence motion the Speaker shall interrupt the proceedings and put, without further debate, every question necessary to dispose of the motion, at fifteen minutes before the ordinary time of adjournment. The proceedings on allotted days on opposition motions which are not no-confidence motions expire when the debate has been concluded or at the ordinary hour of adjustment, which ever comes first. (S.O. 62 (11)). For the guillotine on the estimates and the supply bills see LI 6. (iv).

The Special Committee on Standing Orders and Procedure has been sitting since June, 1982 and has been considering the whole matter of 'financial accountability'. It is generally expected that the Special Committee will present report(s) in this area during this session.

Canada: Senate

The Senate does not have rules or procedures for supply. The estimates which cover all public expenditure are tabled in the Senate and referred to the Standing Senate Committee on National Finance for examination and report.

The estimates require appropriation bills before they take effect. These bills, which originate in the House of Commons, are fully debated in the Senate. The Senate can amend an appropriation bill by reducing the amounts therein, but has no right to increase the amounts without the consent of the Crown.

Manitoba

Supply estimates do not cover all public expenditure which may also be authorised by special warrant, ordered by the Lieutenant Governor in Council (Cabinet), when the Legislature is not in session or has adjourned for more than 10 days.

Parliament can increase this expenditure either by introducing supplementary supply or by a motion to amend an estimate or a supply bill made by a Minister if it is introduced with a message from the Lieutenant Governor recommending the expenditure.

Standing or special committees do not consider estimates although the report of a committee may recommend that the Government consider the advisability of certain expenditure.

Supply bills normally grant moneys for goods and services for one

fiscal year only (April 1 to March 31). Recent Governments have been unable to table the main estimates before February. The Legislature then takes about 3 months of sittings to consider them. Therefore the main supply bill cannot be passed before 31st March, necessitating an interim supply vote to grant a portion of the fiscal year's moneys. This, of course, must be granted before 1st April, if salaries and bills are to be paid. If the Government finds during a fiscal year that insufficient moneys were allocated for that year, a supplementary supply vote before 31st March is necessary.

When the Estimates are tabled, the Minister of Finance proposes a motion which states, 'That this House will, at its next sitting, resolve itself into a Committee to consider of the Supply to be granted to Her Majesty.' After this motion is carried, the following motion is placed on the daily Order Paper: 'That the Speaker do now leave the Chair and the House resolve itself into a Committee to consider of the Supply to be granted to Her Majesty.' This motion is then proposed by the Government House Leader at any sitting, at anytime during Government Business, until all the Estimates have been approved by the Committee of Supply.

Similarly, when financial bills are being considered by the House, there are no days specifically set aside.

Supply Debates can be guillotined as follows:

(a) *In a Committee of the Whole House:* A motion can be received to the effect that the consideration of any resolutions shall not be further postponed. This motion is not debatable. If carried, speeches are limited to thirty minutes, no Member may speak more than once, and the original question must be put by 2:00 a.m.

(b) *In Committee of Supply only:* A motion can be received proposing that the department's estimates under consideration, excluding the Minister's salary, be voted on within a specified period. The motion is neither debatable nor amendable. The motion 'that this question be now put' may also be received. This is not debatable.

(c) *In the House:* A motion can be received to the effect that a debate shall not be further adjourned. This motion is not debatable. If carried, speeches are limited to thirty minutes, no Member may speak more than once, and the original question must be put by 2:00 a.m. The motion 'That this question be now put' may also be received. This motion is debatable but the original question, if then put, is neither debatable nor amendable.

New Brunswick

As soon as the Address to the Lieutenant-Governor has been passed, the Minister of Finance makes a motion that the House will

resolve itself into a Committee to consider the Supply to be granted to Her Majesty and a date is then fixed.

'Supply' denotes the procedure involved in passing the estimates for the ensuing fiscal year. Each item of the estimates is proposed and discussed as a distinct question. Supply days are set aside each session.

The estimates cover all public expenditure.

Nova Scotia

By resolution passed in March 1983, the Estimates procedure has been altered to provide inter alia that:

(a) a maximum of seventy-five hours should be allowed for consideration of Estimates in CWH and the minimum time of consideration should be twelve days;
(b) the House Leader of the Opposition in consultation with the House Leader of the Government determines the first four Ministerial Estimates to be considered in CWH, the order of consideration of the remainder of the Estimates is to be determined by the Government House Leader;
(c) the time in consideration of the Estimates is to be indicated daily in the Orders of the Day;
(d) if all Estimates have not been considered at the expiry of seventy-five hours, the question 'shall all remaining Estimates carry' is put without amendment or debate and upon that motion being carried, the Estimates are referred to the House, where motion of concurrence is put without amendment or debate.

Ontario

The supply process in Ontario is governed by Standing Orders 43–51; particular sections of the Management Board of Cabinet Act and the Financial Administration Act are also of relevance.

The fiscal year in Ontario runs from 1st April to 31st March. Generally speaking, the Budget is presented to the House in April or May. In presenting his budget, the Treasurer moves that 'This House approves in general the Budgetary policy of the Government.' This motion, and the amendments offered by the Opposition (no more than one amendment and one amendment to the amendment) are debated throughout the session, but not voted upon until all estimates have been considered, reported to the House and concurred in. Once the general budget motion is passed, the Supply Act is passed, with all three readings within a very few minutes. Normally this occurs in mid-December as the last action of the session.

At least one motion for interim supply (which may not be for more than six months) is usually required to authorise expenditure pending passage of the Supply Act. Supplementary estimates are tabled throughout the year. In addition, the Management Board of Cabinet Act

permits the government to issue Special Warrants to cover emergency expenditures not provided for in any item of the estimates, if the House is not in session. Usually these are for disaster relief or similar contingencies; in early 1981, the entire government spending programme was authorised by special warrant for several weeks owing to a spring election. The same Act permits the government to issue 'Management Board Orders' at any time 'where an appropriation is exhausted or a sufficient amount was not provided and the public interest or the urgent requirements of the public service necessitate further payments.' In 1981–82, of provincial spending of roughly 18.9 billion dollars, some 470 million dollars was approved in this manner; most orders occur near the end of the fiscal year. The amount and the purpose of special warrants and management board orders must be tabled in the House or printed in the *Ontario Gazette*, but neither require anything by way of House approval, and indeed are rarely mentioned in the House.

The estimates cover most, but by no means all public expenditure. The principle expenditures excluded are those incurred by semi-autonomous agencies such as Ontario Hydro (the provincially-owned electric monopoly) and the Workers' Compensation Board, which finance their activities through their own levies and fees or through bond offerings guaranteed by the province. These expenditures amount to roughly four or five billion dollars annually.

Standing Order 45(a) requires that all main estimates be tabled within 5 days of the Budget. The three party House Leaders meet to set the order in which the estimates are considered. Under S.O. 47, the House Leaders take turns specifying which estimates are to be done; although not specifically required to do so by the standing orders, the House Leaders also negotiate among themselves the amount of time to be devoted to each set of estimates and whether they are to be considered in the Committee of Supply or in Standing Committee. Although S.O. 46(a) provides that 'approximately half' the estimates are to be referred to Standing Committees, in fact the actual proportion is more like two-thirds or three-quarters. A total of 420 hours is allotted for estimates review; generally about ninety percent of this time is actually used.

In 1970, the cumbersome procedure revolving around the motion to go into Committee of Supply – 'That the Speaker do now leave the Chair' – was done away with, and an order placed on the Order Paper for 'House in Committee of Supply' once the budget was presented. Accordingly, the Government House Leader simply calls the order and the House, according to order, resolves itself into Committee of Supply. The Ontario Legislature has no 'supply days' or 'Opposition days'.

Although they are not permitted to take part in the debate, up to three officials are permitted to advise the Minister whose estimates are under review in Committee of Supply, from a small table placed directly in front of the Minister's desk.

In both Committee of Supply and in Standing Committee, the procedure is the same. Ministers and Opposition critics are permitted and almost invariably make, opening statements, which may run to several hours in total. Debate then proceeds with a wide-ranging policy discussion on the first item of the first vote, 'main office'. Other votes and items are considered in turn, but very little discussion involved justification of estimates expenditures; rather, debate focuses on the advisibility and efficacy of government policy, interspersed with Members raising pet constitutency problems.

Occasionally, critics and Ministers will agree to a time schedule for the various votes and items, but typically debate proceeds on a given item until the topic is exhausted or pressure to move along to another item wins the day. Accordingly, given the fixed number of hours allocated to each set of estimates (say 5 hours for a small ministry, 25 for a large ministry), often particular votes and items, representing perhaps several hundred million dollars, are never discussed. It is of course the Committee's prerogative to reduce or defeat an item in the estimates, but this is almost never even attempted.

Estimates not considered by Committee of Supply are referred to one of four omnibus 'policy field' standing committees – Justice, Social Development, Resources Development and General Government – all of which have 12 Members and are chaired by Government Members. Ministers, who attend in person throughout their estimates, are invariably accompanied by large numbers of civil servants armed with voluminous documentation and statistics on ministry activities. At the Minister's discretion, officials may take part in the committee discussion; the extent to which this occurs depends largely on the Minister's style: some prefer to field almost all questions themselves whereas others are willing to let their officials speak at length. The Standing Committees have authority to call for non-ministry witnesses but very rarely exercise it.

Save the ability of ministry officials to give evidence and the different atmosphere in the standing committees, little distinguishes estimates review in Committee of Supply from that in standing committee. Both are characterised by minimal press attention and a like level of participation from Members who are not directly involved or interested in a given ministry's policy.

When the standing committees report estimates to the House in the form of a resolution, an order for concurrence in the particular set of estimates is placed on the order paper. Concurrence debates are, by custom, not held until near the end of the session. Each concurrence may take up to two and a half hours (which is deducted from the global 420 hours) but few do; most last less than an hour and not a few are concluded in a matter of minutes.

Once all the estimates considered by the Committee of Supply are completed, the Committee reports two resolutions to the House: one

for the main estimates and one for the supplementary estimates. Concurrence in those resolutions is usually a formality which does not generate any debate.

Most of the stages in the supply procedure are subject to time limits, but all stages are subject to either a special time allocation motion or the moving of 'the previous question'. Both procedures are unusual in Ontario in any context; the only time in which they have been imposed with respect to supply was in the fall of 1981 when the Government moved the previous question on the motion for interim supply after several hours of debate.

Dissatisfaction with the supply process is widespread, most notably with the consideration by committees of estimates. The Procedural Affairs Committee recently recommended a thoroughgoing revision of the estimates process – with a Finance and Economics Affairs Committee which would, *inter alia*, do all estimates on a rotating basis (only a limited number each year) – but there are no indications of imminent change.

Quebec

The estimates cover all public expenditure. The National Assembly may increase expenditure by voting a supplementary budget.

The role of committees is merely to study the estimates of every department.

The fiscal year for the Government extends from 1st April to 31st March. The budget speech is usually delivered at the end of March. Standing Committees begin to study the estimates of different departments and since there are twenty-seven different Standing Committees it takes a certain time because they are allowed to study the estimates of any department for at least ten hours. The final approval of the budget for a fiscal year, by the National Assembly, may occur only in May. Meanwhile the Government needs money to administer, so the Minister of Finance after having given verbal notice at a preceding sitting will make a motion that the Assembly resolve itself into Committee of the Whole to vote one-quarter of the different items of such budget as a lump sum. This is called the vote of provisional appropriations.

No specific date is set aside but according to the Standing Orders forty-five days are allowed to study the estimates of every department.

Saskatchewan

Most of the estimates are considered in a committee of the whole House called the Committee of Finance. A recent change (1982) provides for certain estimates to be referred by unanimous consent to a standing committee. To date, this committee has handled only estimates for the operation of the Legislative Assembly and the Legislative Library.

(i) The estimates include all public expenditure but some of the items are statutory and do not require a vote.
(ii) Parliament could increase the expenditure only by the Minister of Finance bringing in further estimates. The Committee itself cannot increase an estimate.
(iii) The purpose of the Committee review is for scrutiny and maintaining accountability not making financial decisions.
(iv) There are no deadlines imposed on the supply procedure other than the necessity of having an appropriation bill passed by the end of the fiscal year.
(v) The House does not have separate supply days because almost all of the estimates are still taken in a committee of the whole.
(vi) There are no time limits on speeches and no guillotine on supply procedures. There is a two-day time limit on the debate of the combined second/third reading stage of an Appropriation Bill. The Assembly spends about half of its sitting time in Committee of Finance doing estimates.
(vii) The House has studied its supply procedure several times in the last 8 years but each time has decided to make only minor changes.

Cayman Islands

The estimates cover all public expenditure and the legislative assembly may increase this.

Hong Kong

The estimates do not cover all public expenditure. The legislature may approve a Supplementary Appropriation Ordinance. Supply does not have to be granted by a certain date. The Finance Committee meets fortnightly immediately after a meeting of the Legislative Council to consider proposals by the Financial Secretary for supplementary provision. Supply debates cannot be guillotined.

India: Lok Sabha

The President causes to be laid before both Houses of Parliament every year the annual financial statement. The estimated expenditure of the Government of India is presented in the form of Demands for Grants to Lok Sabha which has the power to assent, or to refuse assent, to any Demand, or to assent to any Demand subject to a reduction of the amount. A separate demand is ordinarily made in respect of the grant proposed for each Ministry. Each Demand contains first a statement of the total grant proposed and then a statement of the detailed estimate under each grant divided into items. Certain expenditure, like pay and allowances of the President and the Speaker and Deputy Speaker and Judges of Supreme Court etc, has been described by the Constitution of India as expenditure charged on the Consolidated

Fund. Such expenditure is not submitted to the vote of Parliament, though it can be discussed. The Demands are discussed and passed by Lok Sabha. Thereafter, an Appropriation Bill is passed for withdrawal of moneys from the Consolidated Fund of India. The Finance Bill is then considered and passed.

The Estimates Committee of Lok Sabha has no role in decision making. The Committee is responsible for examination of such estimates as may seem fit to it, or are specifically referred to it by the House or the Speaker. It can suggest economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates. It can suggest alternative policies in order to bring about efficiency and economy in administration and examine whether the money is well laid out within the limits of the policy implied in the estimates. The recommendations of the Committee are not mandatory but they do influence Government.

Supply has to be granted by a set date. Normally, vote on account, *i.e.* a part of the total expenditure, is first taken for a certain period, generally two months, pending the detailed discussion on Demands. Discussion and voting on the Demands has to be completed within that period. The Finance Bill has to be passed within 75 days after its introduction, by virtue of the declaration under the Provisional Collection of Taxes Act which is usually appended to the Bill.

During the Budget session, days are set aside for discussion and voting of Demands for Grants. Supply debates can be guillotined.

Gujarat

Under Article 202 of the Constitution of India the statement of the estimated receipts as well as expenditure of the State which is known as the Annual Financial Statement or Budget is presented to the Legislature. Thus unlike in the UK where the estimates are presented to the House in February while the Chancellor of Exchequer opens his Budget after the commencement of the financial year i.e. after 31st March, in India the Annual Financial statement covers not only the estimated expenditure but also estimated receipts. Secondly unlike in the UK where the estimates cover only charges payable out of moneys to be provided by Parliament, i.e. moneys voted year by year in response to demands presented in the form of estimates but does not include expenditure incurred on Consolidated Fund standing services, in India, the estimate of expenditure embodies the expenditure charged upon the Consolidated Fund of the State which is similar to the expenditure on the Consolidated Fund standing Services in UK and also other expenditure which is submitted to the Legislature in the form of demands for grants which is similar to the estimates in UK. Of course the expenditure charged on the Consolidated Fund of the State is not submitted to the vote of the House but the figures of such expenditure are included in the Appropriation Bill.

Under article 203 of the Constitution of India, the State Legislature has power to assent or refuse to assent to any demand or to assent to any demand subject to reduction of the amount specified therein. The State Legislature has, however, no power to increase the demand.

Neither the constitution of India nor the Gujarat Legislative Assembly Rules prescribe any particular date by which the supply is to be granted. The constitution, however, provides for Vote on Account. In so far as the State of Gujarat is concerned, the practice is that Vote on Account is not taken every year but it is taken only during the year when there are general elections and the new House is constituted. When Vote on Accounts is taken it is generally taken for a period of four or five months and that is done before 31st March and the required supply for the remaining part of the year is voted subsequently before the end of the period for which Vote on Account is taken. During the years when Vote on Account is not taken supply is granted before the commencement of the year for which the supply is to be granted.

