The Table

BEING

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

EDITED BY

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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		●	●	●	●						●	
India — Orissa		●	●	●				●	●			
India — Punjab					No settled practice							
India — Rajasthan		●	●	●				●	●	●		
India — Uttar Pradesh					No settled practice							
India — West Bengal		●	●	●			●		●		●	●
Ghana			●			●			●			●
Malaysia	●		●	●			●			●	●	●
Sarawak					No settled practice							
Sabah			●			●			●			●
Singapore					No settled practice							
Sierra Leone			●	●			●				●	
Tanzania		●		●		●	●			●		
Jamaica			●	●	●						●	●
Trinidad and Tobago	●	●	●	●	●	●	●			●	●	
Barbados	●	●	●	●	●	●	●			●	●	●
Kenya												
Malawi					No settled practice							
Zambia	●	●	●	●			●	●			●	●
Bermuda					No settled practice							
Guyana					No settled practice							
Solomon Islands			●				●				●	
Gilbraltar												
Malta, G.C.					No settled practice							
Mauritius			●	●	●	●			●	●	●	●
St. Vincent	●	●	●	●	●	●	●	●	●	●	●	●
Belize		●	●		●	●	●		●	●	●	●
Cayman Islands		●			●				●			
Lesotho					No settled practice							
Cook Islands					No settled practice							
Seychelles					No settled practice							
Grenada					No settled practice							
St. Lucia	●	●	●	●	●	●	●	●	●	●	●	●
Bahamas					No settled practice							
Fiji		●	●		●			●	●		●	●
Hong Kong	●	●	●	●	●	●	●			●	●	●

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I. EDITORIAL

In this as in previous volumes, we print articles on a variety of subjects. They range from the family background of probably the most famous Clerk-at-the-Table, Sir Thomas Erskine May, to the confessions of one who has the rare distinction of membership both of the Society and of the House of Lords. There are two articles based on Canadian experience about the role of the Speaker, a subject of central importance and abiding interest to Clerks. We note in this connection the publication of 'The Office of Speaker in the Parliaments of the Commonwealth' (Quiller Press) by Philip Laundy, Clerk Assistant of the House of Commons of Canada. A review will appear in the next edition of *The Table*.

The Editors are grateful to those who have contributed articles. Some have volunteered material. Others have responded to our pleas. We express thanks to them all. We would only add that if the Table is to go on being valued by members of the Society (and those outside it), articles of a high standard are needed every year. It is not always possible to learn of matters of direct concern and interest to colleagues elsewhere in the Commonwealth unless they are drawn to our attention via material submitted for publication. We depend therefore to a very great extent on the active help and co-operation of fellow Clerks.

It is hoped that this volume will join its predecessors as a quarry for working Clerks and a useful tool to the compilers of Erskine May and its equivalents.

J. V. D. Webb – Mr John Webb whose tragic death at the early age of 52 occurred in October 1983 had been Principal Clerk of the Judicial Office and Fourth Clerk-at-the-Table (Judicial), House of Lords since

1977. The six years during which he had occupied these posts were the culmination of a distinguished career in the House of Lords which had begun in 1958. Webb served first as a junior clerk in a number of offices including the Judicial Office, and then in more senior capacities in both the Committee Office and the Public Bill Office. For many years he was Clerk to the Joint Committee of both Houses on Consolidation Bills, a subject in which he became an acknowledged expert. It was with this expertise that he published, with Lord Simon of Glaisdale, a Law Lord and one time Chairman of the Joint Committee, 'Consolidation and Statute Law Revision.'

Webb had qualified as a barrister before he joined the House of Lords and this training, together with his early posting to the Judicial Office, helped him on his promotion to Principal Clerk in 1977 quickly to master the intricacies of judicial procedure and taxing work. His considered and firm advice always commanded the respect of Law Lords and members of the legal profession alike.

John Webb also gave distinguished service to the House of Lords in another capacity. For nearly twenty years he was Secretary of the House of Lords Motor Club. His knowledge of, and enthusiasm for cars and motoring made him ideal for this post and he did much to build up the activities of the Club.

John Webb was a modest man, much loved and admired by his colleagues and he is greatly missed by all his friends in the Lords. Our sympathy in her loss goes to his widow, Libby, who herself until recently also rendered valuable service to the House.

R. Chin – On 1 September 1983, the Assembly of the Northern Territory of Australia passed the following resolution concerning the retiring Clerk, Raymond Chin –

'That on the occasion of the retirment of Raymond Chin from the position of Clerk of the Legislative Assembly of the Northern Territory, this Assembly places on record its appreciation of the long and valuable service rendered by him to the Northern Territory and conveys to him good wishes for many happy years of retirement.'.

The Speaker, Chief Minister, Leader of the Opposition, Ministers and Members from both sides of the Assembly spoke in support of the motion.

Ray Chin joined the staff of the Legislative Council in 1968 after 4 years service in the Royal Australian Air Force, a number of years in business on his own account and 17 years in the Commonwealth Public Service in Darwin. He became Clerk of Records and Clerk of Committees in 1970; Clerk Assistant in 1974; Deputy Clerk in 1978; and Clerk in 1982. He retired on 7 September 1983 having seen the legislature through the exciting and challenging advance from a Legislative Council with a majority of appointed members under its first elected President to

a fully-elected Legislative Assembly with full responsibility for the government of the Territory.

In addition to his contribution to the legislature, Ray found time to contribute a great deal to community activities and organisations such as Legacy, the Returned Services League, the Chung Wah Society and the Darwin Bowling Club.

Ray was born in Canton, China, and attended school in Darwin and in Canton. He saw his share of disasters – being bombed by the Japanese in Canton while at school in 1937, again in Darwin in 1942, and had his house completely destroyed by a cyclone in 1974.

Ray continues to live in Darwin following his retirement amongst his family and the community in whose activities he has taken such a very active and useful part.

(Contributed by the Clerk of the Legislative Assembly of the Northern Territory of Australia)

Sir Charles Gordon, KCB – Sir Charles Gordon retired in July 1983, after serving for four years as Clerk of the House of Commons of the United Kingdom.

Charles joined the Clerk's Department in 1946, the second of a large post-war intake (after Richard Barlas) to become a Clerk following active service in the Armed Forces. He had joined the Fleet Air Arm in 1939, and served throughout the war holding various hazardous sea appointments in East Indian waters and on the Russian convoys. He finished the war as a Lieutenant RNVR and was demobilised only a few months before coming to the House.

In the ten years that followed, Charles learnt the nuts and bolts of a Clerk's trade in the Journal Office and undertook a prolonged bout of work with financial committees, notably the Public Accounts Committee, which he clerked for four years. Later in the 1950s he joined the Table Office, a five year apprenticeship which prepared him for the eventual and lengthy headship of that Office from 1967 to 1976. In that latter capacity he was to give the departmental evidence to the Select Committee on Parliamentary Questions, 1972, which carried out a major survey of the rules of the House governing the form and content of Questions to Ministers. A short period in the Public Bill Office completed his tour of the main Offices of the Department.

A thorough grounding in the clerkly science, combined with intellectual abilities stretched by the exacting processes of an education at Winchester College, and Balliol College, Oxford, made him a natural successor in 1962 to Richard Barlas as Fourth Clerk at the Table, a post which he held for five years.

From 1951 to 1961 he had been secretary of the Society and co-editor of *The Table*, so that his name and reputation were already well known throughout the Commonwealth. Long journeys now took place to assist

newly independent Parliaments, notably in Malaysia and Nigeria, to give advice on procedure, standing orders and organisation; and many friendships across the Commonwealth were formed or deepened. Each journey was scrupulously logged, and the resulting diaries, which were widely read by Clerks at Westminster, provided an illuminating and entertaining commentary on the day to day contribution which an experienced Clerk could make to Parliaments overseas during their formative years.

In 1976 Charles became Clerk Assistant, just in time to confront, as Clerk to the Committee of the whole House, a period in which the Government had just the slimmest of majorities and then, with erosion through by-elections, none at all. The Government's ardour for controversial legislation, however, remained undimmed, and during this time various bills to devolve legislative power to Assemblies in Scotland and Wales – constitutional measures which went to the root of United Kingdom government – were fought for many long days and nights in the committees on the floor of the House. Throughout these turmoils Charles won the fullest confidence of the Chairman of Ways and Means and those who assisted him.

As Clerk of the House (1979–83), he probably most values two out of many outstanding services. The first was to win the universal esteem of the staff and the unions at a time of great potential difficulty, with the inception in 1979 of the new House of Commons Commission (comprising six senior Members of the House under the chairmanship of the Speaker) as the employer of all staff. In carrying on the tradition of first class staff relations he showed himself a mediator and conciliator of a high order.

The other was his editorship of the 20th edition of Erskine May. All previous editors back to the 15th edition had made use of his well-organised mind; now he was able to fulfil a long-standing ambition to edit one himself. It was a fitting conclusion of 37 years of service to the House, of which 21 were spent at the Table; and his many friends at Westminster and throughout the Commonwealth will wish him and Jane Gordon, who made the Clerk's Residence a much sought after centre of entertainment, the warmest wishes for a long and contented retirement.

(Contributed by the Clerk of the House of Commons)

Sir Peter Gordon Henderson, KCB (Lord Henderson of Brompton) – On 26th July 1983, Sir Peter Henderson retired as Clerk of the Parliaments after 25 years' service in the Parliament Office of the United Kingdom House of Lords.

Sir Peter Henderson joined the Parliament Office in 1954. In 1960 he became the first Clerk to be seconded as Private Secretary to the Leader of the House and Government Chief Whip. He thus began the tradition of bringing to this post the clerkly experience which has proved

invaluable to successive Leaders. On his return to the Parliament Office in 1964 Sir Peter was appointed Clerk of Public Bills and soon after began his service at the Table of the House as Reading Clerk. Towards the end of his tenure of these positions he was again able to use his invaluable experience to the full as a member of the Committee on the Preparation of Legislation. Following a brief period as Clerk Assistant in 1974, Sir Peter was appointed Clerk of the Parliaments by Her Majesty the Queen in June of that year.

During the nine years of Sir Peter Henderson's service as Clerk of the Parliaments the daily attendance of the House of Lords increased by almost 20%. These years also witnessed a significant growth in the Select Committee activity of the House. Sir Peter responded to the challenge created by these changes with the grace and ability which won him the friendship of all sides of the House. Sir Peter took a close interest in the conservation and restoration of the Palace of Westminster and helped bring about the restoration of the figures of Justice and Mercy flanking the statue of Queen Victoria in the Prince's Chamber of the House of Lords.

On 27 July 1983 the House of Lords resolved:

> That this House has received with sincere regret the announcement of the retirement of Sir Peter Gordon Henderson, KCB, from the office of Clerk of the Parliaments and thinks it right to record the just sense which it entertains of the zeal, ability, diligence, and integrity with which the said Sir Peter Gordon Henderson executed the important duties of his office.

In moving this motion, Viscount Whitelaw, the Leader of the House and Lord President of the Council, expressed Sir Peter's achievements in the following terms:-

> In 1974 Sir Peter became successively Clerk Assistant and Clerk of the Parliaments. The nine years during which he served as Clerk of the Parliaments have witnessed a number of changes in your Lordships' House. It has become more complex in terms of its party composition. There has been a significant increase in the length of sittings and the size of the active membership. Perhaps most remarkable has been the development of the committee activity of the House. It is easy to forget that 10 years ago there was very little such activity. Now, the European Communities Committee and the Science and Technology Committee absorb a large amount of the energies and resources of the House, producing reports of outstanding quality that have done much to enhance the reputation of the House. This successful development owes much to, and reflects great credit on, Sir Peter's leadership and inspiration.

Speakers from all sides of the House paid tribute to Sir Peter's outstanding service. Speaking on behalf of the official opposition Lord Cledwyn of Penrhos, Leader of the Labour Party in the House of Lords, declared:

> I believe it to be the unanimous opinion of your Lordships in all parts of the House that Sir Peter takes his place among the great Clerks of the Parliaments. There is a sense of loss at his departure which I have not often met with in public life. I believe this to be due to

two qualities. The first was the way in which his intellectual gifts enabled him to fulfil the demands of his high office. He served successive Lord Chancellors with distinction; he served Ministers and Shadow Ministers with impartiality; and he served individual Members of the House with thoughtfulness and courtesy. His second great quality was his willingness at all times to make himself available to everyone who sought his assistance and advice; and his personal kindness has been appreciated by us all.

It is the combination of these attributes which has gained for Sir Peter the respect and affection of all Members of this House. If I say that in peace as well as in war he showed courage beyond the call of duty, I know the House will agree. Sir Peter Henderson is a man for all seasons, and we are proud to have had him as our Clerk of the Parliaments.

It is to the great fortune of the House that, after only a brief period of retirement, Sir Peter was raised to the peerage in the 1984 New Year's Honours List, and, as Lord Henderson of Brompton, has returned to the House as an active member.

(Contributed by the Clerk of the Parliaments)

Alfred Reginald Bruce McDonnell, J.P. – On 14 September 1983, Bruce McDonnell retired as Clerk of the Parliaments and Clerk of the Legislative Council of Victoria. Bruce McDonnell joined the Public Service in 1935 and shortly after completing war service with the Royal Australian Navy from 1941 to 1946 joined the Legislative Assembly staff. He was appointed Sergeant-at-Arms in 1955, Second Clerk-Assistant in 1961, and Clerk-Assistant in 1964. In 1968 he was appointed to the Office of Clerk of the Legislative Assembly, transferring to the office of Clerk of the Legislative Council in 1969. He served as Honorary Secretary of the Commonwealth Parliamentary Association (Victoria Branch) for a period of 16 years and was Assistant Clerk to the Australian Constitutional Convention at its first Plenary Session in 1973. He subsequently held office as Clerk to the Convention for the 1975, 1976, 1979 and 1983 Plenary Sessions.