The main budget for the year is generally passed during the Budget Session. Under the Gujarat Legislative Assembly Rules the Speaker in consultation with the Leader of the House is empowered to allot 4 days for general discussion of the Budget and not more than 18 days for the discussion and voting of demands for grant. In practice, the Speaker allotes 4 days for general discussion of the Budget and 14 to 16 day for discussion and voting of demands for grants. These days occur during the month of February and March. Besides these days allotted for the main budget, one or two days are allotted for discussion and voting of supplementary demands. These days are generally allotted in February and sometimes in March.

Generally there are two sessions in a year and in the second session also generally the statement of supplementary expenditure is presented to the House and one or two days are allotted for the discussion and voting of supplementary demands. Time for this session is not fixed but generally it is held in August or September.

Similarly a day or a part of a day is allotted for discussion and voting of excess demands in the session in which they are presented to the House.

The purpose of allotting particular numbers of days for general discussion of the budget and discussion and voting of demands for grants or supplementary demands or excess demands is to see that the House gets at least that much time for discussion of the estimates.

By convention the question as to which demands should be discussed and in which order is left to be decided by the Opposition.

Under Rule 228 of the Gujarat Legislative Assembly Rules on the last day of the days allotted for discussion and voting of demands for grants, one hour before the time appointed by the Speaker for the adjournment of the House guillotine is applied and the Speaker puts forthwith every question necessary to dispose of all the demands for grants which were

under discussion at the time and also to dispose of all the remaining demands which have not been discussed and which are to be voted without discussion.

Maharashtra

The estimates cover all public expenditure and the legislature cannot increase this. The responsible Committee can only make recommendations on expenditure and does not have a role in making final decisions. Supply has to be granted by the end of the previous financial year, i.e. 31st March. After Presentation of the Budget, but not earlier than seven clear days from the date of such presentation, the Speaker allots not more than six days for general discussion. There is also a provision which stipulates that not more than 18 days will be allowed for voting of demands for grants. Fixing of the entire time schedule is finalised in a meeting of the Business Advisory Committee. The purpose is to have a fruitful discussion on the demands included in the Budget Estimates. On the last of the days allotted for voting of demands, two hours before the time appointed for the adjournment of the House, the Speaker forthwith puts every question necessary to dispose of all outstanding matters in connection with demands for grants.

Punjab Vidhan Sabha

The Estimates cover all public expenditure before 31st March of a financial year. The financial year begins from 1st April and concludes on the 31st March of the next year.

Financial Business The Annual Financial Statement or the Statement of the Estimated Receipts and Expenditure of the Government of the State in respect of every financial year, known as the Budget, is presented to the Vidhan Sabha with a speech by the Finance Minister. It is then dealt with in three stages:

(i) General Discussion.
(ii) Voting of Demands for Grants.
(iii) Appropriation Bill.

General Discussion of Budget The general discussion of the Budget takes place for such period as the Speaker, in consultation with the Leader of the House, may determine. Members are then at liberty to discuss the Budget as a whole or any question of principle involved in it. The Finance Minister has a general right of reply at the end of the discussion. Other Ministers may also take part in the discussion to answer any criticism that may have been made of the departments under their charge. No motion is moved at this stage. Nor is the Budget submitted to the vote of the Vidhan Sabha.

The Speaker can prescribe a time limit for the speeches.

Voting of Demands for Grants: The Voting of demands for grants takes place for such number of days not exceeding fifteen days as the Speaker, again, in consultation with the Leader of the House, may allot for the purpose. Any one demand cannot be discussed for more than two days.

The demands for grants, which are specifically discussed, are those which are mutually agreed upon between the Government and the Opposition.

Members may move motions to omit or reduce any item in a grant or reduce any grant. A token cut may be proposed, but when that is done, the object of the cut has to be specified clearly and precisely. But no motion can be moved to increase any grant or alter its destination.

The charged expenditure is subject to discussion, but not to the vote of the Vidhan Sabha.

The debate on motions must be confined to the administrative matters for which the Government is responsible and not deal with matters requiring legislation.

Guillotine On the last day of the days allotted for the voting of demands for grants, the Speaker 1½ hours before the normal hour of interruption of business forthwith puts every question necessary to dispose of the demand under consideration and thereafter puts one by one all the outstanding demands for grants.

Supplementary, Additional, Excess and Exceptional Grants and Votes of Credit Supplementary, Additional, Excess and Exceptional Grants and Votes of Credit are regulated by the same procedure as is applicable to the demands for grants with such modifications, addition or omission as the Speaker may deem necessary or expedient. But the debate on these grants or votes has to be confined to the items constituting the same, and no discussion may be raised on the original grants or on the policy underlying them except to the extent necessary to explain or illustrate the particular items under discussion.

Vote-on-Account A 'Vote-on-Account' is a vote of a demand for grant given in advance in respect of the estimated expenditure for a part of a financial year pending the completion of the procedure relating to the voting of the annual budget and the passing of the Appropriation Bill in relation thereto.

A motion for a 'Vote-on-Account' states the total sum required and the various amounts needed for each department or item of expenditure which compose that sum. These various sums are stated in a Schedule appended to the Motion. Amendments may be moved for the reduction of the whole grant or for the reduction or omission of the items of which the grant is composed.

Scope of Discussion Discussion of a general character on the motion or any amendments moved thereto is allowed, but discussion of the details of the grants further than that necessary to develop the general points is prohibited.

Appropriation Bill When the demands for grants have been voted by the Vidhan Sabha, the Appropriation Bill providing for the appropriations out of the Consolidated Fund of all the moneys thus voted as well as the charged expenditure is introduced and discussed in the House.

No amendment can be proposed to an Appropriation Bill which has the effect of varying the amount or altering the destination of a grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State.

Discussion The Appropriation Bill is discussed in the Vidhan Sabha for such period as the Speaker may allot, and on the allotted day, or if more than one day has been allotted on the last of the allotted days, half an hour before the hour of interruption, he forthwith puts every question necessary to dispose of all the outstanding matters in connection with the Bill. The Speaker can prescribe time limits for speeches at all or any of the stages involved in the passage of the Bill by the House.

Restriction on discussion The debate on the Appropriation Bill is restricted to matters of public importance or administrative policy implied in the grants covered by the Bill which were not raised while the relevant demands for grants were under consideration.

The Speaker may, in order to avoid repetition of debate, require Members desiring to take part in the discussion on an Appropriation Bill to give advance intimation of the specific points they intend to raise and he may withhold permission for raising such of the points as in his opinion, appear to be repetitious of the matter already discussed on a demand for grant or as may not be of sufficient public importance.

Tamil Nadu: Legislative Council

The Annual Financial Statement or the Statement of the estimated receipts and expenditure of the State in respect of every financial year shall be presented to the Council on such day as the Governor may appoint under Article 207 of the Constitution of India.

Under the Tamil Nadu Legislative Council Rules, the Chairman in consultation with the Leader of the House and the Business Advisory Committee shall fix and appoint sufficient number of days for the general discussion on the Budget. During the days appointed for general discussion on the Budget, the Council shall be at liberty to discuss the Budget as a whole or any question of principle involved thereon, but no motion shall be moved at this stage, nor shall the Budget be submitted to the vote of the Council.

Further, under Article 204 of the Constitution of India, as soon as may be, after the grants have been made by the Assembly there shall be introduced a Bill to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet – the grants so made by the Assembly; and the expenditure charged on the consolidated fund of the State but *not exceeding* in any case the amount shown in the statement previously laid before the House or Houses. No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grants so made or of varying the amount of any expenditure charged on the consolidated fund of the State.

Uttar Pradesh: Legislative Assembly

The annual financial statement or Budget or the statement of the estimated receipts and expenditure of the State in respect of every financial year is presented to the Assembly under Article 202 of the Constitution of India, read with rule 183 of the Rules of Procedure and Conduct of Business of the Legislative Assembly on such day as the Governor may appoint. The position regarding the specific points mentioned in the question is as follows:

(i) The Budget Estimates cover all the public expenditure.
(ii) Under sub rule (4) of Rule 188 of the Rules of Procedure and Conduct of Business of the U.P. Legislative Assembly during voting on demands of the annual Budget, motions may be moved to reduce any demand for grant or to omit any item thereof but there is no provision to increase or alter the destination of a demand for grant.
(iii) The Financial Committees have a vital role to play in the democratic type of Government. The legislature exercises its control over financial policies of the government through its committees. The Public Accounts Committee and Public Undertakings Committee after considering the audit objections raised in the Reports of the Comptroller and Auditor General of India, prepare their reports and after the same have been presented to the House, the government is expected to implement the recommendations made therein.

The Estimates Committee controls the expenditure made by the executive and advises regarding savings which may be made according to the policy laid down in the Estimates, as well as improvements in the organisation, administrative set-up and efficiency of government departments. The Estimates Committee may also suggest alternative policies in order to bring about efficiency and economy in administration.
(iv) The Assembly passes the Budget by the 31st March at the latest i.e. the last day of the financial year, in order to make the funds available at the very on-set of the forthcoming financial year, but this date may vary

if Vote on Account has been sought. In that case, the last date of the supply by the House would be the last date of the period for which Vote on Account has been taken.

(v) As regards Supply days for Budget, they occur after general discussion on the Budget. Ordinarily five days are allocated for general discussion on the Budget or any question of principles involved therein, and not more than 24 days for consideration and voting on the demands for grants. These supply days are set aside in Budget Session only for the purpose of allowing discussion on the various aspects of the grants of the various departments for the financial year.

(vi) These supply debates can also be guillotined. According to sub-rule (7) of Rule 188 of the aforesaid Rules of the Assembly, about half an hour before the usual closing of the sitting on the last day of the days allocated for the voting on demands the Speaker forthwith puts every question necessary to dispose of the outstanding matter in connection with the demands for grants; and this procedure cannot be anticipated by any motion for adjournment or be interrupted in any manner whatsoever nor can any dilatory motion be moved in regard thereto.

(vii) Regarding changes in the supply procedure, it was felt that the demands for grants for each service should incorporate the budget provisions on Revenue Account as well as on Capital Account (including loans and advances) relating to that service, and that the schedule to the Appropriation Act should show separately amounts authorised for (i) expenditure on Revenue Account and (ii) expenditure on Capital Account, Reappropriation of funds between the two being prohibited, while separate demands on Capital Account may be presented if the nature and magnitude of Capital outlay so warrant. On the basis of the 'Report on Reforms in the Structure of Budget and Accounts' of a team constituted by the Government of India, the Estimates Committee of the U.P. Legislative Assembly recommended this practice of 'Composite Grant' in its Special Report which was presented to the House on the 18th September, 1981. This Proposal was agreed to by the State Government and since 1982–83 the aforesaid practice is continuing in this State. No fresh changes are under *consideration* at present.

Isle of Man

Each year, each department of Government is required to prepare an estimate of the cost of providing its services and carrying out its duties for the next financial year and to submit its estimates of income and expenditure in respect of revenue and capital to the Finance Board. After consultation with each Board, during which alterations may be made, all estimates are tabulated and submitted to Tynwald during the month of March. Estimates are considered by the whole Court: there are no 'subject' Committees. Normally from three to five days are spent debating the estimates, each Board's vote being moved by its Chairman. There is no guillotine. Amendments to reduce the vote may be made

but amendments for increased expenditure are out of order. Resolutions ask the Finance Board to take each Board's proposals into consideration when framing the Budget.

Malta

The Estimates show all the expenditure of Government for the year in question. However, they do not show the expenditure of Public Corporations, unless Government is passing money to any of them.

Government can increase this expenditure through a Supplementary Estimate. In fact almost each year there is a Second Appropriation Act to cover Supplementary Estimates for the current year. This usually follows the Appropriation Act to cover the expenditure for the coming year.

Section 107 of the Constitution is relevant to the date by when supply has to be granted. It starts 'Parliament may make provision under which . . .': Parliament has made this provision in the Financial Administration and Audit Act (Act 1/62) Section 23, which runs thus

'Authorisation of expenditure before appropriation.

23. (1) If the Appropriation Act has not come into operation at the commencement of any financial year, the Minister may authorise the issue of moneys from the Consolidated Revenue Fund for the purpose of meeting such expenditure as he may consider necessary for carrying on the government of Malta:

Provided that moneys so authorised to be issued for any service which is of a recurrent nature shall not exceed one-third of the amount voted for that service in the Appropriation law for the preceding financial year.

(2) Any moneys authorised to be issued as provided in subsection (1) of this section shall not exceed the sum specified for that service in the estimates presented for the current financial year and shall be set off against the amounts respectively provided in the Appropriation Act on its coming into operation.

(3) The powers conferred on the Minister by this section shall not extend beyond the period of the first four months of any financial year or beyond the day on which the Appropriation Act for the year comes into operation, whichever is the earlier'.

It follows from the above, that supply has to be granted at the latest by end April: this used to be end July, when the financial year was April/March.

Since 1980 it has become the practice for the Finance Minister to deliver his Budget Speech by about mid-November and for the Estimates to take practically all the remaining sittings until the relevant Appropriation Bill is passed through all stages in the last sitting of the House (usually about 22nd December) before the Christmas Recess.

Supply Debates can be guillotined by motion of procedure suspending the relevant Standing Orders and moved after at least 3 days' notice. This, however, has never been done.

There are no plans before Parliament to change supply procedure.

New Zealand

The annual estimates laid before Parliament seek authority for the expenditure of approximately 85% of all public expenditure, the remainder being authorised by permanent legislation and not requiring to be appropriated annually. The types of expenditure permanently authorised in this way are the salaries and allowances of the Governor-General (the Civil List expenditure), members of Parliament, Ombudsmen, Controller and Auditor-General and the Judges, subsidies to superannuation funds, interest and charges on Government debt and a number of other miscellaneous payments. For the information of members these amounts are printed and published alongside the estimates.

Parliament could increase the amounts which are initially sought from it by appropriation although a motion or amendment so to increase expenditure would have to be moved by a Minister of the Crown and would require to be supported by a Message from the Governor-General recommending the increased expenditure. In practice the amounts which are sought are not amended in this way – if, before the end of the financial year, the Government realises that these are insufficient it will introduce Supplementary Estimates to rectify the situation. If it is not possible to introduce Supplementary Estimates before the financial year ends, authority for any over-expenditure is sought retrospectively in the next financial year.

Parliamentary committees have no specific role in the preparation of the Government's proposals for public expenditure. There is no pre-Budget consultation with such committees. Once the estimates have been introduced into Parliament they are referred to the Public Expenditure Committee for scrutiny. This committee 'farms-out' many of the individual departmental votes for scrutiny by other select committees more closely concerned with the subject-matter of those departments, and itself examines the remainder. However this scrutiny is not an examination of the policy on which these expenditure proposals are based. The supply procedure in the House proceeds only as and when each department's estimates of expenditure have been thus examined.

The financial year in New Zealand runs from 1 April to 31 March following. The Government has legal authority during the first three months of this financial year to expend up to 25% of the amount voted by Parliament in the previous financial year. This means that Parliament must pass legislation authorising further expenditure on or before 30 June each year. This is done by passing temporary legislation granting supply on an interim basis. Later in the financial year the estimates are presented and, when approved by Parliament, supersede this (and any other) grant of interim supply.

Sixteen days are allocated each session to consider the estimates. In addition one day is spent considering supplementary estimates. The Government can choose up to two days each week to consider esti-

mates, and it decides the order in which each department's estimates are considered (subject to that department's estimates having been scrutinised by the Public Expenditure Committee as described above). Consideration of the estimates takes place in Committee of the whole House being formally the Committee stage of the Appropriation Bill. The Minister of the department under consideration, assisted by his officials, responds to questions or comments on the items contained in the estimates. Policy can be debated at this stage. The Opposition determines the amount of time spent debating each department's estimates (although as was remarked above, not the order in which the debates take place). When the 16 days consideration is over any remaining departmental estimates are put forthwith without further debate. Subseqently the Appropriation Bill is read a third time and receives the Royal Assent. The supplementary estimates are enacted in a (No 2) Bill.

United Kingdom: House of Commons

House of Commons supply procedure is fully described in *Erskine May*, 20th Edition, pp773–792. Recent changes in this procedure were the subject of an article in Volume L of *The Table*, pp39–43.