Mr McDonnell's contribution to the Parliament and the people of the State was well recognised by the House when a motion of appreciation, in anticipation of his impending retirement, was passed on 16 June 1983. Mr President and the Party Leaders all paid tribute to Bruce when they spoke of his high integrity, impartiality and unfailing courtesy.

(Contributed by the Clerk of the Legislative Council, Victoria)

Mrs Sybil I. McLaughlin, MBE, Clerk of the Legislative Assembly of the Cayman Islands – On 24 February 1984 when His Excellency the Governor of the Cayman Islands, Mr G. Peter Lloyd delivered the Speech from the Throne at the State Opening of the Legislature, he informed the Legislature of the impending retirement of Mrs Sybil I. McLaughlin, MBE, Clerk of the Legislature since 1959. He said –

'Our present Clerk is due to retire within a few weeks. This is the last meeting at which she will officiate. I should like to pay tribute to a record of service remarkable both for duration and devotion.

Few, if any, Clerks can have been responsible for advising Commonwealth Legislatures for longer than she has advised ours. Her knowledge of Parliamentarians, and her experience of parliamentary affairs, have been invaluable. I am confident that I shall be reflecting the feelings of all Members when I express sincere gratitude for so much thoughtful past help and offer warm good wishes for a happy future in retirement.'.

The Governor of the Cayman Islands is also the Presiding Officer.

Mrs McLaughlin joined the Government service on 23 July 1945 and on 1 September 1959 was appointed Clerk of the Executive Council and of the Legislative Assembly, on the coming into effect of the Islands' first written Constitution. She has held the post of Clerk of the Legislature continuously since that time. Her duties as Clerk of the Executive Council terminated in December 1967 when another officer was appointed, as the work of the Legislature increased and required full-time attention.

She served an attachment to the House of Commons for three months in 1966 and two weeks at Stormont Parliament, Northern Ireland, as well as attachments to the Parliaments in Grenada and Trinidad, West Indies, in 1971.

She served for 18 years as Secretary of the local branch of the Commonwealth Parliamentary Association and organised three conferences in Grand Cayman, the first in 1967, Regional, the second in 1972, Conference of Presiding officers and Clerks of Caribbean Parliaments and the last in 1981 another Regional. She served for 6 years as Secretary to the Standing Committee for the organisation of the Presiding Officers and Clerks Conference. As Secretary, she attended various CPA conferences within the Caribbean as well as Canada, Mauritius and Zambia and visited many countries such as Australia, Fiji, New Zealand and many parts of Europe.

Among the many achievements of her career was the chairmanship of a committee to plan for the celebrations of the Islands' 150th anniversary of parliamentary Government in 1982, the events of which were televised.

After her return from London in 1966 she was instrumental in instituting the verbatim recording of the Assembly's proceedings.

In 1969, together with Mr Bell of the British Development Division, she drew up plans for a new Parliament building which was later put out to tender and awarded to Rutkowski, Bradford and Partners, Ltd. of Jamaica. This building was officially opened on the 31 July 1972 and the first function held therein was the Conference of Presiding Officers and Clerks of Caribbean Parliaments in August 1972.

Mrs McLaughlin also prepared a draft of Standing Orders while on attachment in the House of Commons, but these were not required until a new constitution came into effect in 1972. In 1974 following the Conference of Presiding Officers and Clerks of Caribbean Parliaments held in Bermuda, Mr Kenneth Bradshaw, then Clerk of the Overseas

Office, visited Grand Cayman and held discussions with the Select Committee appointed to deal with the draft of these Standing Orders. These came into effect on the 10th of September 1976.

Many Members joined in the tribute and these included the Hon. G. Haig Bodden, Fourth Elected Member of Executive Council, responsible for Works and Communications. Mr Bodden has for many years been the Chairman of the local CPA Branch's Executive Committee and at the recent CPA Conference in Kenya was appointed one of the Region's Representatives. Mr Bodden said –

'I feel it a privilege to say thanks to our retiring Clerk. She has weathered many a storm in this House and she has seen much change in the political life of these Islands and I do not want to tell you her age but she has seen the development of our constitution; she has seen the liquidation of the Assembly of Justices and Vestrymen; she has seen the changes in the constitution during her time in Government, although all of it was not in the Legislative Assembly. She has seen the abolition of Nominated Members of the House; she has seen the introduction of internal self-government in the Cayman Islands; she has seen Members being given responsibility for the running of Government Departments; she has seen women receive the vote. Universal adult suffrage, I think, was introduced during her time with Government. She has seen the construction of a fine Parliament Building; she has seen the introduction of a recording system which makes it easy for her staff to prepare the Hansards and so even in one short life-time she has seen the evolution of a political system which has moved onward and upward with a democratic beat.

She has seen, recently, in the last 12 years, the constitution upon which we now work; she has seen quite recently the amendments to that constitution which will provide for an appeal court for the Cayman Islands; she has seen all these things and accepted them with grace and welcomed the changes, some of them have been dramatic, some of them have been controversial, but nevertheless we live in a changing world and it is for us, the inhabitants of the earth to adapt ourselves to these changes.

I first met the Clerk in her official capacity in 1972 and over the years I must say we have had a very good relationship. I have a lot of respect for her and I have sought her advice on many occasions, even a couple of months ago when I attended a Conference in Kenya, she provided me with some material which allowed me to make one of my long speeches, and apart from that, she has advised me in the past on procedural matters in the House and I know the Legislative Assembly will miss her.'.

Mrs McLaughlin retired on the 31st of March 1984 after a service to the Cayman Islands Government and its people of thirty-eight years and eight months. Her successor is Mrs E. Gay Jackson, formerly the Director of Social Services with the Government.

(Contributed by the Deputy Clerk of the Cayman Islands Legislature)

D. Mitchell, M. A. – David Mitchell, Clerk Assistant (Procedural) resigned effective 30 March 1984. He returns to British Columbia to work for British Columbia Resources – a private mining and oil corporation in British Columbia. Before adjournment on Friday 23 March 1984, several Members rose in the Legislative Assembly and thanked David for his three years of faithful service to the Legislative Assembly and wished him well in his new job.

After adjournment, Mr Speaker Swan, on behalf of all Members, presented David with a Marjorie Durante painting.

David Mitchell thanked the Members for their remarks and concluded with a small poem that he had composed, as follows:

There once was a Clerk from Saskatchewan
Who delighted in speaking English plain
But once he got to the Table
He was thereafter unable
To speak much in public again.

(Contributed by the Clerk of the Saskatchewan Legislative Assembly)

F. K. M. Thompson – On 9 July 1982, Frederick Keith Mannering Thompson retired from the office of Clerk of the Legislative Assembly of the Northern Territory of Australia.

He commenced his public service in 1937 when he entered the Royal Austrialian Navy as a cadet midshipman. His naval career was cut short in 1944 when he was retired on the grounds of invalidity as a result of wounds received in a bombing raid on Brighton, England, in 1942.

Keith entered the Commonwealth Public Service in Darwin in 1957 and after service in the Agriculture and Welfare Branches of the Northern Territory Administration joined the staff of the then Legislative Council in 1962 as the first editor of the Northern Territory's new Hansard, which used the then novel method of recording and transcribing from tape. He became Deputy Clerk in 1964 and Clerk in 1977.

During his service he saw the Northern Territory legislature evolve from a Legislative Council with a majority of appointed members to a fully-elected Legislative Assembly with full responsibility for self-government, and saw the Assembly through the difficult period following self-government.

Keith was the third full-time Clerk in the history of the Council and the Assembly, and was the second Thompson to occupy the office. His brother Deric was Clerk of the Legislative Council from 1948 to 1959.

On the last sitting day – 3 June 1982 – prior to his retirement, the Speaker, Chief Minister, Ministers and members from both sides of the Assembly paid tribute to Keith Thompson for his long and distinguished service and wished him and his wife, Olga, a long and happy retirement.

Keith, who would be well known to many of his colleagues in the Society who had met him at Regional Conferences of the C.P.A., conferences of Presiding Officers and Clerks, and at the C.P.A conference in Jamaica in 1978, has remained in Darwin to enjoy his retirement.

(Contributed by the Clerk of the Legislative Assembly of the Northern Territory)

R. O. Kelman – Mr R. O. Kelman, Clerk of Parliament, Barbados, resigned with effect from 1 September 1983.

I. N. McCarron – Mr Neil McCarron has retired as Clerk Assistant of the Legislative Assembly, Melbourne, Victoria.

Birth: Mrs. G. Ronyk – The Table usually records retirements and obituaries of Clerks. We are happy to note when a member of the Society gives birth.

Gwenn Ronyk, Deputy Clerk of the Legislative Assembly of Saskatchewan gave birth to an 8 lb. 8 oz. baby girl on 13 October 1983. The baby's name is Brittany Anne. Gwenn was on maternity leave but returned to work on 1 March 1984.

Acknowledgements – The Editors are pleased to make the following acknowledgements which were omitted from Vol LI:

The note on 'Ontario (Privilege and Order)' was contributed by Mr Roderick Lewis, Q. C. The article on 'Television in the Saskachewan Legislative Assembly' by Gordon Barnhart was previously published in the summer 1983 issue of the *Canadian Parliamentary Review*. We thank the Editor of the *Review* for permission to reprint.

II. *LEGISLATIVE DRAFTING IN THE* 'GARDEN OF EDEN': *SEYCHELLES*

BY GREGOR KOWALSKI

Assistant Legal Secretary and Deputy Parliamentary Draftsman, Lord Advocate's Department, London.

'Unique by 1000 miles!' That is how the Seychelles is described in luxurious holiday advertisements and not without justification. General Gordon of Khartoum was sufficiently inspired by the beauty of the islands to declare, it is alleged, that they must have been the location for the Garden of Eden. However that may be, it is no doubt inevitable that the legislative system adopted by any sovereign state will be, in some respects at least, unique to that state. Seychelles is not particularly different from any other sovereign state in that respect. But there is in Seychelles an additional factor which adds interest to the particular form of legislative system adopted by that country. Seychelles constitutes a 'mixed jurisdiction'. The law is to be found both in a Civil Code and in an ever increasing number of statutes which conform, largely, to the 'Westminster' pattern.

The islands were originally settled by the French in the mid 18th century but, after several changes of hands during the French Revolutionary and Napoleonic wars, were finally ceded to the United Kingdom in 1814. The colonial authorities did not seek to interfere with the French system of law and the Code Civil continued to have effect in relation to private rights and duties. Gradually rules for public administration and the regulation of the criminal law were introduced in the form of statutes and orders more readily recognised by the 'common' lawyer. This situation continued until just before independence in 1976 when there was a substantial body of UK style legislation operating, perhaps uneasily, along side an unreformed Code Civil.

As part of the preparation for independence it was decided to produce a new civil code with an authoratitive text in English. That task was undertaken by the late A.G. Chloros, then Professor of Comparative Law at King's College, London and later the Greek Judge of the Court of Justice of the European Communities in Luxembourg. Somewhat ironically the new Seychelles Civil Code, which had to be brought into effect by a UK style statute owes its origin, principally, to the French Code Civil and is to be interpreted in accordance with the principles of (unless clearly inconsistent with) the jurisprudence of the civil law.

Having said that, any inconsistency between the Civil Code and any

later statute would clearly require to be resolved in favour of the statue, so the draftsman has constantly to be on his guard to try to avoid such an inconsistency which might have the unintended effect of undermining provisions of the Civil Code. Consequently statutes do refer from time to time to provisions of the Civil Code in an attempt to make clear the relationship between the two. Quite apart from attempting to achieve a properly balanced relationship between the two forms of law there still exists in Seychelles a very strong francophile influence and any attempt to weaken further the influence of the jurisprudence of the Code Civil or of the French tradition in the law would certainly be resisted.

When Seychelles gained independence from the United Kingdom in 1976, it acquired a constitution which (as with many other newly independent states) had been the subject of negotiation between the demitting colonial power and the various interests in the new state. However, as has also happened elsewhere, that constitution did not survive for very long. Indeed within one year of gaining independence, and while the first President of the Seychelles was attending a Commonwealth Heads of Government conference in London, a coup took place and France Albert Rene was installed as the new President, a post he presently occupies. For two years President Rene ruled by Decree until a new Constitution, the result of a Constitutional Commission, was brought into force in 1979.

That Constitution provides that all political activity in the Seychelles shall be undertaken through the Seychelles Peoples' Progressive Front, thus Seychelles became a one party state. The Front also has, in theory, a substantial role in the legislative process as will be seen later.

From August 1982 the writer spent one year on secondment to the government of the Seychelles as 'legal draftsman'. Seychelles consists of almost 100 islands (most of them uninhabited) spread in various clusters over an area of several thousand square miles in the Indian Ocean. As at the middle of 1981 the population was estimated to be in the region of 66,000. It is not therefore surprising that there was only one legal draftsman in the service of the government at any one time. The legal draftsman is part of the establishment of the Attorney General's Office and in addition to drafting both primary and subordinate legislation is frequently asked to give general legal advice on a wide range of matters.

Striving to produce a clear and effective legislative text from policy expressed in varying degrees of clarity is a difficulty which besets all draftsmen. In that respect Seychelles presented no difference to Westminster although at least at Westminster one has the comparative luxury of instructions prepared by another lawyer. In that situation, one hopes that some of the more basic problems may be already ironed out by the time the material reaches the draftsman. Since, in Seychelles, all departments looked to the Attorney General's Office for their legal advice, that luxury was just not possible.

Another significant difference between the work of the draftsman at Westminster and that in Seychelles is the extent to which the draftsman's work brings him into contact with the legislature and requires knowledge of and ability to give advice on the procedural rules of the legislature.

The history of the legislature in Seychelles in its present form dates only from 1979 when the new Constitution was introduced. Both the Constitution and the Standing Orders of the Peoples' Assembly clearly indicate that the Assembly is only one part of the legislative process. It is also intended that an important part of that process should be the consideration of each Bill by every branch of the Seychelles Peoples' Progressive Front. The branches correspond to the areas of the electoral districts in Seychelles and the Standing Orders of the Assembly provide that no Bill should be considered by the Assembly unless it has been published for at least 16 days prior to the sitting of the Assembly at which the Bill was to be dealt with. The Standing Orders also provide that Members of the Assembly should only speak and vote in accordance with a mandate from their Front branch. Consequently, at least in theory, only measures which have the approval of a majority of Front branches will be passed into law. In fact on 3 out of 4 occasions when the Assembly sat from August 1982 to July 1983, the requirement for the Bills to have been published for 16 days prior to consideration was suspended on a motion from the floor of the Assembly (inspired by the Government) with no prior notice and on no occasion was there a vote against any measure although there was, from time to time, criticism of the policy of specific provisions in Bills.

An interesting feature of legislative drafting in Seychelles was that although Bills were drafted in English, the language almost invariably used in the Assembly was Creole. Consequently, one could have a situation where the detail of a provision drafted in English was being discussed in Creole with frequent reference to the wording of the provision in English. However since all Bills being presented for consideration were dealt with in the course of one sitting of the Assembly, and since as many as 5 or 6 Bills could be disposed of in a sitting of no more than 4 hours, discussion tended to be in the nature of what Westminster observers would term 'Second Reading' points with most emphasis being placed on questions of principle and comparatively little discussion of detail. In the writer's experience there was no criticism or discussion of the drafting itself, although whether that is a good or bad thing is a question which might provide enough material for an article of its own.

It was rare for amendments to be moved on Bills and when amendments were moved these were invariably moved by the Government. In any event there was no procedural requirement for or penalty in respect of failure to give advance notice of any proposed amendment.

Ministers are not members of the Assembly as such and indeed are not chosen from among the members of the Assembly; but they do attend and speak in debates. So also did the Secretary General of the Seychelles Peoples' Progressive Front, reflecting the importance of the Front in the constitutional and administrative framework of Seychelles. Indeed there is a very strong presumption that what the SPPF thinks is best for Seychelles *is* best for Seychelles. This came out very clearly in the interventions by the Secretary General in Assembly debates. His views were always treated by the Assembly with the greatest of respect.

One of the sessions of the Assembly held in December every year is used as the occasion for the President to deliver the 'State of the Nation' address required by the Constitution. The President also answers questions on his address from Members of the Assembly.

Provision is made for committees to be formed from among the Members of the Assembly and, in particular, for a public accounts committee, but, so far as could be ascertained, no such committee had ever been formed or undertaken any deliberations. The Standing Orders also provide that any Bill which will create a charge on the people should be certified as such by the Attorney General and that any Bill which has been so certified should not be proceeded with other than on the recommendation of the President, a rule presumably derived from the practice at Westminster.

It is also interesting to note that the Chairman of the Assembly is not himself a Member of the Assembly. The current holder of the position is also the Principal Secretary in the President's Office, indeed that is his principal function and as such he also acts as Secretary to the Council of Ministers. As a matter of practice, although there was no formal rule to this effect, any question as to the procedure of the Assembly or the interpretation of the Standing Orders was referred to the Legal Draftsman for advice. However, very few procedural questions arise since the business of the Assembly is conducted in a relatively informal manner. In recent times there has been no official report of the proceedings of the Assembly. Part of the reason for that may be that at present Creole is principally a spoken language and is only now in the process of development as a written language. For the time being, at least, any formal report would probably require to be translated into English with an inevitable loss of some of the intrinsic flavour of the proceedings.

Drafting legislation in Seychelles proved to be a most interesting experience giving a new perspective to the task of the draftsman.

III. THE SPEAKER AND DISCIPLINE IN THE CANADIAN HOUSE OF COMMONS

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It is misleading when considering the Speaker to refer to his powers of discipline in the House. Such a concept in Canada, as in Great Britain, is foreign to the nature of the office. In neither country does the Speaker, acting simply on his own authority, have any power of discipline. Instead, one of the most fundamental privileges of Parliament is the right to make rules for itself and the right to enforce them. This power, however, belongs to the House as a body, and such powers as the Speaker may exercise are merely delegated to him by the body over which he presides. The most extreme form of discipline, of course, the right to expel a person from membership, the House has kept to itself. Less significant powers, such as the right to clear the galleries, the House in Canada shares with the Speaker.[1] In this article it is intended to look at only one corner of the question of discipline, the power that the Speaker has to enforce the rules that the House has set down for the conduct of members. It should be noted that even in this aspect, the Speaker is only the initiator of action, and the House itself, as a body, applies such penalties as it chooses to punish offenders.

Over the years since Confederation, the Canadian House of Commons has tended to be a remarkably sedate legislature. While political issues have been debated with rigour and even bitterness on occasion, there seems to have been a reasonable acceptance of the parliamentary rules of the game and a respect for order and decorum. In spite of its generally staid appearance, the House has not always behaved as one might wish. In the last century particularly, the existence of clear cut party divisions, late night sittings, and a saloon bar in the basement combined on a number of occasions to produce some riotous moments in the House. Alexander Mackenzie, for instance, on one occasion described an evening sitting in a letter to his political colleague George Brown:[2]

'. . . I gave John A. and his party two whole days for the Quebec business, but I insisted on a vote at 2 last night. This was resisted and speaking against time has been going on since. John A. got very drunk early last evening and early this morning they had to get him stowed away somewhere. McDougall of Three Rivers was also very drunk and kept the floor off and on for nearly two hours uttering utter nonsense and just able to stand.

Campbell of Cape Breton was in a shocking state. He got on the floor in front of the Speaker with his hat on and a stick in his hand which he flourished round his head daring

the Gov't or any member to fight him yelling at the highest pitch of his voice. Plum Caron and others were also drunk but did not so seriously expose themselves . . .'

Even allowing for a degree of exaggeration for political effect, the scene would be a surprising one today. A reading of the *Debates* for the time will also provide other examples of undisciplined conduct. The last day of a session was traditionally rowdy and perhaps could be overlooked, if there had been no complaints at other times about the throwing of papers,[3] a blue book[4] and even firecrackers.[5]

In more modern years, the Canadian House has become more restrained. Certainly on occasion, a heated debate will provide short periods of noisy interchange across the floor and one Speaker while suggesting that provocative speeches might well provide such a result, made no attempt to limit the interjections.[6] The introduction of an automatic adjournment hour in 1927 may have removed some of the strains provided by late night sittings and it is interesting to note that several of the recent examples of disorder in the House have indeed occurred late at night on extraordinary occasions. Recently there have been only two occasions in Canada when an observer might legitimately conclude that the normal functions of the House had completely broken down. The first of these was in the memorable pipeline debate of 1956 when the Speaker in an unusual ruling reversed the stand that he had taken on the previous evening, and deprived the Opposition of the tactical advantage that it had gained through procedural manoeuvres.[7] While the Speaker was putting the question on an appeal from his ruling certain members of the Opposition spilled over into the centre aisle and advanced on the Chair shaking their fists. Others of their colleagues rose to make statements of protest and some Government back-benchers contributed to the uproar by singing scurrilous songs designed to annoy the Opposition.[8] The other occasion on which the decorum of the House broke down completely was during the Constitutional resolution debate of 1980, when the Government had moved closure on a motion to refer its constitutional proposals to a special committee. When the final vote was called at 1 a.m. on the morning of October 24, once again some Opposition members stormed the Speaker's Chair, shouting, while others appeared ready to indulge in physical assaults on Government members.[9]

With both of these disorderly incidents, the Speakers of the day did nothing but wait for the tumult to subside. Indeed, it seems certain today that in spite of allegations in three places to the contrary, [10] that the Speaker has no power whatsoever parallel to that provided by the Standing Orders of the British House, to suspend a sitting for disorder. During one discussion the Speaker in the last century suggested in the House that such power existed, but it was not used at the time, nor (perhaps unfortunately) was the question pursued.[11] Certainly the

Standing Orders in Canada are silent on the subject, and any attempt to use Standing Order 1 which applies British usages to unprovided cases in Canada would appear to lack the necessary authority to carry British Standing Orders into effect in Canada.[12] Some few occasions may be found when the Speaker has suspended a sitting without formal motion, but again these do not appear to be an exercise of any formal authority. The need for time to consider an urgent point of order, [13] or prolonged disturbance in the Gallery [14] may give rise to such a suspension, although they do not fall under the heading of disorder in the House. In any event, at such times the Speaker will propose suspension to the House informally and at least appear to obtain the unanimous consent of the House itself before suspending the sitting. Once even the form of consent was dispensed with. On February 3, 1916, the Parliament buildings burned to the ground while the House was sitting. On receiving the information from a doorkeeper that the building was on fire, the sitting was suspended without formality, the consent of the House being naturally assumed.[15]

One may look in vain in the Standing Orders of the House of Commons of Canada for any clear statement of the disciplinary powers of the Speaker. The broadest power is granted to the Speaker in Standing Order 15 which specifies in part: 'The Speaker shall preserve order and decorum, and shall decide questions of order.' The actual method of enforcement is left to tradition and presumably the common sense of the Speaker. A further provision appears in Standing Order 38 which gives the Speaker the right to order a member to discontinue his speech if he is guilty of irrelevance or repetition. Only in Standing Order 38 does the traditional sanction of 'naming' appear.

The origin of this well recognized procedure appears shrouded in history. Philip Laundy in his *The Office of Speaker* summarizes the accumulated wisdom of Hatsell and May,[16] but fails to shed much light on the reasons for the adoption of what is a bizarre proceeding. Clearly the resolutions of the British House in 1641 and 1693[17] provide for this sanction in the hands of the Speaker. But even then, the process seems to have been only indifferently understood. The apocryphal answer of Mr Speaker Onslow to the question of what would happen if he were to name a member, 'the Lord in Heaven knows!'[18] may be rather excessive but probably contains at least a germ of truth. Regardless of the doubts that may have existed in the eighteenth century, the British House in more recent times has both clarified the procedure in its Standing Orders and has used the rule enough to make its effects known to all.

The Canadian House has never been too clear about this power of the Speaker, largely as a result of its non-use. There seems never to have been any doubt that some powers existed, presumably through the application of British precedents in unprovided cases. The Speaker may be found threatening to name members over a considerable period[19] but

it was not until 1913, forty-six years after Confederation that the threat was put into practice[20] and it was not until 1942, seventy-five years after the House first met, that the procedure was followed to its natural conclusion.[21] Two further suspensions followed two years later[22] and a third in 1956.[23] From that time, the procedure appears to have gained in popularity and the last twenty-three years have seen no less than twelve member suspended.[24] This increased use of the supreme penalty may not, of course, reflect an increasing wish on the part of the Chair to be severe with erring members. One other factor may perhaps be significant. The House of Commons has been televising its debates live for a number of years and half of the total number of suspensions have at least potentially been witnessed by the whole country. It may be possible to speculate that members have decided that some small and temporary inconvenience is a cheap price to pay for a protest projected into the living rooms of the nation either live or at least on the national news broadcasts.

It is probably a reflection of the generally orderly nature of the Canadian House that the reasons for suspending members appear to be almost trivial. Although all of the examples can be summarized under the single heading of refusal to obey the authority of the Chair, such a generalisation tells nothing, and it is important to look at the real offence which brought the Chair into conflict with the individual member. The single most common offence has been a persistent refusl to withdraw words used in debate which the Chair has decided are unparliamentary, ınd increasingly the words involved have been 'liar' and 'deliberately nisleading.'[25] Three times a member has been suspended for refusing (again persistently) to resume his seat when ordered to by the occupant of the Chair.[26] Twice accusations of partiality aimed at the Chair have resulted in suspension,[27] and twice a member was suspended for interrupting another member's speech.[28] A simple summary of this sort cannot, of course, do full justice to the surrounding atmosphere of debate which undoubtedly has some effect on the attitude of the Speaker. There is little doubt that the most recent suspension (that of Mr Deans) was officially for his refusal to resume his seat, but a brief extract will indicate that a multitude of offences actually occurred any one of which might legitimately have ended in his censure by the House.