1. The estimates do not cover all public expenditure. All grants of supply in respect of estimates must be authorised by legislation.
2. Members may not move that expenditure be increased. They may only propose a decrease.
3. Select committees are empowered to examine the expenditure of government departments and to make recommendations. In addition the Liaison Committee is required by Standing Order No 101 to 'report its recommendations as to the allocation of time for consideration by the House of the estimates on any day allotted for that purpose'.
4. Yes – 5th August.
5. Three days are allotted in each session for the consideration of estimates.
6. On a day on which any total amounts or numbers (as specified in the Standing Order) are put down for consideration, Mr Speaker is directed to put the necessary questions at 10 o'clock.

Zambia

The estimates cover all public expenditure Although the Parliament of Zambia can debate estimates it cannot increase the expenditure; it can only suggest a decrease. This is provided for in Standing Orders 75 (a) (ii) and 87 which state:

'75. Except upon the recommendations of the President signified by the Prime Minister or a Minister, the National Assembly shall not –

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:

(ii) for the imposition of any charge upon the general revenues of the Republic or the alteration of any such charge otherwise than by reduction;'

'87. The Committee shall not attach a condition or an expression of opinion to a vote, nor alter its destination, nor increase any item in a grant asked for.'

Committees with responsibility for particular areas have a role in making financial decisions – in particular the Public Accounts Committee, Committee on Parastatal Bodies, Committee on Foreign Affairs, and the Committee on Local Administration.

The most influential Committee is the Committee on Public Accounts, whose duties comprise the examination of the accounts showing the appropriation of the sums granted by the National Assembly to meet the public expenditure; the Report of the Auditor-General on these accounts and such other accounts including the accounts of the Party. The power of this Committee to make financial decisions has been enhanced by the Constitution of Zambia which in Article 123, Clause 4 states:

'Where, in any financial year, expenditure has been incurred without the authorisation of the National Assembly, the Minister responsible for finance shall, on approval of such expenditure by the Public Accounts Committee, introduce in the National Assembly, not later than thirty months after the end of that financial year or, if the National Assembly is not sitting at the expiration of that period, within one month of the first sitting of the National Assembly, a bill to be known as the Excess Expenditure Appropriation bill, for the approval by Parliament of such expenditure.'

Although no Constitutional provisions exist in respect of other Committees, viz – Committees on Parastatals, Foreign Affairs and Local Government, the relevant Standing Orders have made provision for these Committees to make necessary financial decisions in their respective roles. From experience it has been learnt that the Executive wing of Government accepts and implements recommendations of the said Committees on financial issues.

Supply has to be granted before 1st April of every year. Supply days are not set aside as such but debate on supply comes after the debate on the Budget motion, i.e. end of January to March. Supply debates cannot be guillotined because each ministry or department is debated separately and Standing Order 81 (1) states:

'In Committee of Supply, the Chairman shall call the estimates vote by vote by reading the number thereof.'

At the moment the Parliament of Zambia has no plans to change supply procedure.

XVI. APPLICATIONS OF PRIVILEGE

AUSTRALIA

VICTORIA LEGISLATIVE ASSEMBLY

Threat of union action.—A Member of the Opposition complained by letter to the Speaker that a Minister of the Crown had threatened union action against the Member's company.

Speaker ruled *prima facie* case and permitted the Member to move a motion referring the matter to the Privileges Committee. After an explanation by the Minister the motion was, by leave, withdrawn.

(Ref. *Hansard* pp 555–558 – 22 Sept. 1982)

CANADA: SASKATCHEWAN

Allegedly misleading answer.—On July 9 Jerry Hammersmith (NDP – Prince Albert – Duck Lake) raised a point of order to the effect that a reply to an oral question by Colin Thatcher, Minister of Mineral Resources, was inaccurate and misleading. On the next sitting day, July 12, the House heard from the Minister on the question. On July 13, Speaker Herb Swan ruled that, on the basis of the information in front of him, a *prima facie* case of privilege had been established. He stated that the Minister's answer to the oral question was indeed misleading and left it up to Members to decide if there was a deliberate attempt to mislead the House. At the time, the Minister of Mineral Resources was not present in the legislature.

Following the Speaker's ruling, Mr Hammersmith moved a motion which referred the matter to the Standing Committee on Privileges and Elections. When Acting House Leader, Bob Andrew spoke to the motion and moved adjournment of the debate, Opposition Members called for a recorded division and departed from the Chamber. Almost four hours later, when the Opposition returned, Mr Thatcher, was also in his place. The motion to adjourn debate was defeated, and the Minister thereupon rose and offered an unequivocal apology to the House, stating: 'I was at no time attempting to mislead the Assembly, deliberately or otherwise.' The House decided to accept the Minister's apology and the question of privilege was thereby disposed of. However, later that evening the news media reported Mr Thatcher as saying he only apologised because he was forced to and he questioned Speaker Swan's ruling on the matter. The following day, July 14, Mr Hammersmith directed an oral question to Premier Grant Devine asking if the statements attributed to the Minister outside the House

reflected the views of the Government. The Premier requested leave for his Minister to make a statement; leave being granted, Mr Thatcher stated: 'Mr Speaker, last evening in the corridor I made an off-the-cuff remark that was stupid, inappropriate and inexcusable . . . Mr Speaker, it is my sincere wish that you accept my apologies with my additional assurances that such will not be repeated.' The Minister's further apology was accepted and the matter was finally laid to rest.

Contempt by law firm.—On July 15 Jo-Ann Zazelenchuk (PC – Saskatoon-Riversdale) claimed that a representative of a law firm was in contempt of the House for his actions in posing as an official or employee of the Legislative Assembly and thereby interfering with the proper access that the Legislative Assembly Office ought to have to Members. The issue arose after Miss Zazelenchuk was summoned from the Chamber by a note signed 'Legislative Assembly Office'. When she stepped out into the corridor she was met by a former Saskatchewan Deputy Minister who served her with a petition notifying her of former Attorney General Roy Romanow's intention to have the election result over-turned in her constituency under the *Controverted Elections Act*. Mr Romanow lost by 19 votes on a recount in Saskatoon-Riversdale. The following day, Mr Speaker Swan ruled that a *prima facie* case of privilege had been established, and Miss Zazelenchuk moved a motion which, amended by Murray Koskie (NDP – Quill Lakes), declared that the individual who impersonated an employee of the House was 'guilty of a grave contempt of this Assembly'.

INDIA: LOK SABHA

Disturbance in Visitors' Gallery.—On March 18 1982, the Deputy Speaker (Shri G. Lakshmanan) informed the House as follow:—

'As the House is aware, at about 12.35 hours today, six visitors calling themselves Keshar Sharma, Bhagat Ram Gupta, Anil, Shyam Lal Garg, Mahabir Singh and Ravinder Pal Singh shouted slogans from the Visitors' Gallery and tried to throw some leaflets on the floor of the House. The Watch and Ward Officer took them into custody immediately and interrogated them. The visitors have made statements but have not expressed any regret for their action.

I bring this to the notice of the House for such action as it may deem fit.'

The Minister of State in the Department of Parliamentary Affairs (Shri P. Venkatasubbaiah) moved the following motion:—

'This House resolves that the persons calling themselves Keshar Sharma son of Shri Tej Ram Sharma, Bhagat Ram Gupta son of Shri Ram Kumar Gupta, Anil son of Shri P. C. Mittal, Shyam Lal Garg son of Shri Hazari Lal, Mahabir Singh son of Shri Chandagi Ram and Ravinder Pal Singh son of Shri P. P. Singh, who shouted slogans at about 12.35 hours today from the Visitors' Gallery and attempted to throw some leaflets from there on the

floor of the House and whom the Watch and Ward Officer took into custody immediately, have committed a grave offence, and are guilty of the contempt of this House.

This House further resolves that the said Keshar Sharma, Bhagat Ram Gupta, Anil, Shyam Lal Garg, Mahabir Singh and Ravinder Pal Singh be sentenced to simple imprisonment till 6 P.M. on Wednesday, the 24th March, 1982, for the aforesaid contempt of the House and sent to Central Jail, Tihar, New Delhi.'

Shri Suraj Bhan, a Member, then moved the following substitute motion which was negatived by the House:—

'This House does not approve the slogan shouting and throwing of leaflets in the House today by the outsiders from the visitors gallery and lets them off with warning.'

The motion moved by Shri P. Venkatasubbaiah was then put to vote by the Deputy Speaker and adopted by the House.

In pursuance of the above motion, a Warrant of Commitment, addressed to the Superintendent, Central Jail, Tihar, New Delhi was issued by the Speaker and the offenders were sent to the jail.

Proposed summoning of a member of Lok Sabha before a Legislative Assembly.—On October 4 1982 Shri Mani Ram Bagri, a member, sought[1] to raise a question of privilege regarding reported proposed summoning of Shri Atal Bihari Vajpayee, another member, before the Rajasthan Vidhan Sabha in connection with a question of alleged breach of privilege and contempt of Rajasthan Vidhan Sabha by Shri Vajpayee for alleging in a Press statement[2] that the candidate belonging to his party for election to Rajya Sabha had been defeated because 'some Opposition M.L.As. had been purchased'.

On 7th October, 1982, the Speaker (Dr Bal Ram Jakhar) observed[3] as follows:—

'On 4 October, 1982, Shri Mani Ram Bagri had sought to raise question of privilege regarding reported proposed summoning of Shri Atal Bihari Vajpayee, a member of this House, before the Rajasthan Vidhan Sabha in connection with a question of alleged breach of privilege and contempt of the Rahasthan Vidhan Sabha by Shri Vajpayee.

I have not received any communication in this behalf either from Shri Atal Bihari Vajpayee or from the Rajasthan Vidhan Sabha. The House may however like to know that a similar case had arisen in 1962 in the Gujarat Legislative Assembly relating to an article in a paper alleging that money had been passed to get a particular candidate elected at the election to the Council of States. The matter was referred to the Privileges Committee of Gujarat Assembly which thoroughly examined the subject and gave a learned Report in which they had inter alia stated that "a Member while voting at such election is acting in the capacity of a voter of the electoral college and not in the capacity of a Member of the House . . . that the allegation of bribery and corruption made in the said news item against the . . . Members do not concern the character or conduct of the Members in that capacity and do not cast reflections upon the Members of the House for or relating to their service therein, and therefore, there is no breach of privilege of the House". The Report of the Privileges Committee was adopted by the Gujarat Legislative Assembly.

As Honourable Members know it is a well established convention that if a prima facie case of breach of privilege or contempt of the House is made out against a Member who belongs to another House, the matter is reported to the Presiding Officer of that House for taking such action as he considers necessary. In fact, in pursuance of the decision taken at

the Presiding Officers' Conference, Rajasthan Vidhan Sabha had, as early as December, 1958, passed a resolution to the effect that if any Member of a House of any other Legislature in India or the Indian Parliament was involved in any case of alleged contempt or of a breach of privilege of the Assembly, the Speaker would refer the matter to the Presiding Officer of the House to which the Member belonged.

I have no doubt that all concerned would take the relevant facts into account while dealing with this sensitive and important issue.'

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1. *L. S. Deb.*, dt. 4.10.1982.
2. As published in *Rajasthan Patrika*, a Hindi newspaper, dt. 4.4.1982.
3. *L. S. Deb.*, dt. 7.10.1982, c. . .

GUJARAT

Disturbance in Visitor's Gallery.—On January 15 1982 one person from the Speaker's Gallery and four persons from Visitors' Gallery shouted slogans and threw pamphlets in the House. They were immediately taken into custody by the Security Staff. Thereafter, Honourable the Minister for Parliamentary Affairs moved the following motion which was adopted by the House: 'That those who have thrown pamphlets in the House and shouted slogans in the House have committed a contempt of the House be sentenced to three days' imprisonment'. In the pursuance of the aforesaid motion adopted by the House, Honourable the Speaker by warrant of commitment signed by him and addressed to the superintendent of Sabarmati Central Jail, Ahmedabad sent the said five persons to the jail.

Premature publication of proceedings of a Committee.—One case of breach of privilege arising out of premature publication by a local weekly 'Sadhana' of the proceedings of Assurance Committee, before the Committee could present its report to the House, was referred to the Committee of Privileges by the Speaker. The matter is pending.

MAHARASHTRA

Assaulting and obstruction of a Member.—On September 8, 1981 when the House assembled for its meeting, a member rose in his seat and complained to the Speaker that while he was signing some application forms in the Council Hall premises for his constituents he was caught by a Police Officer by his collar and was taken to the Police Station (temporary tent pitched in the Council Hall premises). Another member of the House said that he had witnessed the incident and stated that even though he himself and the member who had been caught told the Police Officer that the said member so caught was a member of the House, the Police Officer did not listen but took the member to the Police Station by his collar. Many members rose in their seats and demanded an immediate action against the Police Officer concerned.

Assurance from the Speaker that appropriate action would be taken against the Police Officer, did not seem to pacify the members and the Speaker had to adjourn the House for thirty minutes.

After the House re-assembled, the Speaker announced that after making preliminary enquiry, he was referring the matter to the Committee of Privileges. He also informed the House of the Government's decision to suspend the Police Officer in the meantime.

The Committee in its report presented to the House on 24th December, 1982 held that the said Police Officer was guilty of breach of privilege and contempt of the House as the member had been assaulted and obstructed while he was discharging his duties in the premises of the Council Hall. The Committee recommended that the Police Officer be called before the Bar of the House and admonished. The House considered and adopted the report on March 31 1983.

Uttar Pradesh

Alleged misbehaviour of a revenue official.—On August 27 1981 Smt. Premvati, a member of Lok Dal, complained against a revenue official of District Budaun, for his alleged misbehaviour with her and certain derogatory remarks said to have been made against the Members of the House. It was maintained that the said official had, by his action, caused obstruction to Smt. Premvati in the discharge of her duties as a Member of the House and it was a fit case to be referred to the Committee. The Minister for Parliamentary Affairs, while agreeing with the seriousness of the matter, suggested that any action against the official could only be taken after an inquiry which was proposed to be conducted immediately. Members of the opposition were so much agitated on this question that some of them along with the lady member of the Lok Dal came in the well of the House demanding that the matter should be decided immediately. There were repeated obstructions and shouting. They were adamant and would not allow the proceedings to continue. There was pandemonium and it was impossible to carry on the proceedings of the House in spite of repeated requests and appeals by the Speaker. The Speaker had to adjourn the House first for fifteen minutes followed by further adjournments lasting for two hours in all. In the meantime, consultations with the Leaders of the various parties were going on in the Speaker's Chamber to resolve the crisis. After hearing the Leaders of the parties, the Speaker announced his decision to refer the matter to the Privileges Committee.

New Zealand

Newspaper Article on Pairing.—In May 1982, the *New Zealand Times* published an article on the subject of pairing, written by Mr T. J.

Heffernan, research officer to the Social Credit Party and employed by the Legislative Department. Mr Speaker, in referring the matter to the Committee, said that the article contained representations of the proceedings of the House and statements purporting to be fact which, if found to be incorrect and deliberately made, could be held to be a contempt of the House. (Hansard, vol. 444, pp. 801–808).

The Particular statements in the article dealt with by the Committee (the Committee's findings indicated in brackets) were:

(a) '. . . Six Labour members themselves deliberately abstained. Their Whips told them, privately, to go to the billiard room, and not to vote. This they did . . .' (found by the Committee to be an incorrect statement of a purported fact);
(b) '. . . pairing is where members are present but don't vote' (in the Committee's view a not unreasonable description of some instances of pairing);
(c) '. . . the Opposition members have the freedom, whenever Ministers of other Cabinet members are away on overseas junkets or making political speeches to do the same' (a false representation of the proceedings of the House, and the team 'junket' deliberately used to reflect unfavourably on Members);
(d) '(pairs) are often granted well in advance . . .' (a false representation of the proceedings of the House);
(e) 'Labour would rather the public didn't know it goes on at all' (a false representation of the proceedings of the House);
(f) '. . . it (pairing) has become one more way in which Parliament readily gives into Executive dictatorship. What it does today, and was never meant to do is to allow the Executive to usurp the law making functions of Parliament itself' (see (g) below);
(g) '. . . it (pairing) has become a constitutional abuse and one at which the official opposition too readily connives' (these statements made without prior research, not substantiated by evidence, contained incorrect statements of purported fact, and the term 'connives' was a reflection on members).

Acknowledging that the article was one of political comment and that 'In the political arena strong views, strongly held, can and should be strongly expressed', the Committee nevertheless reached the unanimous view that 'the inaccuracies, the extravagant and reckless language, the false statements of fact and the false representations of the proceedings of the House', did constitute contempt. It recommended that Mr Heffernan and the *New Zealand Times* be required to apologise to the House.