Mr Deputy Speaker: Will the Hon. Member please be seated.
Mr Deans: I am not sitting down. You cannot sit there and ignore us. Who the hell do you think you are? Take your seat. You cannot allow this kind of garbage. Who do you think you are Francis.
Mr Deputy Speaker: Will the Hon. Member please be seated.
Mr Deans: No. I have been on my feet for two minutes asking for a point of order and you have damned well refused to listen. You sit down.
Mr Deputy Speaker: Will the Hon. Member please be seated.
Mr Deans: I bloody well will not sit down. Who do you think you are? You cannot allow this garbage to take place. You may think you are God up there but you are not.[29]

Finally after a total of eight requests to resume his seat, Mr Deans was named for 'disregarding the authority of the Chair.' Even this solemn event was somewhat marred by the attitude of the culprit who seemed remarkably unmoved.

Mr Deputy Speaker: Mr Deans, I have to name you for disregarding the authority of the Chair.

Mr Deans: Well, you bloody well go right ahead. But you are going to have a problem. You cannot ignore me when I rise on a point of order.[30]

Fortunately for the dignity of the House any threat of further insubordination implied in Mr Deans' remark evaporated and the House proceeded with formal suspension.

Perhaps surprisingly, considering the few times the power has been used, the House has always appeared to be fairly certain of the procedure to be followed when the Chair enforces its authority. When an offence has been committed in the eyes of the Speaker, every effort will be made to persuade the erring member to repent. There is no doubt that the Speaker will go to extraordinary lengths to calm the emotions which often give rise to such an event. The occasion noted in the previous paragraph, where no less than eight requests were made to the member to resume his seat is by no means unusual. When all else fails, the Speaker will generally (although not always) warn the offender that he proposes to name him. If this does not settle the matter, the member will be named. He is then generally given an opportunity to clear the air once more and on occasion an apology at this stage will result in no further action being taken.[31] If the process proceeds normally, the member leaves the chamber while the House decides his fate. It is generally assumed that it is the duty of the Government House Leader (if present) to move the penalty of suspension from the service of the House. The House may entertain a very brief discussion at this point if it is thought desirable to raise any further matters strictly relevant to the affair and will then proceed to vote. If the member has returned to the House he will then leave in accordance with the decision taken, escorted by the Sergeant-at-Arms if necessary. Should the offence occur in Committee of the Whole House, the Committee will rise and the Chairman will report the events to the Speaker. The report from Committee takes the place of the formal naming process.

While this procedure appears simple on the surface, there have been variations over the years. The actual form of the statement naming a member has generally been constant in its nature. The Speaker has always used a short clear statement which can leave no real doubt as to what is happening. Strangely, however, considering the nature of the process (the lapse from tradition in using a member's real name in the Chamber) on no less than five occasions, the name of the member has in fact, not been mentioned. Three times the Speaker has been so

accustomed to normal practice that the statement has used the member's constituency rather than his name.[32] In the other two cases, not even the constituency was used and only the identification 'the hon. member' appears in the *Debates* although there can be no doubt as to which member was affected.[33]

The general form of the motion to suspend a member has been remarkably consistent, although even here there is no certainty as to whether the member's name will appear in the motion. Two different forms may be found: the member may be referred to by his constituency alone, or both name and constituency may be used. It is possible that some of this vibration may be a result of the translation service of the House,[34] and some may be a result of the editing of the House documents.[35]

There is no rule to determine who should move the motion to suspend a member from the House. On the first occasion that the House took action, Mr Ilsley, a very senior minister noted that he 'believed' that the practice was that 'the minister leading the House or the senior minister present' moved the necessary motion.[36] Such a practice was certainly followed on the next two occasions, when Ian McKenzie and the Prime Minister took action.[37] Since that time the practice appears to have solidified, most probably as a result of the modern acceptance of a recognized and formally appointed Government House Leader. On virtually every occasion since 1956 the Government House Leader has taken responsibility. On the two occasions when other ministers have moved the motion it is reasonable to assume that the House Leader was not present.[38] The House in one of these cases appears to have accepted yet another principle which has no base in the written rules. When Mr Robinson was named in 1982 it is clear that the House Leader was absent as his Parliamentary Secretary rose to move the proper motion. Such action was challenged by the Opposition House Leader and a Minister was recognized as the mover of the motion. The basis for this objection must be found only in practice. Neither the British Standing Order nor May specify that the motion must be moved by a minister, although common sense might indicate that only some senior member of the House should exercise such responsibility.

Under normal circumstances the question of who moves a motion to suspend would seem to be an academic one, and it is generally assumed that the House Leader will perform the duty. This does not seem to be a universally held attitude, and on two occasions the House Leader (Mr Allan J. MacEachen) spoke strongly against such an assumption, although he admitted that the tradition existed.[39] In both cases Mr MacEachen contended that it was within the discretion of the Minister whether to make such a motion or not. Should a House Leader take such a stand, and refuse to uphold the dignity of the House, there seems

to be nothing in the rules which would prevent a motion being made by another member. Whether such a motion (moved, perhaps, to suspend a leading member of the Government) would pass, is another question.[40]

In this context it is interesting to note that over the years it has been only Opposition members who have been suspended from the House. This should not be looked on as a reflection on the impartiality of the Speaker, but is more likely a result of the general tenor of debate in the House. It is almost inevitable, and increasingly so in recent years, that the Government should have a preponderance of power and that the Opposition will feel frustrated and even rebellious at times. Under these circumstances it is not surprising that the Government may be found voting in favour of every motion to suspend that has been moved in the House. On three occasions it has stood alone against the combined forces of the Opposition.[41] Five other times, the party to whom the offending member has belonged has stood alone in opposing the motion to suspend a colleague.[42] Beyond these two generalities there has been no consistency in the voting pattern in the House. On several occasions a party has split its vote with members being found on both sides of the question.[43] Without any doubt today, a motion to suspend is looked on as an opportunity to register a protest, and a member's colleagues will support him regardless of the propriety of his actions. It is interesting to note that only on the first two suspensions was no recorded vote taken. The same member, Liquori Lacombe, was involved in both cases. He sat in the House as an Independent or Independent Liberal and appears to have been sufficiently disliked that no one was willing to rise to his defence. The question was, therefore, put and carried without a division.

Remarkably little interest appears to have been shown in the severity of the penalty imposed by the House, and unlike the United Kingdom where a scale of penalties has been adopted, the rules are silent. When Mr Lacombe was suspended for the second time in 1944 the House appears to have considered a second offence to be worthy of a more severe penalty than the previously used 'remainder of the sitting.' The judgment then was a suspension for seven days. No reason was advanced, and a full session had intervened between the two offences. It might well be assumed that the House had made a decision that further offences, even at long range, should be treated more severely than the first. In practice such a decision (if ever consciously made) has never grown into a precedent. Mr Cossitt was named and suspended in 1979 and 1981. The same lapse of time had occurred as with Mr Lacombe, but Mr Cossitt received the same 'remainder of the sitting' penalty for a second offence as for the first. It might be thought also that Mr Lacombe had offended twice within the same Parliament and had incurred a more severe penalty, while Mr Cossitt's second suspension was after a general

election. Even this theory breaks down with the suspension of Mr Robinson in 1982 and 1983. Here the same member, within a shorter period of time than Mr Lacombe and within the same session of one Parliament was suspended twice for the traditional single sitting. One is left with the uncomfortable feeling again, that Mr Lacombe paid a price for being an Independent and a relatively unpopular member. It should also probably be noted that most suspensions in Canada have been for relatively trivial offences committed in the heat of the moment. Under such circumstances the penalty now customarily used is probably sufficient. Should the House meet more violent or deliberate disorder in the future, a more lengthy suspension would presumably be possible.

Once the vote is complete and the sentence of the House has been formally expressed, even more confusion has plagued Canadian practice. In the large majority of cases, the suspended member apparently has left the House without further action. On six occasions, however, the Speaker has proceeded one step further and has formally ordered the member to leave the House.[44] Twice, for no apparent reason, the Sergeant-at-Arms has escorted the member from the Chamber,[45] and once the assistance of the Sergeant-at-Arms has been suggested, although he appears not to have acted.[46]

One suspension stands alone in Canadian practice. In 1962 Mr Dumont, a newly elected Social Credit member, rose as soon as the House met on an alleged question of privilege, and proceeded to launch ıto a speech dealing with the problem of his constituents. Mr Speaker ambert, having called him to order seven times, proceeded to name m. Up to this time, the procedure was perfectly normal. But in the rocess of naming, Mr Lambert went one step further and added '. . . it ıs my wish that you withdraw.' When Mr Dumont continued with his speech, the Speaker repeated his order to withdraw and suggested that the Sergeant-at-Arms might be instructed to take appropriate action. No motion to suspend was ever made, and Mr Dumont apparently withdrew for the remainder of the day.[47]

No more was heard of the Dumont case, but two years later the Government appeared to believe that the precedent was a good one. When Mr Hamilton (a leading member of the Opposition) was named in 1964, the Government clearly had no intention of moving for suspension. Mr Hamilton, as is customary, had left the House while his fate was decided, and both the Speaker and the Prime Minister clearly assumed that the matter was closed. The Opposition itself raised the question of the propriety of the procedure, and one member even went so far as to suggest that Mr Hamilton was free to return at any time he wished. In fact, Mr Hamilton did return to the House during the procedural debate, and under the prodding of the Leader of the Opposition, the Government proceeded to move the traditional motion to suspend.[48]

It seems clear from the experience of the Canadian House since Confederation that the Speaker has had few problems and that discipline is of minimal interest. The Canadian House may occasionally be noisy and unruly, but there is little doubt that the participants except when unusually disturbed, have all agreed to abide by a few basic rules of propriety. Certainly, the House has never been faced by the same type of problem that the British House has had in the past, where a group of members have consistently attempted to make the parliamentary process unworkable. Even the avowed anti-confederates elected in 1867 were sufficiently imbued with the parliamentary spirit to have made no attempt to frustrate the normal procedures of the House. The appearance on the Canadian scene, however, of a national offshoot of the Partie Quebecois dedicated to separatism and quite possibly willing to disrupt proceedings in Ottawa in the same way as the Irish did in Westminster in the last century, gives rise to thoughts for the future. The procedures of the House at the present time are patently unsuited to meet a determined challenge, and it may well be that in the future the Canadian House will be forced to adopt the same type of standing orders as exist in Great Britain to put into the hands of the Chair effective weapons to meet such a situation.

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1. Standing Order 16 (1983) provides that should a Member request it the Galleries will be cleared only after a vote of the House. The Speaker is given the authority to order them cleared on his own initiative.
2. N. Ward, *Mice in the Beer*, (Toronto, 1960), pp. 116–7.
3. *Canada, House of Commons Debates*, May 9, 1883, p. 1086. (Hereafter referred to as *Debates*).
4. *Ibid.*, April 25, 1892, c. 1636.
5. *Ibid.*, May 13, 1882, p. 1520. On this occasion a fair minded member took care to fix the blame on the members of the House and to exonerate the pages.
6. *Ibid.*, June 28, 1955, pp. 5360–1.
7. *Ibid.*, June 1, 1956.
8. *Ottawa Citizen*, June 2, 1956; *Ottawa Journal*, June 2, 1956. Some of the songs are recorded in the *Debates*, June 1, 1956, p. 4553.
9. *London Free Press*, October 24 and 25, 1980.
10. A. Beauchesne, *Rules and Forms of the House of Commons of Canada* (2nd Ed. Toronto, 1927)citation 121; (5th Ed. Toronto, 1978) citation 24; W. F. Dawson, *Procedure in the Canadian House of Commons*, (Toronto, 1962), p. 115.
11. *Debates*, March 5, 1877, p. 470. More recently both the Speaker and leading members of the Opposition have assumed that this power exists, although the Speaker made no attempt to use it. *Ibid.*, February 19, 1968, p. 6898.
12. I am indebted to Mr Charles Robert of the Table Research Branch of the House of Commons for establishing the argument to this effect.
13. *Ibid.*, October 23, 1980, p. 3978.
14. *Ibid.*, May 11, 1970, p. 6796.
15. *Ibid.*, February 3, 1916, p. 578. the *Debates* record this unique incident: 'At this time Mr C. R. Stewart, Chief Doorkeeper of the House of Commons came hurriedly into the Chamber and called out: "There is a big fire in the reading room, everybody get out quickly." The sitting was immediately suspended without formality and members, officials, and visitors in the Galleries fled from the Chamber.'
16. P. Laundy, *The Office of Speaker*, (London, 1964), P. 79.
17. J. Hatsell, *Precedents of Proceedings in the House of Commons*, (London, 1818). Vol. 2, p. 321.
18. *Ibid.*, p. 237.
19. *Debates*, May 9, 1890, c. 4717–8; September 28, 1903, c. 12562; etc.
20. *Ibid.*, March 15, 1913, c. 6019–22.
21. *Ibid.*, March 24, 1942, p. 1607.
22. *Ibid.*, July 4, 1944, p. 4514; July 31, 1944, p. 5684.
23. *Ibid.*, May 25, 1956, pp. 4351–2.
24. F. Howard in 1961; A. Caron and B. Dumont in 1962; A. Hamilton in 1964; R. LaSalle in 1978; T.C. Cossitt in 1979 and 1981; J.C. Crosbie and S. J. Robinson in 1982; I. E. Greenaway, S. J. Robinson, and I. Deans in 1983.
25. LaSalle, Cossitt (twice), Crosbie, Robinson (in 1982), and Greenaway. Hamilton may also be added to the list for using a similar term 'not the complete truth.'
26. D.M. Fleming in 1956, B. Dumont in 1962, and I. Deans in 1983.
27. A. Caron in 1962 and S.J. Robinson in 1983.
28. L. Lacombe, both in 1942 and 1944.
29. *Ibid.*, October 31, 1983, p. 28593.
30. *Ibid.*
31. M. Clark in 1913 (*Ibid.*, March 15, 1913, c. 6019–22) and J.E. Broadbent in 1983 (*Ibid.*, May 20, 1983, pp. 25629–