The Committee took the opportunity to comment on three issues which arose in this case. On the practice of pairing, it pointed out that pairing had been part of the Westminster parliamentary system for more than 200 years and was practised in virtually every democratic legislature. In New Zealand, the fact that pairing had been recognised explicitly in the Standing Orders, and that pairs were recorded in Hansard, indicated that the House regarded it as a proceeding of the House. Further, pairing facilitated the work of Parliament and the Government, and indeed was necessary to the effective functioning of Parliament.

The second issue related to the challenge to the Committee's jurisdic-

tion made by counsel for Mr Heffernan and the newspaper. The Committee stated that the question of privilege as referred by Mr Speaker was of a general nature, and that the Committee, in formulating the specific charges, was not limited by the wording of Mr Speaker's original ruling. In response to counsel's argument (citing Erskine May (19th ed) pp. 402–3) that pairing was not recognised by Parliament and therefore could not be the basis of a breach of privilege or contempt charge, the Committee drew attention to the specific reference to pairing in the Standing Orders of the New Zealand House (S.O. 146).

Finally, the Committee reflected on the implications of Mr Heffernan's role as a research officer, employed by the Legislative Department. It disturbed the Committee that Mr Heffernan dealt directly with the news media, without always seeking clearance from the two Social Credit members, whom he was employed to serve. Mr Heffernan appeared to expect to speak for and on behalf of the Social Credit political party. The Committee proposed that the Prime Minister, as Minister in Charge of the Legislative Department, should 'consult with the Leader of the Opposition and the Leader of the Social Credit Political League, to lay down guidelines for the future conduct of those employees of the Department who are engaged in research for members of Parliament.'

The House adopted the Committee's report on 30 July 1982, after considerable debate on the motion that it be tabled. (Hansard, vol. 444, pp. 1575–1594). Written apologies were submitted to Mr Speaker by Mr Heffernan and the *New Zealand Times*, and subsequently tabled.

Reflections on Impartiality of Mr Speaker.—On 8 September 1982, during an adjournment debate on ministerial replies to questions when the Deputy Speaker was in the chair, Mr G. T. Knapp (member of the Social Credit opposition) raised a point of order concerning his failure to be given the call so that he might respond to attacks on Social Credit's defence policy. After the House had risen, Mr Knapp issued a written press statement which included the comments that 'If ever there was proof of the gross injustices of the present Parliamentary system we have seen it today. . . . I was denied the call despite my efforts and two points of order. It is difficult to believe the Acting Speaker was not affected by his politics.' The statement was broadcast by Radio New Zealand the following morning. On 10 September, the question of privilege having been raised by the Leader of the House, Mr Speaker ruled that the statement appeared to contain a reflection on the impartiality of the Deputy Speaker. This involved the privileges of the House, and the matter was referred to the Privileges Committee. (Hansard, vol. 446, pp. 3138–3139).

The Committee decided that media organisations which had published Mr Knapp's press statement should be called to answer the charge, as well as Mr Knapp himself. This involved the Broadcasting

Corporation of New Zealand (owner of Radio New Zealand) and four daily newspapers. Two newspapers were cleared, on the ground that in the publication of the statement a deliberate editorial decision was made to delete the particular remark which called into question the impartiality of the Deputy Speaker. Mr Knapp, Radio New Zealand, the *Auckland Star* and the Christchurch *Star* were found to have been in breach of the privileges of the House in respect of the words used in Mr Knapp's statement, that it was 'difficult to believe that the Acting Speaker was not affected by his politics.'

In determining what penalties should be recommended, the Committee took the view that given the distinctive position of the Speaker and his deputies in the House, any reflection on the impartiality of a presiding officer was an especially serious offence, the more so when made by a member. The Committee noted that members of Parliament had a remedy for what they might believe was unfair treatment by Mr Speaker, by way of notice of motion tabled in the House (Speakers' Rulings 134/5–134/8). The Committee recommended that Mr Knapp be severely censured by the House; and that the Broadcasting Corporation, the *Auckland Star* and the Christchurch *Star* be required to apologise as appropriate, in the case of the Corporation by broadcast on the same bulletins that carried the offending statement, and for the newspapers, through their columns in a position of similar prominence to the original reports.

The Committee's report was tabled and adopted by the House on 17 December, after debate. (See Hansard, 17 December 1982, pp. 5782–5786.)

XVII. MISCELLANEOUS NOTES

1. Constitutional

Quebec (National Assembly).—A bill was passed to bring order and precision to, and to update, the legislative enactments dealing with the structure and exercise of the legislative power. The bill confirmed the supremacy of the Parliament of Quebec, comprising the National Assembly and the Lieutenant-Governor, and solemnly affirmed the special status and the prerogatives of the National Assembly.

2. Electoral

Isle of Man (Representation of the People (Preferential voting) Act).—The above Act enables voting at elections for members of the House of Keys and non-Tynwald members of the Board of Education to be by preferential voting by the single transferable vote system rather than the 'first past the post' system. The Act, introduced as a private member's Bill, was based on recommendations of the Commission on the Representation of the People Acts accepted by Tynwald on 22nd April 1980.

New South Wales (Election Funding).—The Election Funding (Legislative Assembly) Amendment Act, 1982, which is cognate with the Parliamentary Electorates and Elections (Legislative Assembly) Amendment Act, 1982, amended the Election Funding Act, 1981, to provide that a candidate at a by-election is eligible to receive public funding if he is registered under the Election Funding Act, 1981, and he is elected or receives sufficient votes to secure the return of his deposit, under section 79 of the Parliamentary Electorates and Elections Act, 1912.

(Contributed by the Clerk of the Legislative Assembly)

South Australia (Changes in electoral law).—The Constitution Act Amendment Act, 1982, makes an amendment to that section of the principal Act dealing with disqualification of Members holding offices of profit. If a candidate for election as a Member of Parliament holds an office of profit from the Crown he shall, unless he resigns that office before the date of the declaration of poll, be incapable of being elected.

Likewise, an amendment has been made to the section dealing with disqualification of persons holding certain contracts for the Public Service. This amendment provides that an officer or employee of the

Crown is not disqualified by that section from being a candidate for election as a Member of the Parliament but shall, unless he resigns that office or employment before the date of the declaration of poll, be incapable of being elected.

The Constitution Act Amendment Act (No 2), 1982 provides that where an election to supply vacancies in the membership of the Legislative Council is avoided or fails, a fresh election shall take place as soon as practicable after the date of the former election. For the purpose of term of office of a member elected at an election under these circumstances, the fresh election shall be deemed to have taken place at the time of the last preceding general election of the House of Assembly.

The provisions concerning qualification for election to the Legislative Council have been amended by this Act. The references to a qualifying age and to the fact that a member must be a British subject have been removed. The Act now provides that no person shall be capable of being elected a member of the Legislative Council unless that person is entitled to vote at an election for the Legislative Council and has resided in the State for at least three years.

In addition, the provisions concerning qualification of electors for the House of Assembly have been amended. The prospective voter must now be an Australian citizen rather than a British subject. The qualification of a British subject who is presently enrolled as an elector has been preserved.

(Contributed by the Clerk of the Legislative Council)

Victoria (Qualification of Electors).—The Constitution (Qualification of Electors) Act 1982 was passed to effect an agreement reached in 1981 between Commonwealth, State and Northern Territory Ministers responsible for immigration and ethnic affairs, who had recommended that migrants, irrespective of their country of origin, should be treated equally in relation to their right to vote at and nominate as candidates for Parliamentary elections.

To provide for the basic national criterion for electoral franchise to change from British subject status to Australian citizenship, the Commonwealth electoral law was amended by the Commonwealth Parliament in 1981. The operation of that law, however, was deferred until reciprocal legislation was passed by the several other Parliaments affected by the agreement.

The Victorian situation prior to its amending Bill was that British subjects may enrol and vote after 6 months residence in Australia, whereas other migrants must be naturalised citizens, involving a minimum of 3 years' residence before being eligible to enrol and vote.

The new law reflected the agreement that Australian citizenship be the basis for enfranchisement. In future, British subjects would not be eligible to enrol unless they became Australian citizens, save and except

those who were on the electoral rolls within 3 months immediately preceding the proclamation of the new provisions. Persons already on the rolls who were not Australian citizens would not be disenfranchised by the amendments, nor would persons on current electoral rolls in other States who were not Australian citizens be disadvantaged if they moved residence to Victoria, provided they were otherwise eligible to enrol as an elector.

The qualification for eligibility to nominate for election to the Victorian Parliament – that a candidate must be eligible to enrol as an elector – was retained.

(Contributed by the Clerk of the Legislative Council)

Western Australia (Religious exemption from voting).—Voting for Australian elections is compulsory. Until 1982 it had been the practice for the Chief Electoral Officer and his predecessors to exercise discretion where honestly-held religious beliefs conflicted with the law. Early in the year, doubt about the exact meaning of the Electoral Act prompted a test case and Peter Blakeney, an elder in the congregation of Jehovah Witnesses, was convicted of failing to vote after a trial in which he pleaded not guilty.

The magistrate fined Blakeney $1 and refused an application for the defendant to pay $220 costs, giving as his reason that the Chief Electoral Officer had motivated the test case and could have exercised his discretion in the normal way. An appeal to the Full Court against the conviction was rejected by a triumvirate of judges who ruled that the general tenor of the Act was for compulsory enrolment and compulsory voting.

In November 1982, the Parliament passed an amendment providing for exemption from voting in State Elections on religious grounds. Western Australia in this respect is now at one with New South Wales, Queensland and Victoria.

3. Procedural

Australia (Joint Select Committee on Parliamentary Privilege).—A joint select committee on parliamentary privilege was established by the Commonwealth Parliament in April 1982. The committee's task was to:

". . . review, and report whether any changes are desirable in respect of:

(a) the law and practice of parliamentary privilege as they affect the Senate and the House of Representatives, and the members and the committees of each House.

(b) the procedures by which cases of alleged breaches of parliamentary privilege may be raised, investigated and determined, and

(c) the penalties that may be imposed for breach of parliamentary privilege . . ." (V.P. 1980–82/805)

Both the Senate and the House of Representatives have a Standing Committee of Privileges to investigate and report upon complaints of breach of privilege referred to them by their respective Chambers. The appointment of the joint select committee may be seen as a recognition of the need for a comprehensive joint review of the relevant law, practice and procedures following periodic references to the desirability of such a review. In particular, the House of Representatives Committee of Privileges had, in three separate reports on specific inquiries, pressed for a general review of privilege in the Australian Parliament.

Two matters relating to the membership may be of interest to parliamentary colleagues. First, the committee consisted of ten members with equal representation from each House, which is not the usual course in Australia. Secondly the government did not have a majority on the committee – there were five Government members, four members of the (then) Opposition with the tenth place filled by an Australian Democrat Senator.

The committee elected Mr J. M. Spender, Q.C., M.P., as its Chairman and immediately advertised widely for submissions. Before commencing its program of public hearings the committee invited Presiding Officers and Clerks from Australian Parliaments to participate in a private seminar on the subject, which enabled a number of matters of common interest to be discussed informally.

The program of public hearings began on 3 August and attracted considerable media attention. Witnesses included the Clerk of the Senate (Mr Alan Cumming Thom) and a former Clerk of the House of Representatives (Mr Jack Pettifer) whose submission was received prior to his retirement, and a number of academics and media representatives.

Quite diverse views were put at these hearings, including arguments that the current provisions were inappropriate – by virtue of section 49 of the Commonwealth Constitution the powers, privileges and immunities of the Senate and the House, and their committees and members, are, until declared, those of the House of Commons as at 1901. It was argued by some witnesses that the Parliament should proceed to declare its privileges in statutory form, while other witnesses were strongly opposed to this on a number of grounds, such as the perceived difficulties in drafting a satisfactory code and the danger of losing the flexibility that is currently enjoyed.

Witnesses also expressed varying views on the procedures that should be followed in the investigation and determination of complaints of breach of privilege or contempt, including the basic question of whether the entire determination should be wholly within Parliament or transferred to, or shared with, the courts. Views were also put to the committee on such matters as the involvement of counsel for persons concerned with inquiries by Privileges Committees, whether hearings should be open to the public or held *in camera*, the penalties that should be

available and whether some appeal mechanism should be available for persons found to have committed a breach of privilege or contempt.

The committee had not completed its inquiry when it lapsed with the dissolution of both Houses on 4 February 1983. The substantial interest generated by the Committee's inquiry will almost certainly ensure the establishment of a new Committee in the new Parliament to complete the work undertaken by its predecessor.

(Contributed by the Clerk of the House of Representatives)

Australia: House of Representatives (Sub judice convention).—Notwithstanding its fundamental right and duty to consider any matter if it is thought to be in the public interest, the House of Representatives, like other Houses throughout the Commonwealth, imposes a restriction on itself in the case of matters awaiting or under adjudication in a court of law. Broadly speaking, the sub judice convention is that, subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court of law should not be brought forward in debate, motions or questions. Having no standing order of its own relating specifically to sub judice matters the House has been guided by its own practice and that of the House of Commons as declared by resolutions of that House in 1963 and 1972.[1]

The origin of the convention appears to have been the desire of Parliament to prevent comment and debate from exerting an influence on juries and from prejudicing the position of parties and witnesses in court proceedings.[2] The essential difference between the sub judice convention and contempt of court is seen as that:

> . . . the former is imposed voluntarily by Parliament upon itself and exercised subject to the discretion of the Chair, with the object of forestalling prejudice of proceedings in the courts. The courts of law on the other hand protect themselves from prejudicial comment outside Parliament by the exercise post hoc of their powers to punish contempts.[3]

It is by this self-imposed restriction that the House not only prevents its own deliberations from prejudicing the course of justice but prevents reports of its proceedings from being used to do so.

The practice of the House of Representatives is as follows:

> 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.
>
> Matters awaiting or under adjudication in all courts exercising criminal jurisdiction shall not be referred to in motions, debate or questions from the moment a charge is made.
>
> Matters awaiting or under adjudication in a civil court shall not be referred to in motions, debate or questions from the time the case is set down for trial or otherwise brought before the court, not from the time a writ is issued.
>
> Proceedings before a royal commission shall not be referred to in motions, debate or questions where the matter inquired into

concerns issues of fact or findings relating to the propriety of the actions of specific persons.

Proceedings before a royal commission, where the matter inquired into is intended to produce advice as to policy or legislation, may be referred to unless such references would constitute a real and substantial danger of prejudice to the proceedings.

Issues of national importance, such as the national economy, public order or the essentials of life, before, for example, the Conciliation and Arbitration Commission, may be referred to unless such references would constitute a real and substantial danger of prejudice to the proceedings.

An explanation of these points is set out below.

Right to legislate.

The right of the House to legislate on any matter without interference or hindrance is self-evident. Circumstances could be such, for example, that the Parliament decided to alter the law to remedy a situation which is before the court or subject to court action.

Discretion of the Chair

The discretion exercised by the Chair must be considered against the background of the inherent right and duty of the House under the Westminster system to debate any matter considered to be in the public interest. Freedom of speech is a fundamental right without which Members would not be able to carry out their duties. Members must be able to speak the truth without hope of favour or fear of retribution. Imposed on this freedom is the voluntary restraint of the sub judice convention; a procedure devised for the simple purpose of ensuring 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. It recognises that the courts are the proper place to judge alleged breaches of the law. It is a restraint born out of respect by Parliament for the judicial arm of government, a democratic respect for the rule of law and the proper upholding of the law by fair trial proceedings. Speaker Snedden stated in 1977:

> The question of the *sub judice* rule is difficult. Essentially it remains in the discretion of the presiding officer. Last year (*see* below) I made a statement in which I expanded on the interpretation of the *sub judice* rule which I would adopt. I was determined that this national Parliament would not silence itself on issues which would be quite competent for people to speak about outside the Parliament. On the other hand, I was anxious that there should be no prejudice whatever to persons faced with criminal action. Prejudice can also occur in cases of civil action. But I was not prepared to allow the mere issue of a writ to stop discussion by the national Parliament of any issues. Therefore I adopted a practice that it would not be until a matter was set down for trial that I would regard the *sub judice* rule as having arisen and necessarily stifle speeches in this Parliament. There is a stricter application in the matter of criminal proceedings.[4]

The Select Committee on Procedure of the House of Commons put the following view as to what is implied by the word 'prejudice':

> In using the word 'prejudice' Your Committee intend the word to cover possible effect on the members of the Court, the jury, the witnesses and the parties to any action. The minds of magistrates, assessors, members of a jury and of witnesses might be influenced by reading in the newspapers comment made in the House, prejudicial to the accused in a criminal case or to any of the parties involved in a civil action.[5]

It is significant that this view did not include judges but referred only to magistrates, as it is unlikely that a judge would be influenced by anything said in the House. In 1976, Speaker Snedden commented:

> . . . I am concerned to see that the parties to the court proceedings are not prejudiced in the hearing before the court. That is the whole essence of the *sub judice* rule; that we do not permit anything to occur in this House which will be to the prejudice of litigants before a court. For that reason my attitude towards the *sub judice* rule is not to interpret the *sub judice* rule in such a way as to stifle discussion in the national Parliament on issues of national importance. I have so ruled on earlier occasions. That is only the opposite side of the coin to what is involved here. If I believed that in any way the discussion of this motion or the passage of the motion would prejudice the parties before the court, then I would rule the matter *sub judice* and refuse to allow the motion to go on; but there is a long line of authority from the courts which indicates that the courts and judges of the courts do not regard themselves as such delicate flowers that they are likely to be prejudiced in their decisions by a debate that goes on in this House. I am quite sure that is true, especially in the case of a court of appeal or, if the matter were to go beyond that, the High Court. I do not think those justices would regard themselves as having been influenced by the debate that may occur here.[6]

Civil or criminal matter

A factor which the Chair must take into account in making a judgment of the application of the sub judice rule is whether the matter is before a criminal court or a civil court. The House of Commons rule, followed by Australia, provides for greater caution in the case of criminal matters. First, there is an earlier time for cutting off debate in the House, namely, 'from the moment a charge is made' as against 'from the time the case is set down for trial or otherwise brought before the court' in the case of a civil matter. In the case of a civil matter it is a sensible provision that the rule should not apply 'from the time a writ is issued' as many months can intervene between the issue of a writ and the actual court proceedings. The House should not allow its willingness to curtail debate so as to avoid prejudice to be convoluted into a curtailment of debate to advantage a party by the issue of a 'stop writ' as is often done in defamation cases, namely, a writ the purpose of which is not to bring the matter to trial but to prevent public discussion of the issue. Secondly, there is the greater weight which should be given to criminal rather than civil proceedings. This view stems very largely from the tendency to use a jury in criminal cases and not in civil matters and the possibility of members of the jury being influenced by House debate.

Chair's knowledge of the case

An important practical difficulty which sometimes faces the Chair when application of the sub judice convention is suggested is the lack of knowledge of the particular court proceeding or at least details of its state of progress. If present in the Chamber the Attorney-General can sometimes help, but often it is a matter of the Chair using its judgment on the reliability of the information given.

Matters before a royal commission

In 1954, Speaker Cameron took the view that he would be failing in his duty if he allowed any discussion of matters which had been deliberately handed to a royal commission for investigation.[7] The contemporary view is that a general prohibition of discussion of the proceedings of a royal commission is too broad and restricts the House unduly. It is necessary for the Chair to consider the nature of the inquiry. Where the proceedings are concerned with issues of fact or findings relating to the propriety of the actions of specific persons the House should be restrained in its references. Where, however, the proceedings before a royal commission are intended to produce advice as to future policy or legislation they assume a national interest and importance, and restraint of comment in the House cannot be justified. In 1978, Speaker Snedden drew a Member's attention to the need for restraint in his remarks about the evidence before a royal commission. Debate was centred on a royal commission appointed by the Government to inquire into a sensitive matter relating to an electoral redistribution in Queensland involving questions of fact and the propriety of actions of Cabinet Ministers and others. The Speaker said:

> I interrupt the honourable gentleman to say that a Royal Commission is in course. The sub judice rules adopted by the Parliament and by myself are such that I do not believe that the national Parliament should be deprived of the opportunity of debating any major national matter. However, before the honourable gentleman proceeds further with what he proposes to say I indicate to him that in my view if he wishes to say that evidence ABC has been given he is free to do so. The Royal Commission would listen to the evidence and make his judgment on the evidence and not on what the honourable gentleman says the evidence was. But I regard it as going beyond the bounds of our sub judice rules if the honourable gentleman puts any construction on the matter for the simple reason that if the Royal Commissioner in fact concluded in a way which was consistent with the honourable gentleman's construction it may appear that the Commissioner was influenced, whereas in fact he would not have been. So I ask the honourable gentleman not to put constructions on the matter.[8]

The question as to whether the proceedings before a royal commission are sub judice are therefore treated with some flexibility to allow for variations in the subject matter, the varying degree of national interest and the degree to which proceedings might be prejudiced.

Issues of national importance

The Australian Conciliation and Arbitration Commission has juris-

diction in respect of the prevention and settlement of industrial disputes extending beyond the limits of any one State, and also determines matters such as standard hours, national wage cases, the minimum wage, equal pay principles, and so on. The guide rule in the matter, therefore, amounts to a stressing of the normal right of the House to discuss matters of national interest even though the matters are before the judicial arbitral and wage fixing bodies. There has been a large increase in the number and frequency of hearings of the Commission in recent years which put a new emphasis on the work of the Commission in which there is almost always a high degree of public interest. To disallow debate on the issues would negate one of the most important functions of the House, and the view is held that anything said in the House would be unlikely to influence the skilled judges who make their determinations on the facts as placed before them.

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1. *May*, p.429
2. *House of Commons Select Committee on Procedure*, 4th report, HC 298 (1971) vii–viii
3. HC 298 (1971–72) vii–viii
4. H. R. Deb. (24.3.77) 558
5. *House of Commons Select Committee on Procedure*, 1st Report, HC 156 (1962–63) v.
6. H. R. Deb. (4.6.76) 3048.
7. H. R. Deb. (12.8.54)222.
8. H. R. Deb. (30.5.78) 2780.

New Zealand (The Speaker and the Casting Vote).—The General Election held in New Zealand in November 1981 resulted in one of the closest results in recent times in terms of party standing in Parliament. The National party was returned to office with 47 seats, the Labour party won 43 seats, and the Social Credit Political League, 2. With the Government expected to provide a Speaker from amongst its ranks, the media and the public began to ask questions – about the role of the Speaker and means of resolving a tied vote in the House – matters which had lain dormant for many years.

There was, of course, no Speaker in office during the interregnum between the election and the first meeting of Parliament. However it was widely expected that the previous Speaker, Sir Richard Harrison, M.P., would be re-elected to that position and during this time much of the discussion and speculation on the Speaker's role was addressed to him personally. He was therefore obliged to respond to this questioning with his ideas on the Speakership in New Zealand and how local conditions had led it to differ in certain respects from its model, the British Speakership. He was in due course re-elected unanimously as Speaker on 6 April 1982.

During the first session of the Parliament elected in 1981 Mr Speaker Harrison was required to give his casting vote on two occasions. The first, resulting from confusion over the granting of leave to a Minister, arose on a motion for the introduction of a Government Bill. The Speaker voted in favour of the Bill's introduction so as to allow the House another opportunity of considering it. The second tied vote that

session occurred on the second reading of a Government Bill when a Minister in the Press Gallery, a part of the building not well served by division bells, missed the division. This time the Speaker took the opportunity thus occasioned to set out in full his thoughts on the Speakership in New Zealand and the exercise of the casting vote. He hoped that by doing this he might be able to remove the uncertainty that continued to exist among parliamentarians and the public as to how the Speaker (or in Committee the Chairman) could be expected to act in the event of tied votes on a number of other matters.

Certainly as far as New Zealand is concerned Mr Speaker Harrison's ruling is of prime importance in guiding presiding officers in the exercise of the casting vote (in the application of which, in terms of the Standing Orders, they have an unfettered discretion). It may be that other Parliaments will find this ruling of some interest, particularly if the Speakership in their country shares the differences which New Zealand's has developed with that of the House of Commons. These are described by Mr Speaker Harrison in his ruling which is reproduced here in full:

'Perhaps this is the occasion on which I should give a considered ruling that I have been thinking about for some time on the question of the casting vote of the Speaker. It is important that members and the public should know where I stand on the matter of the casting vote. I have already given my views in answer to questions by members of the press shortly after the 1981 general election. Those views were widely reported, and, I do not doubt, were observed by most members and closely studied by some. I have little reason to believe that they are not generally understood and accepted by members of the House, who subsequently elected me as Speaker. The Standing Orders give the Speaker in the chair no deliberative vote, only a casting vote in the event of there being an equal number of votes cast for and against the motion by the members voting. The Standing Orders do not direct how the Speaker should use his casting vote, but there are Speakers' rulings, such as 88/1(1) and 88/1(2).* It could be argued that those were given long ago – 1900 and 1903 in the case of Speaker's ruling 88/1(1), and 1912 in the case of Speaker's ruling 88/1(2) – and that our procedures have changed so much since then that it is no longer appropriate to use them as a guide. However, Speakers' rulings of even older vintage have often been referred to to give guidance for a ruling in the House.

Moreover, Standing Order 2 states: "In all cases not hereinafter provided for Mr Speaker shall decide, taking for his guide the rules, forms, and usages of the House of Commons . . . so far as the same can be applied to the proceedings of this House" That Standing Order turns our attention to *Erskine May*, nineteenth edition, at page 403, which may properly be applied to the proceedings of this House in relation to the casting vote of the Speaker. One could argue that as the office of Speaker has evolved quite differently in New Zealand from the United Kingdom, the United Kingdom example of *Erskine May* is no longer applicable. For example, in the United Kingdom the convention is that the Speaker withdraws entirely from his political party. On standing for re-election he is not usually opposed in his constituency by candidates of the other major parties. On re-

* 'Speakers' Rulings, 1867 to 1980 inclusive'
Ruling 88/1 – The Speaker's casting vote is given (1) in favour of advancing a Bill a stage further, so as to allow the House another opportunity of expressing an opinion, or (2) so that the existing state of things shall continue.

(1) 1900, Vol. 111, p. 297, O'Rourke
1903, Vol. 123, p. 693, Guinness
(2) 1912, Vol. 157, p. 339, Guinness.

election to the House of Commons he is automatically re-elected as Speaker regardless of the result of the general election. As Speaker he cuts himself off from his fellow members in his social life. In the Committee of the whole House he does not exercise his right to speak and cast a deliberate vote in the same way as any other member.

In New Zealand, such conventions do not apply. The Speaker retains membership of his political party; he is opposed by candidates from the other parties; at general elections he campaigns on the platform of his own party, although usually less contentiously. He is likely to be re-elected as Speaker only if his party wins sufficient seats to control the House, and he maintains a large measure of social contact with his fellows. He speaks in the Committee of the whole House, although rarely, and now normally only on matters affecting the Standing Orders of the House. He votes when asked to by the Government Whip to ensure that the Government's view is not defeated at any stage in Committee. Nevertheless, he is different from other members. He has no right to speak in debates in the House; he has no deliberative vote in the House; by convention he does not attend party caucuses when the House is in session or adjourned, only during the long recess. He should refrain from making comments on issues that are, or are likely to be, matters of controvery between the parties. After all, it is not permitted to bring the Speaker's name and opinion into a debate in the House.

In New Zealand we have some different practices from those of the United Kingdom – for example, the exercise of the conscience vote traditionally taken on Bills dealing with the sale of liquor, abortion, or homosexual law. In this case, the Speaker could be in some difficulty, but I believe he would be quite justified in voting against that status quo – that is, to change the law – if his conscience very strongly urged him, because, although he would be expressing a viewpoint on the issue by voting and would be entering into a public controversy, it would not be one involving the political parties. I think that on express motions of confidence, and on matters of supply – because they inherently involve confidence – he should vote with the Government, because it should not be his vote, the vote of a person essentially neutral in the House, that should precipitate the resignation of the Government or the dissolution of Parliament.

At page 407 of *Erskine May* it is stated, under the heading "Speaker voting in Committee": "Although the Speaker is restrained by usage while he is in the chair in the exercise of his independent judgment, he is entitled in a committee of the whole House to speak and vote like any other Member. Under modern practice, however, he has abstained from the exercise of this right." Although in New Zealand the second part of that paragraph does not apply with such force as in the United Kingdom, it does not, in my opinion, weaken our adherence to the first part of it. Although the Speaker in New Zealand is still a party member, he is expected in public not to engage in party controversies, and in the chair he is expected to suppress his party inclinations altogether. As Speaker, he is not the Government's man, he is Parliament's man. Governments and Speakers have carefully preserved that separation of office and function, and have respected each other's prerogatives. In spite of the differences between the practices of Speakers in New Zealand and the United Kingdom, and in spite of the age of our rulings on the subject of the casting vote, I think that I would be departing from practice and tradition, and from the understanding of the situation by members, were I to declare Guinness's ruling of 1912 to be obsolete, and *Erskine May's* guidance to be irrelevant.

I therefore conclude that the principles in earlier Speakers' rulings and in *Erskine May* are appropriate. For the record, I state the attitude I feel the House would want me to adopt in the exercise of my casting vote. The guiding principles are((1) that the Speaker should always vote for further discussion, when that is possible – *Erskine May* at page 403, and Speaker's ruling 88/1(1); (2) that, when no further discussion is possible, decision should not be taken except by a majority – *Erskine May* at page 403, and Speaker's ruling 88/1(2); the law should be changed by the deliberative votes of the members of Parliament, not by the casting vote of the Speaker, who, in the chair, is not party political but is impartial; (3) that a casting vote on an amendment to a Bill should leave the Bill in its existing form; (4) on questions of conscience, on which members are free to vote regardless of party affiliation, the Speaker should be entitled to use his casting vote either

in accordance with his conscience or in accordance with the general rule of maintaining the status quo; (5) on express questions of confidence, and on supply, which is a matter affecting the ability of the Government to remain in office, or of the Parliament to remain in being, the Speaker should use his casting vote with the Government.

In the pursuit of those principles I would vote in favour of a Bill's being introduced, being referred to a select committee, and read a second time. To avoid changing the law, I would vote against the third reading unless the Government decided to make the vote an issue of confidence. On the third reading of Bills involving a matter of conscience I would vote as my conscience led me in each case. On the third reading of appropriation and supply Bills, and on other motions of confidence that affect the tenure of office of the Government or Parliament, I would vote to sustain the Government.

I have given a rather long, considered ruling, because I think I owe it to the House to make clear how I could be expected to vote in the event of there being equal votes between members on any motion. That will guide members as to how I would exercise my casting vote, why I vote in Committee, and whether I speak in Committee in future. This time, as it is a second reading and the principle is that Parliament should have an opportunity to consider the matter further, I vote in favour of the motion, which is therefore carried. (N.Z.P.D. 1982, Vol 448, pp. 4917–19)'

(Contributed by D. G. McGee, Clerk-Assistant of the House of Representatives)

Ontario (Privilege and Order).—Over the years in the Legislative Assembly of Ontario it appears that the most frequently recurring problem is the distinction between a matter of privilege and a point of order. This distinction seems to be the most difficult procedural problem for the Members to properly appreciate. While it is understood that Members often rise on what they know to be fictitious matters of privilege or points of order simply to gain the floor so that they may get across a point which is in fact neither; to get an immediate opportunity to answer the Member who has the floor; or even to make a quip or facetious remark, the fact remains that a real confusion does exist.

Again and again a Member will rise on what he alleges to be a matter of privilege if he feels that he has been insulted by another Member. If his objection is valid, that is if the remark made by the other Member is in fact a breach of the rules of order he has arisen quite properly on a point of order, but it is certainly not privilege. The current Standing Order 19(d) of the Ontario Legislature lists 13 distinct actions which have been held to be out of order in debate. This list is not all inclusive but does set out the most glaring breaches of order such as making allegations against another Member; imputing false or unavowed motives to another Member; charging another Member with uttering a deliberate falsehood; or using abusive or insulting language of a nature likely to create disorder. The important consideration to be noted in this respect is that a point of order must be raised immediately. It must at once be called to Mr Speaker's attention so that he is in a position to rule as to whether or not there is a breach of order and deal with it. It is fair to say that many technical breaches of order slip by simply because they escape the Speaker's attention or because no objection is taken. However, if the Speaker hears a remark that is clearly out of order or

such a remark is brought to his attention it is, of course, his duty as presiding officer and protector of the rights of all Members to insist on the immediate withdrawal of the offending remark.