31) were both named but made sufficient retraction for no further action to be taken. The apology must be made at this time. It is too late to apologise after suspension has been moved. (*Ibid.*, October 31, 1983, p. 28594).
32. Howard, 1961; Crosbie; 1982, and Robinson, 1982.
33. Cossitt, 1981; and Robinson, 1983.
34. The recorded versions of the motions (in translation) in the unrevised *Debates* for Crosbie (1982), Robinson (1983), and Deans (1983) do not correspond with the motions recorded in the *Votes and Proceedings*.
35. The addition of a member's name in parentheses after a reference to his constituency is not an unusual alteration to the records of the House.
36. *Ibid.*, March 24, p. 1607.
37. *Ibid.*, July 4, 1944, p. 4514, July 31, 1944, p. 5683.
38. *Ibid.*, June 16, 1982, p. 18524, March 24, 1983, p. 24109. While a Minister has always moved the necessary motion, there is no truth in the allegation of Mr Donald Fleming in 1956 that the motion to suspend him was a 'Government motion introduced by the Minister of Finance.' *Ibid.*, June 4, 1956, p. 4652.
39. *Ibid.*, May 16, 1978, p. 5457, March 21, 1979, p. 4384.
40. The problems attendant on such a proceeding were clearly illustraed in Australia in 1975 when a motion to suspend a Cabinet Minister was moved by a member of the Opposition and defeated by the Government majority. The Speaker immediately resigned from the Chair. J.A. Pettifer (Ed.), *House of Representatives Practice*, (Canberra, 1981), p. 228.
41. The suspensions of Caron (1962), Crosbie (1982) and Greenaway (1983).
42. The suspensions of Bruce (1944), Howard (1961), Cossitt (1981), Robinson (1983), and Deans (1983).
43. The suspensions of Hamilton (1954), LaSalle (1978), Cossitt (1979), and Robinson (1982).
44. The suspensions of LaSalle (1978), Cossitt (1979), Crosbie (1982), Robinson (1982), Greenaway (1983), and Deans (1983).
45. On both occasions that Mr Lacombe was suspended, the Sergeant-at-Arms is recorded as having acted. *Globe and Mail*, March 25, 1942, and *Debates*, July 4, 1944, p. 4514.
46. *Ibid.*, May 19, 1982, p. 17596.
47. *Ibid.*, October 5, 1962, p. 233.
48. *Ibid.*, June 19, 1964, pp. 4523–5.

IV. THE HOUSE OF LORDS AND SUBORDINATE LEGISLATION: THE PRACTICE OF THE HOUSE

BY MISS F. P. TUDOR
Clerk
AND
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Introduction

Subordinate legislation in the United Kingdom is made by Ministers under powers conferred by statute and falls into three main categories: instruments which require the approval of both Houses of Parliament before they can come into or remain in force (affirmative instruments); instruments which may be annulled by resolution of either House (negative instruments); and instruments which are not subject to any parliamentary proceedings. A small number of instruments of a financial character are the concern of the House of Commons alone.

In common with private bills and bills to confirm provisional orders, subordinate legislation is not subject to the Parliament Acts 1911 and 1949 which restrict the legislative powers of the House of Lords. Since 1911 there has been a noticeable increase not only in the extent of subordinate legislation but also in the significance of its content, so that the opportunities for the Lords to use their powers in this area have greatly increased. As Parliament has placed more and more primary legislation on the statute book, so the variety and importance of issues which can be regulated by subordinate legislation have greatly expanded.

Although the House of Lords has a veto over affirmative and negative instruments it has used it only infrequently in the case of affirmative instruments and never in the case of negative instruments, though divisions have taken place in both cases. It is important to bear in mind the distinction between affirmative and negative instruments. Affirmative instruments must be the subject of proceedings in the House but negative instruments are so only if a motion is tabled. Thus motions to annul negative instruments are frequently tabled purely in order to debate them, but with no intention to annul.

Pre-1968

During the period 1950–67 subordinate legislation was rarely the subject of a division in the Lords. In this period there were twenty-one motions to annul negative instruments, of which sixteen were withdrawn after debate, two were negatived without a division and three were

disagreed to on division. In the case of affirmative instruments, on a number of occasions the original government proposals were not proceeded with as a result of criticisms voiced in the House of Lords, although in only a minority was the matter actually put to a vote (eg. on the Judicial Offices (Salaries) Order 1963 and the West Midlands Order 1965 (see Appendix 1). In 1950 the International Organisations (Immunities and Privileges of the Universal Postal Union) Order in Council 1950 was withdrawn after debate in the Lords. In 1957 the Council of Europe (Immunities and Privileges) Order 1957 was withdrawn after debate. In 1959 the Western European Union (Immunities and Privileges) Order 1959 was withdrawn, and a substitute order was laid. In 1961 three Police Pensions Regulations were withdrawn, and substitute Regulations were eventually agreed to. In 1962 the Gas Boards (Rateable Values) Order was withdrawn, and subsequently agreed to in an amended form. In November-December 1962 the Police Pensions Regulations were withdrawn and relaid, and even then, the amended Regulations were only agreed to after an adjourned debate. Two further affirmative instruments concerning international organisations were withdrawn in 1964, namely the International Headquarters and Defence Organisations (Designation and Privileges) Order 1964 and the Visiting Forces and International Headquarters (Application of Law) Order 1964; both Orders were laid on 9 July and withdrawn on 19 July.

Thus, as stated in the White Paper, 'House of Lords Reform' in 1968, 'there have been a number of occasions when orders have not been proceeded with because of known opposition in the House of Lords' (Cmnd.3799, para.18); one further such occasion was the decision not to proceed with plans to site the Third London Airport at Stansted which would have been the subject of an affirmative instrument, following a debate on a motion for papers in the House of Lords on 11 December 1967, in which there was widespread opposition to the decision to go ahead with the Stansted site without an independent enquiry, (*Official Report* 287, cols. 861–1002).

On 18th June 1968, after two days of debate, the Lords rejected the Southern Rhodesia (United Nations Sanctions) Order 1968 – (Contents 184, Not-Contents 193). This use by the Lords of their veto was hotly argued in the debate, not least because at the time negotiations between the parties for reform of the House of Lords were in progress. These talks were broken off by the Government following the rejection of the order.

During the debate, many allusions were made to the propriety of rejecting the Order. For the Government, Lord Shackleton said

'There have been references to Stansted. The great difference between Stansted and this Order is that by discussion and debate on a Resolution*, and not on a Motion to reject

* in fact a motion for papers, see above

the Order, this House, and notably the noble and learned Viscount, Lord Dilhorne, exercised the sort of influence which was right and proper; and the Government thought again. But today they are giving the Government no chance. They are saying, 'Reject the Order'. Until 1909, the House of Lords never rejected a Finance Bill or a Budget. There must have been many Finance Bills that they did not like. I cannot believe that they liked some of Lord Harcourt's proposals. But suddenly, in 1909, such was their hatred of the Liberal Government, such was their conviction of its unpopularity in the country, that they broke with their own precedent to which they had firmly stuck until that moment, and threw out the Finance Bill. This country was then thrown into years of bitter constitutional controversy.

What the Opposition are proposing today will be a breach of self-imposed principle.' (*Official Report*, 18 June 1968 col. 587).

For the Liberals, Lord Wade said:

'But an Order is not amendable, and the custom has rightly grown up that we in this House do not reject an Order.' (col. 362)

Lord Carrington, the Leader of the Opposition, said:

'By voting against this Order, it seems to me, we should be doing a number of things, all of them perfectly and absolutely consistent with the duties of a Second Chamber. First of all, if the House were to reject this Order (and there may be some on this side of the House who do not agree with what I am saying), we should be putting on record that the majority of the House, composed as it now is – and it is, after all, this House that we have to deal with – believe that the Government's policy with regard to Rhodesia is wrong and calculated to lead to disaster for black and white alike in Rhodesia; and by doing that we should be asking the Government to consider the powerful arguments which have been adduced from this side of the House this afternoon, and to reflect upon them.

We should also be allowing time for public opinion to make itself felt. I do not know what public opinion is about Rhodesia. I, too, saw the results of the Gallup Poll in the Daily Telegraph this morning. I was surprised, because certainly the cross-section of people I meet do not seem to hold these views at all. I have no idea what public opinion is, and I do not suppose the Government have; but at any rate such action on the part of your Lordships would enable people to express their views; it would enable newspapers to air their views; it would enable letters to be written to Members of Parliament, and all the other accepted ways of forming public opinion.

Thirdly, if the Government decided, in spite of the advice which we had given them, to re-lay the Order, we should be giving the Commons another opportunity to debate it in the light of what has been said in this House by some eminent people who have first-hand knowledge of Rhodesia. I have always thought that this was the proper function of a Second Chamber. If, as may be the case, it is quite clear that the people of this country are either in favour of the Government's policy or not interested, or are uncertain; or if it is reflected in another vote by the elected Chamber, then, so far as I am concerned, I do not think your Lordships should persist any further. You will have performed your proper constitutional function. But what I cannot accept is that we who sit in this House have not the right – not just a legal right, but not a right – and indeed almost a duty on occasions of this kind to do what we think is right, to take what we believe is the proper course, a proper course that Members of a Second Chamber should take.' (cols.575–6).

A similar argument was put forward by Lord Jellicoe, the Deputy Leader of the Opposition:

'I recognise, of course, that the issue before us today is one of unusual difficulty. It would be unusual – more, it would be unprecedented, I believe, for your Lordships to reject this

Order. Yet it is equally clear that this House would be within its constitutional rights in so doing and thus affording to public opinion, to the Government, and, if you wish, to the Opposition as well, a period for reflection. After all, that is what a Second Chamber is for.' (col.358)

The Government relaid the order as the Southern Rhodesia (United Nations Sanctions) (No.2) Order, and it was agreed to after debate though without a division. A division was called but a second Teller for the Not-contents was not appointed: (18 July 1968, *L.J.* 200, p.487).

Affirmative Instruments 1968–84

Motions for Withdrawal

Since 1968, two affirmative instruments have not been proceeded with following a debate and decision on a vote in the House of Lords. The Town and Country Planning General Development (Amendment) Order 1977 was withdrawn, following a motion moved by Lord Duncan-Sandys which called on the Government to withdraw the Order, and make another in its place 'which would not have the effect of relaxing exisiting planning controls in respect of conservation areas, listed buildings, natural parks and classified areas of outstanding natural beauty'. This motion was agreed to (Contents 48, Not-contents 21) following a debate, in which speeches from all sides of the House were made in favour of opposing the Order. The motion to annul the Order was not proceeded with.

Dilatory Motions

In the second case, that of the Road Traffic (Seat Belts) (Northern Ireland) Order 1978, Lord Carrington moved that further debate on the approval of the Order be adjourned. In doing so he said:-

'My Lords, I should first explain to your Lordships the reason for this rather unusual Motion. It seems to me that the circumstances surrounding the presentation of this order warrant it, and it has nothing whatever to do with the merits or otherwise of the order itself. It is usually the case that we in this House do not oppose Government orders. It is true that on very rare occasions we have done so, sometimes with rather unexpected results. Generally speaking, orders pass through your Lordships' House with nothing other than discussion. The reason for this is that orders do not come under the provisions of the Parliament Act. Therefore, the rejection of an order by this House is the end of the matter; there can be no second thoughts, though, of course, it is possible for the Government to re-lay the order at a later date in slightly different terms. Your Lordships will remember that there has been some debate in the past, particularly from those who sit on the Government Benches, as to whether or not this state of affairs should continue. But, on this occasion, the proposal has not been discussed in another place and, should the order be rejected, there would be no opportunity for the House of Commons to make its views known about this matter and – perhaps rather more importantly in this particular case – there would be no opportunity for the only elected representatives from Northern Ireland in the Westminster Parliament to make plain their position with regard to their own Province. I do not think that it would be right that this House should deprive the other House, in particular those most concerned, of the right to have a discussion'. (col.810–812)

The motion to adjourn the debate was carried by 114 votes to 74, and the draft instrument was not proceeded with.

After the change of Government in 1979, there were a number of occasions on which the official Oppostion pushed their opposition to the policies of the new Government to the extent of forcing a vote in the House of Lords on affirmative instruments (see Appendix 2). This happened on eight affirmative instruments in the course of the two years 1979–81. On one such occasion on the Agriculture and Horticulture Development Regulations 1980, the then Leader of the House, Lord Soames said:

'My Lords, before my noble friend Lord Mansfield rises to answer the many points that have been made in the debate, I feel that as Leader of the House I should put one fact before your Lordships. This is an item of subordinate legislation. It was decided that, unlike primary legislation, subordinate legislation should not be affected by the Parliament Act. I am told that ever since the Parliament Act there has been an unwritten convention that subordinate legislation, since it is not subject to the Parliament Act, should not be rejected by this House. I am told that in recent years there has been only one instance where this has happened. It happened over a matter which affected what was then Southern Rhodesia. That is the one and only case that I have been able to find out about since the passing of the Act.