On the other hand, privilege is entirely different as it must pertain to one of those special rights which the House as a whole and the Members individually enjoy as Members which other citizens do not. Standing Order 18(a) of the Ontario Legislature contains the following definition: 'Privileges are the rights enjoyed by the House collectively and by the Members of the House individually conferred by the Legislative Assembly Act and other Statutes, or by practice, precedent, usage and custom', and the 19th Edition of May's Parliamentary Practice defines privilege as follows: 'Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals'. Members frequently rise to take objection to statements made in the public press which they consider to be breaches of privilege or, in some cases more properly contempts. The proper procedure in such cases, of course, if fully carried out is to bring the offending article to the attention of the House and then move to have the offender or offenders brought before the bar of the House or a Committee thereof. In the Ontario Assembly, however, for very many years the Members only real interest is 'to set the record straight'. Members never go even to the extent of moving the motion and letting it lapse, as is done in some jurisdictions.

Finally, Members frequently rise on what they consider to be matters of privilege or even points of order which may or may not be valid and then demand that the Speaker investigate and report back or 'take the necessary action'. A succession of Speakers in Ontario have again and again pointed out to the House that the Speaker has neither the duty nor the right to investigate anything and report back. Should the matter raised appear to be a point of order the Speaker should rule on it and require the offending Member to withdraw the remark complained of, or as the case may be. In the case of an alleged matter of privilege the Speaker's sole prerogative is, of course, to determine whether or not a prima facie case of privilege has been made out. If he decides in the affirmative it is the House which must take the necessary action if it sees fit, not the Speaker. In either case, of course, he may reserve his ruling until there had been an opportunity to look into the authorities, but this is a far cry from 'investigating and reporting back'.

4. Emoluments

Australia (Parliamentary Remuneration.—In 1973 the Australian Government legislated to establish the Remuneration Tribunal empo-

wered to determine allowances to be paid to Ministers, members and office holders of the Parliament. The Tribunal also fixes remuneration and emoluments for members of the federal judiciary, senior public servants and statutory office holders. The circumstances surrounding the establishment of the Tribunal and its operation were reported in Volume XLVIII of *THE TABLE* for 1980.

At the time of its establishment it was hoped that the Tribunal would operate to reduce the controversy generated by increases in the remuneration of federal members by placing the responsibilty for determining levels of remuneration on an independent expert body. These hopes have not been realised. During its years of operation the Tribunal's determinations have continued to encounter adverse media publicity. The government in an endeavour to encourage wage restraint in the community has taken the view that Parliament should set an example of restraint in the community. 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 rest of the community.

The Tribunal's report for 1981 significantly increased Members' remuneration. While not rejecting the increases, the government, as an example of restraint, introduced legislation so that the increase was spread over 2 years, half payable immediately and the balance payable from 1 July 1982.

In its latest report tabled in the House of Representatives on 19 August 1982, the Tribunal took into account, at the request of the government, the state of the national economy and the effect which the Tribunal's decision might have on it. It considered submissions by the then Prime Minister (Mr Fraser) and Treasurer (Mr Howard) on the need to achieve moderation of the rate of wage and salary increases to avoid further increases in unemployment and to reduce inflationary pressures which, in the government's view, could further damage the international competitiveness of the nation. Pursuaded by these arguments that exceptional circumstances existed, the Tribunal made determinations and recommendations based on a general level of increase in salary of 7% with effect from 1 October 1982. It recommended increases in allowances (electorate expenses and travelling allowance) constituting reimbursement for expenditure related to office on its assessment of what was necessary to ensure adequate reimbursement. However, the Tribunal in its report reiterated its basic approach:

> Our conclusions in respect of parliamentary salaries, viz. that they should be increased only by 7% and that the increase should be postponed to 1 October 1982 have been come to only with considerable hesitation. From time to time over the years, the claim has been made that members of the Parliament should accept restraints of various kinds and on several occasions they have done so. We recognise that salaries of members of Parliament should not be pace-setters for wage claims in the community. However, this being said, there are other matters which must be borne in mind. We do not think that, for the

purpose of exhibiting restraint, the salary level of members should fall substantially below what otherwise would be the appropriate level for them and we observe that, in the past, by reason of such restraints, parliamentary salary levels have fallen from time to time significantly below other relevant salary levels. It is also to be borne in mind that members' salaries have traditionally been in the position, not of a pace-setter, but of catching up with movements in income and salary levels which have already taken place in other parts of the wage structure. And, in the end, we are conscious that there is a limit to the extent to which consideration of this kind can be pressed upon members.

Following agreement between the States and the Commonwealth, legislation was passed by Parliament in December 1982 designed to prevent community-round increases in remuneration and decreases in working hours. The Salaries and Wages Pause Act 1982 suspended the powers of certain bodies to make awards or determinations concerning salaries, wages or hours for persons funded from public expenditure for a 12-month period from 23 December 1982. Under the legislation, the Remuneration Tribunal was no longer empowered, for the prescribed period to hold or continue any inquiries or make any determinations or reports, nor to report on electorate allowances, travelling allowances and other such payments.

(Contributed by the Clerk of the House of Representatives)

Queensland (Method of calculating members' salaries). – On 23rd September 1982, a Bill amending the Constitution Act and the Officials in Parliament Act was assented to. This legislation amended the method of calculation of all salaries for all Members of the Queensland Parliament.

Since 1971 Members received salary adjustments annually according to the variation in the average minimum weekly wage rate for adult males in Queensland during the previous financial year. Consequently the salary of a backbench Member of Parliament rose from $10,270 per annum in 1971 to $33,690 per annum in 1981. A decision was made to sever the connection with that standard in line with an endeavour to infuse some restraint into the general demands for wages and salary rises.

The amending Bill provided for the new annual rate to be the rate payable to them immediately before 1st July 1981, increased by the percentage increase in the annual rate of salary payable to State public servants on the 1–17 classification level that occurred during the 1981–82 financial year. Accordingly the new rate of Members salary was determined at $37,695 per annum.

Other salaries were then calculated as follows:

	$ Per Annum
Premier	78,725
Deputy Premier	67,513
Ministers	61,963

Speaker	51,781
Chairman of Committees	42,282
Leader of Opposition	53,471
Deputy Leader of Opposition	41,185
Government Whip	40,044
Opposition Whip	40,044
Deputy Government Whip	39,227
Leader of the Other Party(comprising not less than 10 members)	40,044

New Zealand (Payment of Members' Salaries Fortnightly Instead of Monthly).—Payment of salaries to members of Parliament was introduced in 1892 although members had received expenses and honoraria before that date. From the first, these salaries were made payable on the last day of each month. For a number of years the salaries payable to public servants, which are paid fortnightly, have been processed through a central computer system and within the last few years the salaries payable to parliamentary staff (who are not public servants) have also been handled by this system. This left the parliamentary Accounts staff with a residue of salary work – that for members – to process manually. For some time it has been appreciated that there might be a gain in efficiency if parliamentarians' salaries could be processed by computer along with public servants'. To this end, when the legislation governing parliamentary salaries was being updated in 1979, the opportunity was taken to insert a provision authorising the reduction of the monthly period for the payment of members' salaries and allowances by the making of an Order in Council. In 1982 the Legislative Department was the subject of a Management Audit investigation, one of the recommendations of which was that the processing of members'and staff's salaries be standardised by proceeding to computerise the former.

Accordingly steps were taken to implement the recommendation and as from 17 November 1982 members' salaries became payable at fortnightly intervals. There were two further steps taken. The first was to include members' fixed allowances in the fortnightly change while leaving variable allowances such as day and night allowances to be processed monthly on a manual basis. The second was to include Ministers of the Crown in the changeover. Ministers' salaries and allowances are processed by the Department of Internal Affairs and were not therefore initially encompassed by the Management Audit recommendation. It was concluded however that the reasons for aligning the pay period with public servants' pay applied equally to Ministers and that their pay period should be converted to fortnightly also. In the case of Ministers the change takes effect on 1 April 1983.

Members' salaries and allowances are to be processed manually on a fortnightly basis for a short period while the necessary additions to the

existing computer programmes are made. It is hoped that computer processing of members' salaries and allowances will become fully operational at the time Ministers change over to a fortnightly basis – 1 April 1983.

Quebec (Members' conditions of employment).—A bill was passed to establish certain conditions of employment of the Members of the National Assembly of Quebec. It provides for the annual indemnity and the expense allowance to be granted to each Member. It also fixes the additional allowances for the holders of certain parliamentary functions. In addition, it establishes the entitlement to, and the modalities of computing, a transition allowance payable to a Member when he ceases to be a Member of the National Assembly.

The bill also establishes a new pension plan applicable to every person who becomes a Member of the National Assembly after 1 January 1983 if he is not receiving a pension at that time under the Legislature Act. The pension plan will also apply to any Member who elects to be subject to it, instead of the pension scheme established under the Legislature Act.

5. Standing Orders

New South Wales: Legislative Assembly (Standing Committees).—New Standing Order No 374A was agreed to and adopted by the Legislative Assembly on 11 March, 1982.

The new Standing Order provides:

> Standing Committees may be appointed from time to time, upon motion with notice, to consider and report upon such subjects as may be decided by the House, provided that, unless otherwise ordered, –
>
> (1) (a) Rules relating to the appointment and conduct of such Committees;
> (b) the procedure to be adopted in the proceedings of such Committees; and
> (c) the powers and authorities of such Committees; shall be the same as those applicable to Select Committees.
>
> (2) Such Committees shall have authority to report from time to time and have power to sit during the currency of the Parliament in which they are appointed.

Consequential amendments were made to other Standing Orders to incorporate the provisions of this Standing Order. The Attorney-General, in moving the motion for the adoption of the new standing order, stated that he did not know why the Parliament of New South Wales had not seen fit to provide for standing committees, as they were a popular measure in other Parliaments around Australia, and that, furthermore, standing committees had existed in the House of Commons since 1880.

Canada: Senate (Temporary Speaker).—In 1982, Senate Rule 66 was amended to provide for the selection of a senator to preside as Speaker

pro tempore during the absence of the Speaker *for the duration of a session of Parliament.*

Previously, when the Clerk informed the Senate of the unavoidable absence of the Speaker, the Leader of the Government moved a motion to appoint a senator to preside as Speaker. This procedure was repeated each time the Speaker was absent.

Amended Rule 66(1)(a) authorises the Committee of Selection to nominate a senator to preside as Speaker *pro tempore.* Rule 66(3) provides that the senator so nominated, when his nomination is confirmed by the Senate, serve for the duration of the session.

Canada: Senate (Abstentions).—Rule 49 was amended to permit senators, who wished to abstain from voting, to have their votes officially recorded. Under the old Rule, a senator who wished to abstain from voting was required to state his reasons for doing so and the Senate had to formally grant or deny leave to abstain. The amended Rule permits senators to rise when the Speaker calls 'Abstentions' and their names are recorded in the official records.

6. Broadcasting

House of Lords ('Yesterday in Parliament').—Since the end of the Second World War the British Broadcasting Corporation have been obliged by their Licence and Agreement to broadcast a daily and impartial report of the proceedings of both Houses of Parliament. This they had done through two programmes entitled 'Today in Parliament' and 'Yesterday in Parliament'; the first is broadcast late at night on the same day as the proceedings with which it deals, and the second at about 8.30 a.m. the following day.

In the autumn of 1982 the BBC decided to alter the format and presentation of 'Yesterday in Parliament' with a view to reaching a larger listening public. The change was twofold; in the first place, the programme was to lose its separate identity and instead be included as an item in a daily, light news and current affairs programme. As a result, the amount of time devoted to the programme was reduced by 40%. The second change was that the programme would be prepared and presented by political correspondents, rather than be prepared by news staff and read by news readers. No change was made to the night-time programme 'Today in Parliament'.

The changes resulted in some disquiet among Members of the House of Lords, mainly because the shorter broadcasting time available for the programme seemed to result in less coverage of Lords proceedings, but also because the programme was presented in a lighter, and perhaps slightly irreverent, manner. Consequently, in December 1982, the House instructed the Sound Broadcasting Committee to consider

whether or not the recent change in the format of 'Yesterday in Parliament' and its inclusion as an item in the 'Today' programme was in conformity with Clause 13(2) of the Licence and Agreement of the BBC. The Committee considered this Instruction with the aid of an Opinion from Counsel to the Chairman of Committees, evidence from the BBC and monitoring of the programme carried out by the Clerk to the Committee.

The Committee came to the conclusion that the BBC were not in breach of their obligation to broadcast a daily impartial account of proceedings in Parliament by reason of the changes made to 'Yesterday in Parliament' but did recommend that more time should be devoted to Lords proceedings.

The Opinion of Counsel to the Chairman of Committees set out the BBC's obligation as follows:

'I am asked to give an opinion on the question embodied in the Instruction to the Sound Broadcasting Committee moved on the 9th December 1982, namely whether or not the recent change in the format of "Yesterday in Parliament" and its inclusion as an item in the "Today" programme is in conformity with Clause 13(2) of the Licence and Agreement of the BBC. The Licence and Agreement referred to is the one dated the 2nd April 1981 between the Home Secretary and the BBC and Clause 13(2) provides as follows:

> "The Corporation shall broadcast an impartial account day by day prepared by professional reporters of the proceedings in both Houses of the United Kingdom Parliament."

The background to this question is that "Yesterday in Parliament" until last October was a BBC radio programme of that name broadcast every day from Tuesday to Saturday and dealing with the proceedings in Parliament the preceding day. The programme consisted of recorded extracts from speeches of members of the two Houses, with linking material written by members of the BBC's parliamentary broadcasting unit and read by one of the radio news-readers. It lasted for 25 minutes each day except Saturday, when it lasted for 15 minutes. Under the change made last October, which is the subject of the question for the Committee, there is now no separate "Yesterday in Parliament" programme from Tuesday to Friday but an item of that name in the "Today" programme that is broadcast from 6.30 a.m. to 9 a.m. on those days and contains a miscellany of other topical items of interest including news, sport and weather. The "Yesterday in Parliament" item consists, like the old programme of that name, of extracts from speeches of members of the two Houses with linking material, but differs from the old programme in that (i) the linking is written and read by members of the BBC's team of political and parliamentary correspondents and (ii) the item lasts for only 15 minutes. On Saturdays there is still a separate "Yesterday in Parliament" programme, much as before.

Turning to the question embodied in the Instruction to the Committee, I read it as asking whether by changing the "Yesterday in Parliament" programme in the way indicated the BBC have put themselves in breach of Clause 13(2) of the Licence and Agreement. I have not, however, felt able to consider that question without taking account of the fact that each day from Monday to Friday the BBC broadcasts the "Today in Parliament" programme, starting at 11.30 p.m. This is a programme reporting proceedings in Parliament on the day on which the programme goes out and is in the same form as the old style "Yesterday in Parliament" programme as described above though it lasts 5 minutes longer, namely, for 30 minutes.

It seems to me that the question for the Committee cannot be answered before first considering whether the broadcasting of "Today in Parliament" satisfies the requirements of Clause 13(2). Those are: (i) an impartial account, (ii) of the proceedings of both Houses

of Parliament, (iii) day by day, (iv) prepared by professional reporters. Requirement (i) is to a considerable extent subjective but after listening to a considerable number of these broadcasts I have been unable to detect any lack of impartiality in either the selection of recorded extracts from speeches or the content of the linking material. Nor, as I understand it, has there ever been any suggestion of a failure by the BBC in this respect. I therefore regard that requirement as satisfied and subject only to one point it could not, I think, seriously be argued that the requirements of (ii) to (iv) are not satisfied.

The only arguable point of difficulty, it seems to me, arises on requirement (ii), in that at the time the broadcast goes out (11.30 p.m.) the day's proceedings will occasionally not have been completed in the Lords and frequently not in the Commons. As far as the Lords are concerned the point is really *de minimis*. That is not so for the Commons but the fact that on late night sittings it is not possible to cover proceedings to the end of the day does not, it seems to me, prevent the programme from complying with Clause 13(2). It is in any event not practicable to cover more than a selection of material and by putting the broadcast out as late as 11.30 p.m. the BBC gives itself scope for as wide a coverage as, it seems to me, could reasonably be called for. One can test the matter by asking whether, if the only daily broadcast of parliamentary proceedings were "Today in Parliament", there could be said to be a failure to comply with Clause 13(2) by reason of this time element. I do not think so.

I conclude that the "Today in Parliament" programme satisfies the obligation to broadcast a day by day account of proceedings in Parliament contained in Clause 13(2). It follows that there is, in my view, no obligation to broadcast a "Yesterday in Parliament" programme at all. That does not dispose of the question whether if such a programme *is* broadcast it must comply with the requirements of Clause 13(2). In my opinion, however, there is no obligation for it to do so.

It does not seem to me that the obligation in Clause 13(2) to broadcast a day by day account of Parliamentary proceedings in accordance with the requirements there specified carries any implication that the BBC are not to put out any other broadcasts dealing with parliamentary proceedings. It is indeed clear from Clause 13(7) of the Licence and Agreement that the BBC are free to do so. It follows on this view that if a "Yesterday in Parliament" broadcast is put out it is not required to adopt any particular format or to be presented in any particular way, and accordingly no change in format or presentation of that programme could put the BBC in breach of Clause 13(2). In the sense in which I read the question for the Committee, therefore, my opinion is that the changes referred to are in conformity with Clause 13(2).'

New Zealand (Archive of the Parliamentary Sound Broadcast).— Early in 1982 (in common presumably with a number of other parliaments) a request was received from the Parliamentary Sound Archives, London, about the broadcasting of parliamentary debates in New Zealand and what arrangements were made for preserving material so broadcast in a sound archive.

New Zealand has in fact had a long experience of broadcasting parliamentary proceedings – live broadcasts of the proceedings during normal sitting hours having been made by the public broadcasting authority (now the Broadcasting Corporation of New Zealand) since 1936. However in answering the inquiry it became apparent that very little of the parliamentary broadcast was committed to an archive and that a great deal of potentially useful historical material had been and was continuing to be lost as a result.

Subsequently Radio New Zealand (the sound broadcasting arm of the Broadcasting Corporation) approached the Clerk of the House with a proposal that a more comprehensive archive of parliamentary material

should be established to fill that perceived gap in the public record. Discussions were then held involving the Speaker, the Clerk, and representatives of Radio New Zealand at which agreement was reached on a framework for the collection of such material.

Radio New Zealand is to select significant extracts of the sound broadcast for preservation in its own archive. This selection may be made from the recording of any of the proceedings of the House or a Committee of the whole House, even though the debate may have occurred in an extended sitting of the House and not have been broadcast over the radio. This is in line with present arrangements which allow Radio New Zealand to use extracts from any portion of the House's proceedings on news and current affairs programmes.

As far as proceedings before select committees are concerned no such blanket authorisation applies. Select Committee proceedings are normally open to the news media during the hearing of evidence, but that alone does not permit a sound recording to be made of the proceedings or part of the proceedings. Such a recording can only be made with the concurrence of the Committee itself. It will therefore be necessary for Radio New Zealand to approach the committees individually as and when it desires to make recordings of such proceedings. However the principle of making such recordings has been conceded.

The material held in the archive is of course principally for Radio New Zealand's own use, however it can be made available to third parties subject to the payment of such fees as the Broadcasting Corporation, as the copyright holder, may require. It was considered however that the archive should not be used as a forum for the dissemination of current information on parliamentary proceedings but should be a repository of historically valuable or interesting material. The prime source of current information on words spoken in Parliament will continue to be the verbatim Hansard text. Consequently material is not to be made available from the archive to third parties during the session in which the speech from which the material was extracted was made. It is only material held in the archive which is subject to such a restriction. Extracts from parliamentary debates used by Radio New Zealand in its news and current affairs programmes may continue to be made available to third parties by the Corporation without any time restriction.

(Contributed by the Clerk-Assistant)

7. General

Australia (Appropriation (Parliamentary Departments) Act).—For many years, Senators had expressed concern that appropriations for the five Parliamentary departments had been included in the Appropriation Bill for the ordinary annual services of the Government. The view was

widely held that it was inappropriate that funding for the Parliament should be dependent on executive decision and included in a Bill which made provision for governmental activities. Following a Report from the Senate Select Committee on Parliament's Appropriations and Staffing, tabled in August 1981, which recommended a separate Parliamentary appropriation, the Government agreed to introduce a separate Bill to cover appropriations for the five Parliamentary departments as single line appropriations. The first such Bill, the Appropriation (Parliamentary Departments) Bill, was introduced into the House of Representatives in August 1982 and secured passage through both Houses in November 1982.

(Contributed by the Clerk of the Senate)

Australia (Public Service Acts Amendment Act).—Wide-ranging amendments to appointment, promotion and appeal procedures within the Public Service as a whole were made by this Act, which was agreed to by the Parliament in October 1982. The most important provision, in the context of Parliamentary reform, derived from recommendations of the Senate Select Committee on Appropriations and Staffing. In accordance with the doctrine of separation of powers, and the independence of Parliament from the executive, the Committee recommended that powers relating to all staffing matters for the Parliamentary departments should reside with the presiding officers of the Parliament, rather than with the executive as had previously been the practice. The amendments effected by this Act include provisions that all powers to appoint or promote officers, except the head of each department, and to create and classify positions for the five Parliamentary departments now reside statutorily with the President of the Senate and the Speaker of the House of Representatives, separately in the case of the Senate or House of Representatives, and jointly with respect to the Parliamentary Library, Parliamentary Reporting Staff and the Joint House Department.

(Contributed by the Clerk of the Senate)

Australia: House of Representatives (Information Technology).—The Department of the House of Representatives has been upgrading and expanding its complement of word processors to accomodate increasing demand for more sophisticated word processing facilities. Additionally, work is currently in progress to determine areas within the Department where microfilm may be used to rationalise storage space taken up by documents and assist in the Department's information retrieval processes.

The Table for 1981 made mention of the Steering Committee on Information Systems and progress towards a 'detailed design' for the introduction of information technology in Parliament. The detailed design has not as yet been commissioned. The Steering Committee, in

its review of the Overall Plan Report, considered that it was too early to commission the detailed design. In addition, preliminary work on the information systems and service requirements for the new Parliament House, together with other related studies, will be necessary before a full assessment can be made of the Parliament's direction in detailed design.

Australia: House of Representatives (Incorporation of Unspoken Material in *Hansard*).—In the House of Representatives an arrangement has existed whereby unspoken material referred to by a Member during the course of his speech may be incorporated in the *Hansard* report of his speech. The arrangement provides that the Minister or Member seeking leave to have material incorporated in the *Hansard* report first shows the material to the Member leading for the Opposition or to the Minister at the table, as the case may be, and then during his speech formally asks for leave to have the material incorporated.

The final decision on the practicability or desirability of incorporating material has always resided with the Speaker, despite the granting of leave. He exercises his authority in respect of requests for incorporation of material such as graphs, maps, blocks or matter of a libellous or improper nature or which is irrelevant and has refused to authorise incorporation of photographs, lengthy tabulated material, when a document has not been of a quality acceptable for printing and when the proposed incorporation would present technical problems and unduly delay the production of the daily *Hansard*.

In some respects the arrangement is a useful device for the incorporation of interesting and relevant material without taking up the time of the House. However, the frequency of requests and abuse of the arrangement led to Mr Speaker Snedden making the following statement to the House of Representatives on 10 May 1978:

'I do not encourage the incorporation of anything into the Hansard record other than things such as tables which need to be seen in visual form for comprehension.' (House of Representatives Debates, p. 2131).

Whilst some improvement in the situation may have resulted from the Speaker's statement, he felt compelled to return to the topic on 21 October 1982. After referring to his earlier statement, he said:

'Underlying my attitude and the attitude of the House since federation, is the aim of keeping Hansard as a true record of what is said in the House. Recently there has been a tendency for this commendable aim to be broken down.' (House of Representatives Debate, p. 2339).

Mr Speaker went on to point out the following additional factors against incorporation of unspoken material in *Hansard*:

- a Member's speech is lengthened beyond his entitlement under the standing order;

- the incorporated material may contain irrelevant or defamatory matter or unparliamentary language;
- other Members will not be aware of the contents of the Material until production of the daily Hansard next morning when a speech may be discovered to have matter not answered in debate and so appear more authorative. Similarly, a succeeding Member's speech may appear to be less relevant and informed than it would have been if he had known of the unspoken material before making his speech.

He stressed to the House that he did not propose a completely inflexible system recognising for example, that the Treasurer must receive special consideration on Budget night. He directed all occupants of the Chair to pay particular attention to his statement and a significant improvement in the matter has been apparent.

New Zealand (Service as a member of Parliament 'Legal Experience').—In general in New Zealand no barrister or solicitor may commence practice on his own account, as a partner or otherwise, unless, amongst other things, he has had not less than three years' legal experience during the preceding eight years.

'Legal experience' means doing legal work in the office of a barrister or solicitor, a Government Department, local authority or company, or full-time law teaching in a University. In addition, as a result of a provision inserted into the legislation embodying this requirement as it was passing through the House last year (now the Law Practitioners Act 1982) legal experience also includes experience as a member of the House of Representatives. Lawyers currently make up the largest single group in the House (16 lawyers out of 92 members) and so the new provision will obviously be of some significance to those who wish to enter or return to legal practice following defeat at the polls or retirement from office.

XVIII. REVIEWS

Parliament and the Public. By Edmund Marshall (MacMillan, 1982, £15.00)

At a time when political leaders are seen and heard in the media appealing directly to the electorate over the heads of back benchers the public may understandably ignore the role of the MP as the citizen's representative at Westminster. Furthermore, traditional views on representative democracy are being increasingly questioned by recent constitutional developments: the introduction of referenda, possibilities of electoral reform and of devolved assemblies. Whatever these developments indicate about public attitudes to Parliament as an institution, there may be a gap in the public's awareness of the actual work of an MP, not as a member of a political party or pressure group, but as an individual. From Dr Marshall's experience of twelve years in the Commons the need for some elementary guidance is plainly overdue.

In the first section of the book he examines the position of the MP in relation to the country's overall administration. He starts from the first principle that an MP's formal responsibilities only cover activities over which there is parliamentary control or for which Parliament has provided Ministerial responsibility. A useful sketch of the main Departments of State is given showing where central authority borders upon and overlaps areas of local administration. Beyond his role in the central area much depends on a member's personal judgment as to how he fulfils the expectations of the public for MPs have no real place in the administrative structure of the country. As the structure becomes ever more complex an MP's powers directly to assist a constituent are diminished. At the same time more levels of bureaucracy bring with them lengthening queues of complainants hoping, sometimes demanding, that the MP 'will do something about it'. So the conscientious constituency MP has to listen to an increasing number of grievances only to re-direct them to a more appropriate quarter. A valuable part of the book deals specifically with subjects over which an MP has no jurisdiction. He is not, for example, a last resort for complaints on matters within the discretion of a local authority. The author gives practical advice on how to communicate with a member. Certain basic rules might seem all too obvious – do not use coin telephone boxes, do use postage stamps – but clearly from the author's experience such advice is necessary.

As to activities within the precincts of Westminster, the book concentrates exclusively on the work of the House of Commons and to that extent its title is somewhat misleading. The author describes the procedural machinery for Questions, legislative business and adjournment debates and by way of personal anecdote points out how an MP as

an individual can ventilate matters of concern to his constituents. These are useful summaries of parliamentary business but because an MP is considered solely as an individual he comes across as a rather etiolated being. The reader would benefit from an account of the groups to which the MP belongs such as constituency associations, back-bench Committees and all-party groups, not to mention outside bodies, if only as a reminder that a member has numerous calls on his time beyond attendance in the chamber and in Committee. On the work of Select Committees, the author speaks with the authority of a Chairman of the Trade and Industry Sub-Committee of the Expenditure Committee for three years.

In the closing chapters Dr Marshall surveys some topical subjects of controversy. Given his insistence on the paramountcy of the personal element in the relationship of an MP to his constituents he casts, not surprisingly, a sceptical eye over several forms of proportional representation. Referenda are regarded with suspicion as tending to dissolve the sovereignty and responsibility of Parliament. By Parliament he means the House of Commons, for he has little use for a second chamber, however constituted. He advocates improvements in Commons procedures by reform of time-table motions and by more Select Committee examination of Public Bills. With these changes he considers that the need for a second chamber virtually disappears. This would at least solve the problem of accommodation for MPs.

(Contributed by C. A. J. Mitchell, a Senior Clerk in the House of Lords).

Parliamentary History, Vol I. Edited by Eveline Cruickshanks (Alan Sutton Publishing Ltd, £12.50)

Parliamentary History: a yearbook (volume 1, 1982) is a collection of articles, notes and reviews which the editors hope will be the first in a series of platforms for the publication of current research into parliament from its origins to the present. Naturally, the emphasis has fallen, and will doubtless continue to fall, predominantly on politics in parliament rather than on parliament as an institution, but a collection of this sort is sure to be of interest, in one aspect or another, to those more interested in the latter than the former. In this volume, the parliamentary category includes a study of the Elizabethan origins of the Committee of Privileges and the growth of interest by the House of Commons in the returns of its Members, and a note (by John Sainty) on the Lords proxy records from 1510.

For the most part, however, the readers of this volume will be academics. The shadow of the *History of Parliament* and the Institute of Historical Research falls long over a number of the contributions. The chronological range stretches from the beginning of the sixteenth century to the middle of the nineteenth. The interest generated by the

articles themselves varies considerably. Some take up a standpoint distinctly close to the trees. In others – to change the metaphor – there is a feeling in the disengaged reader that work is going on at seams which, though not exhausted, have become uncomfortably narrow, and everyone concerned is somewhat cramped at their labours. The biography of a Member who received only a column and a half in the relevant *History of Parliament* volume is very much expanded. An attempt in 1767 to sort out the relationship between the government and the East India Company, significant principally for the lessons it taught the government about how not to deal with the Company in more important later disputes, is also dealt with at length. On the other hand, there are contributions which arouse interest because they analyse in detail the activities of politicians on occasions of real importance. The account of the Tories' difficulties with the Whig lords and the Scots, not to mention some of their own side, in the legislation consequent on the commercial treaty with France in the spring of 1713 is particularly lucid. It makes good use – as providently does one of the Notes by the same author – of the State archive of Lower Saxony in Hanover. The undoubted highlights of the collection, however, are an account by Norman Gash of the parliamentary organisation of the Conservative party between 1832 and 1846, and a long 'historical perspective' by J. H. Hexter, surveying the principal literature and ideas on the English Revolution since Gardiner.

Hexter's contribution alone will ensure that the volume remains in frequent use by scholars of the period. It is a racy and pungent *critique* of the pendulum of ideas, and in particular of the successive ideologies which have overtaken the subject – optimistic and constitutional Whiggism, the winning of the initiative by the House of Commons, the rise of the gentry, the decline of the gentry, the decisive influence of the Lords or (alternatively) of the counties, the theories of 'multiple dysfunction' or simply individual regal incompetence or (this is Conrad Russell) 'a weakwilled, glass-jawed House of Commons . . . forced to interpose itself between a couple of quarrelsome, mean customers, court and country, . . . caught between a rock and a hard place.' To all these, Hexter adds his own coda. The disturbances in early XVII century England *were* about the constitution, after all, and in particular about the boundaries of political authority. Not only is the article full of insights about many other people's theories, it runs the whole gamut of historiographical syntax. We pass from looking to 'prior societal pathology for the aetiology of the overt conflict which erupted in 1642' to the more immediately assimilable 'when lots of things are out of whack, there is likely to be a blow-up'.

As a general observation on current trends, it may not entirely be coincidence that in the kind of political history covered by this book, a proportion of practitioners are warily circling round each others' ideological frameworks, before addressing themselves to the evidence. An article on the reform crisis of 1830–32 and the electorate in three

English boroughs deals at some length with the schools of thought about the reasons underlying the ultimate passage of the Bill, and the political effects of the Act, whatever Parliament's intentions. Were the Whigs defusing revolution by concession (Butler, Trevelyan, Gash) or simply excluding Tory patronage and maximising their own (Marx, D. C. Moore). One may wonder if it matters to an article so closely focussed on individual electorates as this one is, particularly when there is relatively little attention paid to the equally important aspect of the motives behind redistribution.

The sounds of historiographical scuffles are heard more clearly in the reviews. Namierisation and High Politics, triumphant and largely unchallenged in studies of the Victorian period, go without comfort in a review of some political diaries, and publishers are warned that certain other recent projects (not yet published) are based on the assumption that reference to the original archives can be rendered superfluous. Another reviewer, however, admits that in analysing parliamentary history 'we are all Namierites nowadays'. Even the 'longue durée' rates a mention.

Finally, we are promised that the yearbook will cover 'parliamentary institutions in the British Isles (including the Scottish and Irish parliaments)'. There is none of this in the present volume, apart from reviews of works on sixteenth and late eighteenth century Ireland and one of the second volume in the *New History of Scotland*, in which – ending in 1306 – the parliamentary content is necessarily slight. It is to be hoped that in future editions the institutional base can be broadened beyond Westminster, if necessary at the expense of a number of reviews which have very little, if anything, to do with parliamentary history.