It would not be right for me personally, as Leader of the House, to enter into the merits or demerits of the argument, albeit, like the noble Lord, Lord Peart, having been Minister of Agriculture, I should dearly like to do so. However, I refrain from so doing. May I suggest that noble Lords should ask themselves whether these proposals – which, as we have heard, have been amended after consultation, although I understand from certain noble Lords who have spoken in the debate that the consultation was not all that they would have liked it to be – are such, in the opinion of your Lordships, to warrant, although one precedent has been created, the creation of another precedent which could affect future Governments of either party. I feel that it is right to put this point to your Lordships.' (*Official Report* 6 August 1980, cols.1561–2).

This statement was questioned from the Opposition Front Bench by Lord Melchett who said:

'I wonder whether he [Lord Soames] can confirm that these orders, as I have suggested, amount to another precedent; that your Lordships' House does not normally consider controversial subordinate legislation in advance of another place. That is a practice which is unlike the rather novel practice which the noble Lord the Leader has put forward, that the House does not divide against orders – which in my brief experience it frequently has. But the regular practice is that we do not consider controversial orders before another place, and these orders break that precedent.' (*ibid.* col.1562).

Lord Soames concurred:

'. . . certainly it is far better that they should be considered first in another place before coming to your Lordships' House.' (*ibid.* col.1563).

Government Undertaking to amend.

Another method used on occasion has been to secure an undertaking from the Minister to lay an amending Order, rather than to vote down the instrument. This was done on the Measurement of Cereals Order on

17 February 1976, when a motion moved by Lord Peddie, reflecting criticism by the Joint Committee on Statutory Instruments, supported by the European Communities Committee, received the following response from the Lord Chancellor (Lord Elwyn-Jones):

'I can assure the House that the Government and I are very ready to accede to the general sense of what has been expressed in the reports of the Committees and in the speech of my noble friend; and that, in the circumstances, we are prepared to amend these regulations by deleting what I might describe as the offending last ten words of the Instrument. I hope that my noble friend Lord Peddie will not press to withdraw the regulations now and at once; since, as the Report of the Select Committee itself concedes, they are not open to objection in their operation at present. But I can give him and the House the firm assurance that they will be amended before any further Directive issues from Brussels which could bring the offending words in the regulations into operation.'

Since the rejection of the first Southern Rhodesia (United Nations Sanctions) Order 1968, there have been 20 divisions on motions to approve affirmative instruments (Appendix 2) and 3 on motions to annul negative instruments (see below para.15), but in none of these cases has the Government been defeated. This fact was recently recognised by the Leader of the House in his response to the following Question for Written Answer by Lord Chelwood:-

'The Lord Chelwood – To ask Her Majesty's Government whether they would regard the rejection by the House of Lords of an affirmative instrument activating Part II of the Rates Bill as consistent with constitutional propriety as well as politically acceptable; and what precedents there are since 1945 for the rejection of an affirmative instrument by the House of Lords.'

The Lord President of the Council (*Viscount Whitelaw*)

'There is a well established convention that the House of Lords does not vote against the Second Reading of a mandated Government Bill. Since the House has always exercised restraint in the use of its powers in relation to subordinate legislation, it might be regarded as inconsistent with this convention if the House were to reject an affirmative instrument to implement Part II of the Rates Bill, for which the Government have a specific electoral mandate.

Since 1945 only one affirmative instrument has been rejected in the House of Lords, namely, the Southern Rhodesia (United Nations Sanctions) Order 1968. The order was subsequently re-laid and agreed to.'

(*Official Report* 14 May 1984, col.1268).

Withdrawal of Motions for approval

The Government sometimes withdraws statutory instruments in response to criticism of a technical nature from the Joint Committee on Statutory Instruments before they have been debated in the House*. In the case of affirmative instruments the following table gives a list of the occasions on which affirmative instruments or drafts have been withdrawn in recent years:-

1977–78	*1978–79*	*1979–80*	*1980–81*	*1981–82*	*1982–83*
11	5	19	3	1	7

* Appendix 3 gives the numbers of statutory instruments considered by the Joint Committee.

More rarely, but not infrequently, motions to approve statutory instruments are withdrawn following criticisms during debate. This occurred on 28 July 1981, on the Building Societies (Authorisation) Regulations 1981. They were subsequently debated and agreed to on 15 October 1981.

Reasoned Amendment to Motion for Approval

Motions or Resolutions deprecating certain provisions of an instrument have been moved on the same day as the Motion to approve it. Such motions are similar to those sometimes moved on Second Readings of Public Bills. For instance on 5 December 1983 the House expressed its disapproval of certain aspects of the Equal Pay (Amendment) Regulations 1983 on a division (108–104) by inserting as an amendment to the motion for approval the words 'but this House believes that the regulations do not adequately reflect the 1982 decision of the European Court of Justice and Article 1 of the EEC Equal Pay Directive of 1975'. The effect of this amendment was to criticise but not to annul the instrument.

Negative Instruments 1960–84

In the period 1969–83, 26 motions for an address to annul a negative instrument were tabled in the House of Lords. Of these, 21 were withdrawn after debate, and one was not moved. Three divisions have taken place on negative instruments, as follows:-

6.12.1977 Conservation of Wild Creatures and Wild Plants (Otters) Order 1977
Motion to add otters to a schedule in the Conservation of Wild Creatures and Wild Plants Act 1975 in place of the Order, after Debate, disagreed to, on Division. (Annulment Resolution not moved.)

8.12.1977 Town and Country Planning General Development (Amendment) Order 1977
Motion seeking to withdraw Order, after Debate, agreed to, on Division. (Annulment Resolution not moved.)

22.7.1982 Town and Country Planning (Vauxhall Cross) Special Development Order 1982
Motion for Address for Annulment (B. Birk) after Debate, disagreed to, on Division.

One further motion for annulment was negatived:-

24.11.1983 Milk-Based Drinks (Hygiene & Heat Treatment) Regulations 1983
Motion for Address for Annulment (L.Graham of Edmonton), after Debate, negatived.

Conclusion

The precedents suggest that both before and after 1968 the House of Lords has exercised restraint in the use of its powers in relation to subordinate legislation; but it has in a variety of ways used the existence of these powers as a means to persuade or compel governments to amend, withdraw, or otherwise not proceed with proposals for delegated legislation.

APPENDIX 1

UNUSUAL PROCEEDINGS ON AFFIRMATIVE INSTRUMENTS 1950–1967

24 July 1950 International Organisations (Immunities and Privileges of the Universal Postal Union) Order in Council 1950 – Motion for approval withdrawn.

May–July 1953 Coastal Flooding (Acreage Payments) Scheme 1953 – laid 20 May, annulled in House of Commons 17 June, second draft laid 23 June, approved 7 July.

2 July 1953 Transfer of Functions (Ministry of Pensions) Order 1953 – Motion for approval objected to; after debate, agreed to.

19 Dec 1957 Council of Europe (Immunities and Privileges) Order 1957 – laid 10 December, withdrawn 19 December.

December 1959 Western European Union (Immunities and Privileges) Order 1959 – laid 1 December, withdrawn and substitute Order laid 8 December.

Feb–Mar 1961 Police Pensions (Scotland) (Amendment) Regulations 1961 – laid 9 February, withdrawn 28 February, substitute regulations laid 2 March, withdrawn 14 March, substitute regulations laid 16 March, approved 28 March.

Feb–Mar 1961 Police Pensions (Amendment) Regulations 1961 – laid 9 February, withdrawn 14 March, substitute regulations laid 16 March, approved 28 March.

July 1962 Gas Boards (Rateable Values) Order 1962 – laid 12 July, withdrawn 23 July, substitute Order laid 23 July.

Nov–Dec 1962 Police Pensions Regulations 1962 – laid 22 November, withdrawn 6 December, substitute regulations laid 6 December, motion for approval 13 December, motion for approval 13 December, further debate adjourned until later that day, regulations approved 13 December.

Feb 1963 National Assistance (Determination of Need) Amendment Regulations 1963 – laid 5 February, withdrawn 6 February, substitute regulations laid 6 February.

26 Nov 1963 Judicial Offices (Salaries) Order 1963 – Moved, That Order be approved, Moved that Debate be adjourned, on Division, disagreed to, after Debate, original Motion agreed to.

July 1964 International Headquarters and Defence Organisations

(Designation and Privileges) Order 1964 – laid 9 July, withdrawn 16 July.

July 1964 Visiting Forces and International Headquarters (Application of Law) Order 1964 – laid 9 July, withdrawn 16 July.

16 Dec 1965 West Midlands Order 1965 – Moved, That Order be approved, after Debate, agreed to, on Division.

22 Dec 1965 Southern Rhodesia (Petroleum) Order 1965 – Moved, That Order be approved, after Debate, agreed to, on Division.

28 Feb 1966 Weights and Measures (Exemption) (Milk) Order 1966 – Moved, That Order be approved, after Debate, agreed to, on Division.

25 Oct 1966 Prices and Incomes Act 1966 (Commencement of Part IV) Order 1966 – Moved, That Order be approved, after Debate, agreed to, on Division.

6 Feb 1967 Southern Rhodesia (Prohibited Trade and Dealings) Order 1966 – Moved, That Order be approved, after Debate, agreed to, on Division.

APPENDIX 2

DIVISIONS ON AFFIRMATIVE INSTRUMENTS 1969–83

Oct 14 1969 CODES OF RECOMMENDATIONS FOR THE WELFARE OF LIVESTOCK – CODE No.1 (CATTLE)

Moved, That Code No.1 (Cattle) be approved, Amendment moved, after Debate, disagreed to on Division, original Motion agreed to.

Nov 9 1982 SOUTHERN RHODESIA ACT 1965 (CONTINUATION) ORDER 1972

Moved, That Order be approved, after Debate, agreed to, on Division.

1973 REGULATION OF PRICES (TRANQUILLISING DRUGS) (NO.2) ORDER 1973

Order laid (21.5), Report by Joint Committee on Statutory Instruments (22.5), Special Report made by Special Orders Committee (11.6), Special Report considered, Amendment moved, after Debate, agreed to, on Division, original Motions, as amended, agreed to (No.3 Order substituted for purposes of current proceedings under S.O.216 (22.6).

Oct 24 1973 SOUTHERN RHODESIA (DISTRIBUTION TO CREDITORS) ORDER 1973

Moved, That Order be approved, after Debate, agreed to, on Division.

Nov 8 1973 SOUTHERN RHODESIA ACT 1965 (CONTINUATION) ORDER 1973

Moved, That Order be approved, after Debate, agreed to, on Division.

Dec 17 1973 GRENADA TERMINATION OF ASSOCIATION ORDER 1973

Moved, That Order be approved, Moved, That Debate be adjourned, after Debate, on Division, disagreed to, original Motion agreed to.

Mar 14 1977 PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976 (CONTINUANCE) ORDER 1977

Motion for approval objected to, on Question, Tellers for the Not-contents not having been appointed, Motion agreed to.

Nov 14 1977 SOUTHERN RHODESIA ACT 1965 (CONTINUATION) ORDER 1977

Report laid and withdrawn, Report laid, Motion for approval agreed to on Division.

July 25 1978 ROAD TRAFFIC (SEAT BELTS)(NORTHERN IRELAND) ORDER 1978

Moved, That Order be approved, after Debate, Moved, That further Debate be adjourned, on Division agreed to, and Debate adjourned.

Nov 9 1978 SOUTHERN RHODESIA ACT 1965 (CONTINUATION) ORDER 1978

Moved, That Order be approved, after Debate, agreed to, on Division.

July 25 1979 EMPLOYMENT PROTECTION (HANDLING OF REDUNDANCIES) VARIATION ORDER 1979

Moved, That Order be approved, after Debate, agreed to, on Division.

July 25 1979 UNFAIR DISMISSAL (VARIATION OF QUALIFYING PERIOD) ORDER 1979

Moved, That Order be approved, agreed to, on Division.

July 26 1979 REGIONAL DEVELOPMENT GRANTS (VARIATION OF PRESCRIBED PERCENTAGES) ORDER 1979

S.O.68 dispensed with in order to approve Order before a Report had been made on it, Moved, That Order be approved, after Debate, agreed to, on Division.

May 12 1980 SOUTHERN RHODESIA (SANCTIONS)(AMNESTY) ORDER 1980 Moved, That Order be approved, after Debate, agreed to, on Division.

Aug 6 1980 AGRICULTURE AND HORTICULTURE DEVELOPMENT REGULATIONS 1980

Moved, That Order be approved, after Debate, agreed to, on Division

Nov 4 1980 EDUCATION (ASSISTED PLACES) REGULATIONS 1980 Moved, That Order be approved, after Debate, agreed to, on Division.

Nov 11 1980 SUPPLEMENTARY BENEFIT (AGGREGATION, REQUIREMENTS AND RESOURCES) AMENDMENT REGULATIONS 1980 Moved, That Order be approved, after Debate, agreed to, in Division.

Nov 13 1980 PICKETING: CODE OF PRACTICE

Moved, That Code of Practice be approved, after Debate, agreed to, on Division.

Mar 5 1981 EUROPEAN COMMUNITIES (MEDICAL, DENTAL AND NURSING PROFESSIONS)(LINGUISTIC KNOWLEDGE) ORDER 1981

Moved, That Order be approved, after Debate, agreed to, on Division.

July 28 1981 BUILDING SOCIETIES (AUTHORISATION) REGULATIONS 1981

Motion for approval; after Debate, withdrawn (28.7) Approved (15.10).

July 30 1982 MOTOR VEHICLES (WEARING OF SEAT BELTS) REGULATIONS 1982

Moved, That Order be approved, after Debate, agreed to, on Division.

Dec 5 1983 EQUAL PAY (AMENDMENT) REGULATIONS 1983

Moved, That Regulations be approved, an amendment ("O'Hagan Type Motion") moved, after debate, amendment agreed to on Division, original motion as amended agreed to.

APPENDIX 3

Total numbers of statutory instruments considered by the Joint and Select (House of Commons only) Committees 1972–73 to 1982–83

Session	*Total*	
1972–73	640	
1973–74†	654	
1974†	707	
1974–75	1656	Joint and Select Committees
1975–76	1391	
1976–77	1030	
1977–78	1104	

	Joint Committee	*Select Committee*
1978–79†	731	63
1979–80	1677	133
1980–81	1144	81
1981–82	1015	61
1982–83†	719	67

† Short Sessions

V. CONSULTANT DRAFTSMEN FOR PRIVATE SENATORS IN AUSTRALIA

BY A. R. CUMMING THOM

Clerk of the Australian Senate

In 1982 the first Appropriation (Parliamentary Departments) Bill, which gave legislative recognition to the Parliament's independence of the Executive, included a new and very modest sum of $17,000 in the proposed appropriation for the Department of the Senate. In evidence to Senate Estimates Committee A during its consideration of the Bill, it was explained that the purpose of this provision was to enable the appointment by the Senate of consultant draftsmen to assist private Senators in giving legislative expression to their own ideas[1]. It was fitting that the item should appear in the first Parliamentary Appropriation Bill, because it illustrated most effectively the Senate's independence of the Government, in that the Senate no longer would have to attempt to call on the services of the statutory Office of Parliamentary Counsel.

Indeed, it is fair to say that 'Parliamentary Counsel' has been, within Australia, something of a misnomer. With very few exceptions, the services of Parliamentary Counsel have been provided exclusively to the Government. Nominally, the Office of Parliamentary Counsel was designed to ensure that all legislative proposals before either House of the Parliament would be expertly drafted within a special office, established in 1970, the functions of which, according to the *Parliamentary Counsel Act 1970*[2], included the following:

'(a) the drafting of proposed laws for introduction into either House of the Parliament;
(b) the drafting of amendments to proposed laws that are being considered by either House of the Parliament;'.

It is interesting to note that, even as the Bill was being debated in the Senate, misgivings were expressed as to how extensively this function would be performed. For example, the then Leader of the Opposition in the Senate, Senator Lionel Murphy (now Mr Justice Murphy of the High Court of Australia), commented as follows:

'The title "Parliamentary Counsel" gives an impression that in some way these people are advisers to Parliament. This is not so. Under this legislation . . . the Parliamentary Counsel . . . would assist the Attorney-General. They are really legislative draftsmen, those who are preparing legislative instruments of various characters for the Government. Clearly some provision must be made to deal with the assistance to be given to those outside the Government who are concerned with the drafting of legislation and delegated legislation . . .

I think we are probably bound to come to a point at which some officer will need to be attached to these Chambers and be removed altogether from the Executive Government. He would be here to advise on and give assistance in the drafting of measures . . .

It appears to me then that there is the need for an extension of facilities in 2 areas: firstly, assistance to the Government itself and, secondly, assistance to non-government members of Parliament – that is, members of the Opposition, and also those members of the Government parties who are not Ministers and who wish advice or assistance in drafting. To me this measure seems exclusively, or almost exclusively, directed to alleviating the difficulties of the Government. We have not yet started to deal with the problem of individual members.'.[3]

Senator Murphy also made the point that, on at least one occasion when assistance of the then Parliamentary Draftsman had been sought,

'a condition of the assistance being given was that any drafts that were made would be available for the information of the Attorney-General and, indeed, that any conversations that took place would be reported to the Attorney-General'[4].

Senator Murphy then went on to state that the Attorney-General at the time

'confirmed that this had been the practice and the tradition for some time past; that it was correct that the engagement or secondment of persons from the Office of the Parliamentary Draftsman had not been regarded as in any way a relationship of confidence between those persons and a Senator or Member who sought the assistance, but was on the basis that whatever took place was available to the Head of the Department or to the Attorney-General'.[5]

While the Minister representing the Attorney-General was able to give a reassurance that the services of Parliamentary Counsel, when made available to private Senators, would henceforth be regarded as confidential between the officer and the Senator concerned, the Minister was not able to meet Senator Murphy's point about automatic availability of Counsel to private Senators and Members. Quoting a statement authorised by the Attorney-General, the Minister advised as follows:

'Consistently with the practice of my predecessors I will be sympathetically disposed to the giving of drafting assistance by the Office of Parliamentary Counsel to private Members. However, the present shortage of draftsmen is such that I give no undertaking that all requests for such assistance will be met. It will be necessary for each request to be considered in the light of the commitments for drafting required by the Government.'.[6]

This remained the position until early 1982. In practice, the needs of the Government meant that only on rare occasions were the services of Parliamentary Counsel made available to private Senators and Members for either the drafting of Bills or the drafting of amendments. There was nothing sinister or obstructive in this. One of the reasons advanced by the Government when introducing the Parliamentary Counsel Bill for the establishment of a separate, specialised office, as distinct from the previous branch of the Attorney-General's Department, was 'an accelerating accumulation of arrears of work. The number of Acts

passed each year by the Parliament has substantially increased over the last 20 years. The average number of Acts passed during the five year period from 1950 to 1954 was 90; during 1955 to 1959 it was 95; during 1960 to 1964 it was 110; and during 1965 to 1969 it was 126'[7]. The Minister also made the point that Commonwealth legislation was becoming increasingly complicated, using as examples legislation in the tax field and legislation for superannuation, defence forces retirement benefits and regulating trade practices. Looking back, the numbers quoted were derisory. In 1973, for example, the number of Acts passed by the Parliament was 221. It is to be emphasised that that was in one year alone. Since that time, the number of Acts passed by the Parliament annually has never been fewer than 130, and the complexity of legislation has continued in areas such as the perennial taxation area, and in new fields such as legislation giving effect to international covenants, companies legislation, and substantial social and environmental legislation.

However justified the reasons for the Office of Parliamentary Counsel having become the almost exclusive property of the Government, the reality facing private Senators and Members was that expert drafting advice was simply not available to them. In order to give some assistance to Senators and Members, officers of both Houses undertook the drafting of amendments and Private Members' Bills on their behalf. This task formed a particularly large component of the duties of officers of the Senate, for two main reasons: firstly, Senators, belonging as they do to a house of review, were mindful of their responsibility to improve legislation placed before the Parliament by the Executive; secondly, and more prosaically, since the introduction of proportional representation in 1949 there has always been a very fine balance between Government and Opposition in the Senate – only rarely has the Govenment of the day held a majority in the Senate. As a result, the likelihood of amendments to legislation being successful has been significantly greater in the Senate than in the House of Representatives.

In addition, Senators have been more adept in their use of Private Senators' Bills to propound in legislative form philosophies which are not adopted by the Government of the day. The use of this legislative device climaxed following the elections of 1980. Statistics prepared in early 1982[8] indicate the contrast in numbers of Private Senators' Bills introduced over a ten-year period:

1981	21
1980	2
1979	2
1978	3
1977	1
1976	3

1975	0
1974	4
1973	5
1972	4
1971	2

The Bills drafted in 1981 covered matters such as complex amendments to the Conciliation and Arbitration Act, the Income Tax Assessment Act and the Social Services Act, and completely new legislation relating to industrial democracy, liquor advertising and education, and a Bill to codify the law relating to contempt of either House of the Parliament. All of these Bills were drafted by an officer of the Senate in the Procedure Office. In the cases of many of the Bills, there were lengthy consultations with the Senators concerned and numbers of successive or alternative drafts were provided. Each of the Bills mentioned should have had the attention of a trained draftsman because they involved complex drafting, and were drafted in the Procedure Office only because the Office of Parliamentary Counsel was unable to draft them at all or to draft them within a reasonable time. The point was made at the time that an inefficient use of resources resulted when a trained draftsman was not available, in that Bills took longer to draft and the drafting in the final result might not be sound. There was concern that Senators were not being provided with as good a service as they ought to receive.

It was on this basis that the President of the Senate decided early in 1982 to place in the provisional appropriation for the Department of the Senate a sum to enable the services of consultant draftsmen to be made available to private Senators. The estimates were examined by the Senate's Standing Committee on Appropriations and Staffing. In its first report to the Senate[9], submitted in May 1982, the Committee explained that there had been an attempt 'to come to some arrangement with the Attorney-General whereby private Senators wishing to present Private Senators' Bills would be able to have those Bills drafted by the Office of Parliamentary Counsel with reasonable expedition . . . due to the inability of that office to draft Senators' Bills within a time which those Senators considered reasonable, and due to the consequent burden imposed upon the Department of the Senate by the drafting of those Bills, Mr President included in the draft estimates a sum of $15,000 for payment of a trained draftsman to draft Private Senators' Bills. The Committee has asked that expenditure of this money not be undertaken until the outcome of this further attempt to gain reasonable access to the Office of Parliamentary Counsel.'. The President, in response to the Committee's request, asked the then Attorney-General whether an officer of the Office of Parliamentary Counsel could be made available to draft all Private Senators' Bills and to give priority to those Bills. The

Attorney-General was unable to give the commitment sought. As a result, an appropriation was included in the Budget estimates for the Department of the Senate, in the Appropriation (Parliamentary Departments) Bill 1982–83.

The Senate was most fortunate in being able to gain the services of two highly qualified and experienced draftsmen. Both had had extensive service as senior officers engaged in parliamentary drafting before their retirement. It was considered that, as neither wished to take on any major workload in retirement, it would be appropriate to engage both on a part-time, daily rate basis. It was also envisaged that, if any proposed amendments to Bills in the Senate were judged by Senate officers to be of a complexity beyond the Department's capacity to produce, these also should be referred to the specialists for drafting.

After 18 months of access to the expertise of the consultant draftsmen, it is very clear that the Senate's initiative in providing this additional service to its private Senators has worked extraordinarily well. While some simple Bills and most amendments continue to be prepared within the Procedure Office, each consultant has drafted numerous Bills of great complexity, and has willingly given of his time and expertise in the drafting of some of the more complex amendments which have been sought by Senators. There is no question that private Senators are now being assisted in a way which, as elected members of the Parliament, they have every right to expect, but which, until these past months, it was beyond the capacity of the Government-employed Parliamentary Counsel and officers of the Department of the Senate to provide. The extent and complexity of both Private Senators' Bills and, in particular, amendments to Government legislation can only be expected to increase, as the service becomes more widely known.

Experience of the benefits already achieved from the access to experienced, professional draftsmen encourages the author to recommend the adoption of a similar practice, whenever the resources, of both finance and personnel, are available.

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1. Estimates Committee A *Hansard*, 7 September 1982, pp. 3–4; *and see* Estimates Committee A Report, Parliamentary Paper No. 320 of 1982, p.4.
2. Act No. 8 of 1970.
3. Senate *Hansard*, 23 April 1970, p. 1051.
4. Ibid., p. 1050.
5. Ibid.
6. Ibid., 7 May 1970, p. 1232.
7. Ibid., 22 April 1970, p. 1008.
8. In 1982, 15 Private Senators' Bills were introduced, while in 1983 – an election year which resulted in a change of Government – 12 Private Senators' Bills were introduced.
9. Parliamentary Paper no. 135 of 1982.

V. CLERK INTO MEMBER: GAMEKEEPER TURNED POACHER?

BY THE LORD HENDERSON OF BROMPTON

Clerk of the Parliaments, 1974–1983

When I was first created a peer, I was asked by a number of people whether I felt like a gamekeeper turned poacher or even whether I felt like a poacher turned gamekeeper. The fact that I was asked these questions – both, to me, inept – (sometimes by the same person) shows that there is some interest in what a servant of Parliament feels when he becomes a Member. And the Editors of 'The Table' think there is sufficient interest to justify a short piece on the subject.

Any Clerk would search for precedents before pronouncing on anything to do with Parliament. When I was a Clerk, I would have made the search myself and vouched for the accuracy of the information. Now that I am a Member, I take advice and I am told that in this century seven Clerks have become Members of one House or other in the UK Parliament. A Clerk of the House of Commons, Sir Gilbert Campion (1937–1948), was created a peer. Two Clerks of the Parliaments, Sir Henry Badeley (1934–1949) and myself (1974–1983) have been created peers. Two Clerks in the House of Commons, E F Wise (1908–1914) and Robert Rhodes James (1955–64), have been elected Members of that House and one Clerk of the House of Lords, Cuthbert Headlam (1897–1924), has been elected a Member of the House of Commons. Finally, L N Helsby, who had been a temporary Clerk in the Commons (1940–1941) was created a peer in 1968. There may be more but, so far as I am aware, none has recorded in any detail what it is like to have made the transition.

I must first state that, in my case, the transition was not immediate. I retired as Clerk of the Parliaments in July 1983 and I was not introduced as a peer until February 1984. In that interval, Parliament seemed remote and when I thought about it (which was not often) I found it hard to realise that I had ever been connected with it. This was due, I think, to two factors: one conscious and the other subconscious. The conscious factor was that I had long determined when I retired to make a new non-parliamentary life for myself and so I dissociated myself from interest both in the mechanics of Parliament and in politics. The subconscious factor was, I suppose, relief from responsibility and reluctance to resume it. But, when this strange thing happened to me, I found consciousness of Parliament returned together with a new sense of responsibility.