While of course this series will be of particular interest to academics, those with a more direct interest in Parliament will always find it worth dipping into.

(Contributed by W. R. McKay, A Deputy Principal Clerk, House of Commons)

Introduction to the Nigerian Constitution. By J. Akande (Sweet and Maxwell, 1982, £3.00)

Dr Akande starts her book with a General Introduction to the historical background of the present Nigerian Constitution. Although brief, it does serve to set the scene for those who may not know of the structural difficulties in the previous constitutions which contributed to the crisis that Nigeria underwent in the 1960's. Dr Akande cites nepotism and tribal jealousy as being at the root of the civil disorder that was widespread in Nigeria at that time and that led to the Biafran War. Certainly, the hard task of binding together many very different ethnic groups into one country based on frontiers inherited from colonial times affected Nigeria badly, as it affected some other newly independent

nations. The effect of the War and the near collapse of public order directly contributed to the political will to create a new dispensation within Nigeria that would, as far as possible, guarantee the survival of the country as one state. The drawing up of a completely new Constitution was a major step towards providing greater cohesion among the various regional and tribal interests.

Dr Akande does not describe the former constitutional arrangements in great detail. This is probably wise, partly because the new Constitution was designed as a fresh start rather than an amendment of its predecessor, but also because the structure of this book depends on brevity. It should be said that although many of the new constitutional provisions were based on those in the previous Constitutions (in particular those relating to 'Fundamental Rights') they are subject to important changes of emphasis and additions. Dr Akande completes her General Introduction by describing the main innovations in the Constitution and commenting on them briefly.

The largest part of the book is taken up by the Constitution itself, which is printed in its entirety. Appended to the text of the Constitution are footnotes, which constitute the chief part of Dr Akande's commentary. It is evident that some areas of the Constitution were easier to comment on in the light of previous authority than others. In the footnotes to Chapter IV (which deals with 'Fundamental Rights') a large amount of authority is cited which is drawn from a mixture of English, American, pre-1979 Nigerian and more recent Nigerian cases. By contrast, the commentary on Chapter II (Fundamental Objectives And Directive Principles Of State Policy) is sparse.

Dr Akande's difficulty in providing precedents upon which to base her comments on Chapter II is hardly surprising given its subject matter. The chapter is entirely new and is possibly based on the example of the Indian Constitution which contains a similar series of provisions. It defines the relationship in principle between the government and the people and outlines political, economic, social, educational, foreign policy and cultural objectives. Freedom of the Press is guaranteed. The national ethic is laid down as being: 'Discipline, Self-Reliance and Patriotism'. Dr Akande says of the definition of the 'National Ethic' that: 'These words are capable of as many definitions as the contexts in which they may be used.' The courts are expressly prevented from enforcing any of the provisions of the Chapter – see Section 6, paragraph (c).

Throughout her commentary Dr Akande relies on cases that are of persuasive authority only, although where possible Nigerian cases are referred to. Not surprisingly, given the characteristics of the Constitution and its strong similarity to the American one, American cases tend to be used frequently. This is especially true when institutional arrangements laid down in the Constitution are described. Some Nigerian law is used that is of quite recent date and (one assumes) as this book is

revised for later editions, less reliance will be placed on non-Nigerian models.

This book is designed for the general reader rather than the professional lawyer. There is a clear table of contents at the front of the Constitution and an Index at the back. The footnotes themselves are brief, as this sort of presentation demands. They are conveniently appended at the bottom of the sections to which they refer. The Constitution can thus be seen as a whole and read section by section with only minimal interruption.

(Contributed by R. I. S. Phillips, a Clerk in the House of Commons, Westminster)

XIX. EXPRESSIONS IN PARLIAMENT, 1982

The following is a list of examples occurring in 1982 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

'boring' (*Ont. Hans.*, 1982 c.5061)
'bullheaded' (*Can. Com. Hans.*, p.15854)
'coward' (*S. Aust. H. A. Hans.*, p.3150)
'dry address' (of Governor's address) (*Gujarat Procs.*, Vol.75, p.419)
'dumb' (*S. Aust. H. A. Hans.*, p.3155)
'grimy' (*Ont. Hans.*, 1982, c.2934)
'hypocrite' (*Can. Com. Hans.*, p.20704)
'ignorant' (*Bermuda Hans.*, 1982)
'misleading the House' (*Ont. Hans.*, 1982 c.5624)
'Mr Shifty' (*W. Aust. L. A. Debs.*, p.2882)
'mongrel tactics' (*S. Aust. H. A. Hans.*, p.3586)
'muffled cadence of jackboots is alive and well' (*Manitoba Hans.*, 1982, p.3461)
'pathetic' (*Bermuda Hans.*, 1982)
'pimping colleague' (*W. Aust. L. A. Debs.*, p.4576)
'pitiful' (*Bermuda Hans.*, 1982)
'slander' (*Can. Com. Hans.* p.20743)
'stunt' (*W. Aust. L. A. Debs., p.2457)*
'unsavoury practices, his associates in' (*W. Aust. L. A. Debs., p.5251)*
'whorehouse' (*Can. Com Hans.*, p.18924)
'words come out sort of like excrement coming out of a goose' (*Can. Com. Hans.*, p.18076)
'yappy' (*Ont. Hans.*, 1982, c.3369)

Disallowed

'Absolute nitwits' (*N.Z. Hans.*, Vol. 448, p.4201)
'Animal Farm' (*N.Z. Hans.*, Vol. 443, p.369)
'anthill politics' (*Zambia Debs.*, c.949)
'barking dogs' (*Gujarat Procs*, Vol.79)

'Billy the Kid' (*N.Z., Hans.* Vol. 444, p.832)
'blackmarketeer' (*L. S. Deb, 29.7.82.* c.387)
'bloody' (*S. Aust. H. A. Hans.*, p.4404)
'bloody farce' (*Vict. L. A. Hans.*, p.1208)
'bloody politicians' (*Vict. L. A. Hans.*, p.403)
'bludger' (*Vict. L. C. Hans.*, 1982, p.1670)
'bogus figure' (*Mahar, L. A. Procs.*, 1982)
'bully' (*N.Z. Hans.*, Vol. 448, p.4889)
'buttering up has become very costly nowadays' (*Mahar. L. A. Procs.*, 1982)
'change colour like a chameleon' (*Gujarat Procs.*, Vol 75, p.608)
'cheap trick such as those implemented by the President of the Legislative Council' (*W. Aust. L. A. Debs.*, p.2463)
'cheat' (*N.Z. Hans.*, Vol. 446, p.2659)
'cheating' (*Vict. L. A. Hans.*, p.2062)
'chose to embark upon his usual snide ironic untruthful remarks about other honourable Senators in this place' (*Aust. Sen. Hans.*, 1982, p.1245)
'clown' (*N.Z. Hans.*, Vol. 443, p.369)
'complete ass' (*Ont. Hans.*, 1982, p.3718)
'complete liar' (*Vict. L. C. Hans.*, 1982 p.3961)
'constitutional dope' (*Aust. Sen. Hans.*, 1982, p.2397)
'corrupt' (*Q'ld. Hans.*, 1982–3, p.173)
'cowardly' (*Can. Com. Hans.*, p.17039)
'crap' (*S.Aust. H. A. Hans.*, p.3144)
'crime, partners in:' (*N.Z. Hans.*, Vol. 449, p.5771)
'crooked Parliament, approved by' (*W.Aust. L. A. Debs.*, p.4435)
'crocodile's tears' (*Gujarat Procs.*, Vol. 79)
'death sentence order' (of Speaker's ruling) (*Gujarat Procs.*, Vol. 79)
'demonstrated vandal' (*Aust. Sen. Hans.*, 1982, p.3366)
'duffer' (*Punjab V. S. Procs.*, 30.3.82)
'dummy' (of the Chief Minister) (*Punjab V. S. Procs.*, 16.3.83)
'excuse for a man' (*Bermuda Hans.*, 1982)
'fascists' (*Can. Com. Hans.*, p.22658)
'flat-footed farmer' (*Sask. Debs.*, 30 March 1983)
'fundamentally dishonest' (*Ont. Hans.*, 1982, p.5906)
'gangster in this country is the Prime Minister' (*Vict. L. A. Hans.*, p.1994)
'grafter' (*Q'ld. Hans.*, 1982–3, p.534)
'Greasy Gray' (reference to Premier) (*Tas. Hans.*, p.3013)
'hue and cry' (*Gujarat Procs.*, Vol. 75, p.307)
'hypocrite' (*Vict. L. A. Hans.*, p.1192)
'if the minister had Pinocchio's nose, it would be so long that 500 Yukon ravens could roost on it' (*Yukon Hans.*, 1982, p.201)
'if you were halfway to being honest, which I doubt' (*W.Aust. L. A. Debs.*, p.3141)
'imbecile' (*Q'ld. Hans.*, 1982–3, p.2135)

'in actual mind, he was way out of this area' (*Manitoba Hans.*, 1982, p.3403)
'irresponsible' (*Mahar L. A. Procs.*, 1982)
'joker' (*Punjab V. S. Procs.*, 25.2.82)
'load of excrement' (of a member's speech) (*Bermuda Hans.*, 1982)
'lunatic' (*L. S. Debs*, 24.2.82, c.2)
'maids in waiting' (of Governors) (*L. S. Deb.*, 22.3.82, c.552)
'Members appear to be extremely well oiled' (*N.Z. Hans.*, Vol.444)
'Members completely plastered' (*N.Z. Hans.*, Vol. 444, p.903)
'misdeeds' (of a party) (*Punjab V. S. Procs.*, 29.3.82)
'Mr Nitwit' (*N.Z. Hans.*, Vol. 447, p.3899)
'monkeys across the way' (*Ont. Hans.*, 1982, p.3855)
'National Party coffers, put it in:' (*N.Z. Hans.*, Vol. 447, p.3524)
'nazi party, you cannot help it that you are a member of' (*Aust. Sen. Hans.*, 1982, p.1156)
'nothing else but bandits or Robin Hood in reverse' (*Ont. Hans.*, 1982, p.2451–2)
'Oh, shut up you' (*Q'ld. Hans.*, 1982–3, p.355)
'personal racist propaganda' (*Yukon Hans.*, 1982, p.25)
'pimp' (*Can. Com. Hans.*, p.18325)
'pompous ass' (*Aust. Sen. Hans.*, 1982, p.1012)
'Pompous little twit' (*N.Z. Hans.*, Vol. 443, p.451)
'rates, must worry about members not paying their' (*N.S.W.L.A.*, 5.4.82, P.D.3373)
'real Speaker back then, let us have the' (*W. Aust. L. A. Debs.*, p.805)
'Red Reverend' (*N.Z. Hans* Vol. 443, p.29)
'Representative of the drinking class' (*N.Z. Hans.*, Vol. 443)
'retard' (*Ont. Hans.*, 1982, p.3176)
'robber and a thief' (*Vict. L. A. Hans.*, p.1554)
'Robots' (*N.Z. Hans.*, Vol. 444, p.1067)
'Ronnie the Rat' (*Tasm. Hans.*, p.3175 1.12.82)
'rorting' (*Q'ld. Hans.*, 1982–3, p.1079)
'saboteurs' (of a public company) (*Zambia Debs.*, c.3017)
'sanctimonious hypocrite without shame' (*Aust. Sen. Hans.*, 1982, p.1041)
'scab' (*S.Aust. H. A. Hans.*, p.1388)
'scoundrels' (*L. S. Debs.*, 9.8.82, c.460)
'sensitivity of the idiot from South Australia' (*Aust. Sen. Hans.*, 1982, p.1164)
'sewage' (of people) (*Zambia Debs.*, c.102)
'spoilt brat' (*S.Aust. H. A. Hans.*, p.279)
'stealing the coins off dead people's eyes' (*N.Z. Hans.*, Vol. 447)
'stooge' (*Zambia Debs.*, c.453)
'stunt' (*Gujarat Procs.*, Vol. 80)
'sycophant' (*L. S. Deb.*, 29.4.82, c.24)

'that cowboy' (referring to President of U.S.A.) (*Vict. L. C. Hans.*, 1982, p.1294)
'Trotskyite views' (*N.Z. Hans.*, Vol. 446, p.3282)
'tummy' (*Zambia Debs.*, c.1605)
'vegetable market' (of the House) (*L. S. Deb.*, 5.3.82, c.312)
'villain' (*L. S. Deb*, 24.2.82. c.383)
'Wallace the Weak' (*N.Z. Hans.*, Vol. 444, p.832)
'Weak-kneed creatures' (*N.Z. Hans.*, Vol. 445, p.1689)
'what a twister' (*Vict. L. A. Hans.*, p.1754)
'wife-beater and child abusers' (*Sask. Debs.*, November 29, 1982)
'witchdoctor' (*Zambia Debs.*, cc.1516, 3055)
'worthless' (of a Minister) (*L. S. Deb.*, 14.10.82, c.13)
'underlings' (*Vict. L. A. Hans.*, p.1226)
'you communist member of the Liberal Party' (*Ont. Hans.*, 1982, p.1973)
'. . . you fat blabbermouth; you're full of bloody wind' (*Tas. Hans.*, p.3409, 16.12.82)

XX. 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 Parliament 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 a subscription payable to the Society in respect of each House of each Legislature which has Members of the Society.

(b) The minimum subscription of each House shall be £20 per member, 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 £3.00 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 £5.50 a copy.

Administration

8. (a) The Society shall have its office at the Palace of Westminster and its management shall be the responsibility of the Clerk of the Overseas Office, House of Commons, under the directions of the Clerks of the two Houses.

(b) There shall be two Officials of the Society, one appointed by the Clerk of the Parliaments, House of Lords, and one by the Clerk of the House of Commons, London; each Official shall be paid an annual salary, the amount of which shall be determined by the two Clerks. One of these Officials shall be primarily responsible for the editing of the JOURNAL.

Account

9. Authority is hereby given to the Clerk of the Overseas Office and the Officials of the Society to open a banking account in the name of the Society and to operate upon it, under their signature; and a statement of account, duly audited, and countersigned by the Clerks of the two Houses of Parliament at Westminster shall be circulated annually to the Members.

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Palace of Westminster, S.W.1.
Editors for Volume LI of THE JOURNAL: J. M. Davies and Mrs J. Sharpe.

XXI. MEMBERS' RECORDS OF SERVICE

Note. – **b.**=born; **ed.**=educated; **m.**=married; **s.**=son(s); **d.**=daughter(s).

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.

BYRNES, PETER J., B.A., S.T.L., (Rome), Grad. Dip. Lib.—Deputy Clerk Assistant, Queensland Legislative Assembly; *b.* 22 March 1944; *m.* 1974, Jennifer Hintz; 2*d.*; *ed.* Urban University (Rome, Italy) and University of Queensland; joined Parliamentary staff, 1978; Parliamentary Research Officer (Parl. Library), 1978; Deputy Clerk Assistant, 1981.

REMNANT, WILLIAM H.—Clerk of the Manitoba Legislative Assembly; *b.* Vancouver, B.C. September 8, 1927; *m.* 1957 to Marion Lynch; 2*s.* 1*d.*; *ed.* in B.C.; joined Federal Department of Northern Affairs and National Resources 1959; Assistant Secretary NWT Council 1966; Clerk of NWT Council 1966; (NWT Council renamed Legislative Assembly 1978); Clerk of the Manitoba Legislative Assembly, January 3, 1983.

SWEETMAN, JOHN FRANCIS, T. D.—Clerk of the Overseas Office, House of Commons, Westminster; *b.* 31st October 1930; *ed.* Cambridge University (M.A. (Law)); Military service (Gibraltar and Malta) 1949–51; Territorial Army 1951 to 1966; Clerk in the House of Commons since 1954; Clerk to Select Committee on Nationalised Industries 1961–64; Select Committee on Science and Technology 1971–73; Clerk of Supply 1976–79; House of Commons delegations to Malawi 1966, Western Samoa 1974, and St. Lucia and Dominica 1981; Conference of Presiding Officers and Clerks, Dominica 1970; CPA Seminar, Zimbabwe 1981; Regional CPA Seminar St. Lucia 1983; Exchange visit to Australia (Canberra, Melbourne and Perth) 1974; Second Clerk of Select Committees 1979–1983; Appointed Clerk of the Overseas Office, August 1983.

XXII. INDEX TO VOLUME LI

ABBREVIATIONS

(Art) = Article in which information relating to several territories is collated.
(Com.) = House of Commons.

Printed in England/Kinnaird Print