The consciousness of Parliament proved to be concerned with the matters discussed in it, not with the mechanics of it – so much so that I found myself seeking the kind of advice that I had been accustomed to give as a Clerk. Interest in the matters discussed occluded knowledge that had been second nature to me as a Clerk. The new sense of responsibility proved to be an obligation to pursue issues in Parliament of a non-party political nature that I thought, or was persuaded to think, of some importance.

This occlusion seems to me now – as it did before – to be the principal justification for the great profession of Clerk. Members of Parliament are so absorbed in the issues that they need outside and impartial advice about the frame of reference within which they operate. They have a need to refer to and they need, on occasion, to be reminded of the rules and customs by the referee as custodian and expositor. I leave aside the administrative function not because it is unimportant – far from it – but because it is not the function of the Clerk that the Member is most conscious of. It takes much of the time of the Clerk but the Member takes it for granted until things go wrong, which is not often. As a new Member, I may say that the machine seems to have the quality of a Rolls.

The Clerk performs this active and reactive role by reason of his professional impartiality (whatever his private views may be) on public issues and his lack of party-political involvement. On the other hand, unless he can enter into and understand what a Political Party or a Private Member wishes to achieve, his advice may be unproductive or, even, counter-productive.

The Member, by contrast, may think he knows the rules and customs. He will have a general awareness of them but they will be subordinate, whereas for the Clerk they are dominant. Even where the Member concerns himself specially with procedure he is often, surprisingly, wrong because he will tend to invoke procedure in aid of an issue that he is promoting.

As a Member, I have sought and received advice in the short space of two months from Clerks at the Table, other Clerks and from the Editor of Debates on a Maiden speech; amendments to bills; relations with Ministers; Questions and Motions; corrections to Hansard; and on a letter to 'The Times'. In each case, I could have acted without advice but undoubtedly received help and reassurance as a result of consultation.

I suppose the aspect of life as a Member that most Clerks are least familiar with is unofficial Parliamentary activity, by which I mean everything that a Member does other than in the House or a Committee of the House. As a Cross-Bencher in the House of Lords, I still know nothing at first hand of party-political or constituency activity but I very soon found myself lobbied, and engaged in All-Party Groups of

Members of both Houses on a variety of subjects. Nothing, of course, is entirely free of party-political overtones or undertones but it is agreeable, though not at all surprising, to find how little party politics enters into discussion in All-Party Groups and how much constructive thinking emerges which eventually finds its way onto the floor of the House or in Committee.

Perhaps it may be useful to illustrate the different satisfactions that a young Clerk and a new Member can find in Parliament. I have deliberately chosen an example of early work as a Clerk to compare to early work as a Member. There could be no valid comparison between work as head of the Parliament Office and work as a new Member of the House.

As a brand-new Clerk, I was asked by the Clerk of the Parliaments in 1954 to write a paper on the privilege of the House in relation to the publication of its proceedings. The Standing Orders as a whole were in the course of radical revision. There was general agreement that the relevant Standing Order could not remain as drafted but there was no agreement as to its revised wording. I came up with a conclusion that found favour and it remains to this day embodied in S.O. 13.

As a brand-new Member, I took part in the proceedings of a Public Bill from start to finish in the House. Thought I did not achieve any amendment to the Bill, I did (with other Peers) extract from the Government undertakings of some importance – or, perhaps, I should say more modestly that the Government vouchsafed those undertakings to the House partially, at least, as a result of amendments I tabled or spoke to.

I offer these random and, maybe, jejune reflections for what they are worth after thirty years as a servant and two months as a Member of the House of Lords separated by an interval of six months. Have the Clerk and the Member a symbiotic relationship? Perhaps they have in the strict sense that they live attached to each other, or one as a tenant of the other, and contribute to each other's support. But of one thing I am sure: the relationship is not that of gamekeeper and poacher.

VII. THE AUSTRALIAN JOINT SELECT COMMITTEE ON ELECTORAL REFORM

BY I.C. HARRIS

Clerk Assistant (Committees) Australian House of Representatives

Appointment of the committee

The double dissolution of both Houses of the Australian Parliament and subsequent general elections in February-March 1983 resulted in the formation of government by members of the Australian Labor Party, whose platform contained as a central issue the reform of the Australian electoral system. An attempt had been made in the 32nd Parliament, dissolved on 4 February 1983, to establish a Joint Select Committee on the Electoral System. The Australian Senate agreed on 26 November 1981 to the appointment of a joint committee to inquire into and report upon all aspects of the conduct of elections for the Parliament of the Commonwealth and matters related thereto, including, without limiting the generality of the foregoing, public funding and disclosure of sources of funds, electoral advertising, franchise and registration of voters, voting systems, polling procedures, legislation governing, and operation of, the Australian Electoral Office, ballot paper format, media coverage and the allocation of time by the Australian Broadcasting Commission, and electoral distribution, procedures and systems.

The Senate also agreed to the somewhat unusual proposition that, as soon as practicable, the President shall authorise public advertisements inviting submissions in relation to the matters referred to, such submissions to be lodged with the Clerk of the Senate on or before 10 March 1982, and that any such submissions be presented to the Senate, and forwarded to the committee in the event that the House of Representatives agrees to the establishment of the committee. This proposition was agreed to on division, with the support of (then) opposition, third party and independent senators. In the House of Representatives, consideration of the message from the Senate seeking concurrence to the appointment of the committee was, on 16 February 1982, made an order of the day for the next sitting. The order had not been called on by the time of dissolution.

Shortly after Parliament resumed, the House agreed on 4 May 1983 to the appointment of the Joint Select Committee on Electoral Reform to inquire into and report upon all aspects of the conduct of elections for the Parliament of the Commonwealth and matters related thereto, including –

(a) public funding and disclosure of funds;
(b) franchise and registration of voters;
(c) voting systems;
(d) polling procedures;
(e) legislation governing, and the operation of, the Australian Electoral Office;
(f) ballot paper format; and
(g) electoral distribution, procedures and systems.

The Senate agreed to the appointment of the committee on 11 May 1983. The committee was required to report by 31 August, less than 16 weeks after its appointment. As both Houses were scheduled to rise for a short 11 day adjournment on 25 August, the time for the committee's deliberations was further compressed. A short extension was granted by both Houses, and the committee presented its first report on 13 September, just 4 months after the resolutions of its appointment were agreed to.

Conducting the inquiry

The committee first met on 17 May 1983. It consisted of 4 Senators and 5 Members of the House of Representatives. One of the Senators was to be nominated by any minority group or groups or independent Senator or independent Senators. The remaining 8 committee members were drawn from government or coalition opposition groups. The membership comprised a vast extent of experience in electoral and governmental matters, and included 2 former cabinet Ministers (one the immediately preceding Leader of the Government in the Senate, the other soon to be Deputy Leader of the National Party of Australia), a former State Premier with a personal history of electoral reform, and 2 former State secretaries of the major political parties. The committee elected as chairman Dr R.E. Klugman, MP, a former shadow Minister with a record of non-subdued independence.

Advertisements inviting submissions were placed extensively in the metropolitan, rural and ethnic press. Given the committee's early reporting date, a short period of time only was allowed for the lodging of submissions. A total of 212 submissions was received from a wide range of Australian citizens, including Ministers, Premiers, State and Federal Members of Parliament, associations, political parties, interest groups and individuals.

The more normal process of conducting public hearings in Australia is for committees to take evidence in major areas or centres of special interest. This has the added advantage of bringing the committees of the Parliament to the people. However in this instance, due to the committee's tight schedule for reporting and the greater availability of support facilities in the vicinity of Parliament House, the committee decided to

meet whenever possible in Canberra, which meant frequent visits by members to a harsh (by Australian standards) winter inland climate. The decision also involved the transporting of witnesses to Canberra. The committee met 15 times in Canberra and once, during airline industrial disruption centred on Canberra, in Sydney.

The committee's deliberations were characterised by co-operation and compromise. All major political parties made submissions to the committee addressing the major areas of inquiry. With very few exceptions, consensus was established on these areas. In many instances members, having made their (often opposing) philosophical positions clear, worked towards establishing practical solutions to the issue before the committee.

The philosophical differences were outlined in a number of minority reports added to the report. In his preface to the report the chairman described the committee's deliberations as examples of rational discussion, and thanked non-government members for co-operating in helping to design reasonable methods of settling questions which might have been expected to produce extreme polarisation of viewpoints.

Not the least of the committee's activities in terms of consumption of time was a section by section analysis of the existing electoral legislation – an Act of 219 sections and 94 pages. The committee suggested a multitude of amendments to the Commonwealth Electoral Act ranging from machinery changes to major substantial alterations of Australia's federal electoral system.

Public funding for election purposes

One major change recommended was the introduction of a system of public funding for election purposes, with the basic amounts for public funding being based on the primary postage rate, and indexed for increases in the basic postal rate:

- at a double dissolution or combined House of Representatives and half Senate election, public funding be provided at the rate of three postage stamps per valid first preference vote.
- for a House of Representatives election (and by-elections), the amount be equivalent to two postage stamps per valid first preference vote.
- for a half Senate election, the amount be equivalent to one and a half postage stamps per valid first preference vote.

All parties and candidates wishing to receive public funding should be registered. Those who received 4% or more of the formal first preference vote were to be eligible for public funding. While the linkage between the basic rate of public assistance and the postal rate was based on the concept of enabling effective written communication with voters, there was to be no public control over the ways in which the financial

assistance was used, but funds received must not exceed election related expenditure. The cost to revenue of the March 1983 election would have been $6.5M at the then basic postage rate, $7.5M at the current rate. However, the scheme is not to operate until the next election.

Public disclosure of income and expenditure

For those who wished to avail themselves of public assistance for electoral purposes, the committee recommended the institution of a system of public disclosure of financial income and expenditure. Donations for federal election purposes in excess of $200 to a candidate or constituency organisation or $1000 to a party organisation and the total amount of donations were to be disclosed. Special provisions related to the non-acceptance of anonymous donations. Donations in kind were to be assigned monetary values. The committee also recommended that there should be public disclosure of the following items of electoral expenditure:

- cost of television, radio and newspaper advertising (including production costs).
- costs of authorised material.
- costs of producing and displaying advertising at theatres, etc.
- fees to consultants, etc.
- costs of opinion polls.

Voting systems

The committee also examined the voting systems operative for elections for each House of Parliament, and concluded that the interests of balancing responsible government and democratic representation in Australia were best served by continuing to have the Senate elected on the basis of State-wide proportional representation and the House on the basis of single-Member constituencies returning representatives elected on a preferential system of voting. However, the committee recommended modifications to procedures currently operating in the voting systems for both Houses. The aim of the committee was to ensure that electors who wished to cast a valid vote were assisted in having that vote considered valid.

This involved for the Senate the introduction of a 'list' system whereby one tick (√) would represent a valid vote according to a registered party or group list with the retention of the full preferential system as an option on the one ballot paper so long as a vote was not considered invalid because of a clerical error i.e. voter intention was ascertainable and 90% of the preference squares were complete. Informality in the Senate vote, with large numbers of candidates standing for election in all States, has been a cause for concern. Surveys

of the 1977 and 1983 invalid Senate votes indicated that over 75% of informal votes were invalidated by a minor, unintentional error.

For vacancies (both general elections and by-elections) in the House of Representatives, the committee recommended that the existing system be retained with the modification that a vote be considered formal as far as its intention is ascertainable provided that all except one of the squares are numbered.

The committee's recommendations concerning voting systems provided a fine example of its independent approach in tackling issues before it. While the committee had a majority of government members, and government policy was for the adoption of optional preferential voting, in the light of evidence and reasoning during its deliberations the final recommendations resulted in a major review of the government's position.

Party affiliations of candidates will appear on ballot papers in the future to assist electors in casting their vote.

Compulsory voting

The committee also recommended compulsory enrolment for all Australians, removing distinction in the treatment of Aborigines, for whom enrolment hitherto had been optional. This will also bring into effect the compulsory voting provisions of the electoral legislation, which may lead to administrative difficulties.

Electoral redistributions

Procedures connected with electoral redistributions were also closely studied by the committee. The process whereby representation in the House of Representatives is achieved is prescribed in sections 24 and 29 of the Australian Constitution. Section 24 declares that:

- the House of Representatives be composed of Members directly chosen by the people of the Commonwealth
- the number of Members be as nearly as practicable twice the number of Senators
- the number of Members chosen in the States be 'in proportion to the number of their people' according to a quota determined by dividing the latest population figures for the Commonwealth by twice the number of Senators.

Where a redistribution was necessary in a State, a proposed redistribution was prepared by distribution commissioners, specially appointed for the purpose, which when complete was forwarded to the Minister. Previously, the proposed distribution required approval by both Houses of the Parliament. Parliament could not amend the proposed distribution but could amend the proposed names for any electoral division for the Governor-General's consideration if the commissioners proposed

names. In the event of either House passing a resolution disapproving any proposed redistribution, or negativing a motion for the approval of any proposed distribution, the Minister could direct the distribution commissioners to propose a fresh distribution of the State into Divisions. This was the cause in 1912, 1922, 1934 and 1968.

Where a redistribution was required by virtue of alteration in the number of Members of the House of Representatives to be chosen for a State and the proposed distribution has not been approved and proclaimed at the time of the next ordinary general election, i.e. at or towards the end of the period of 3 years from the first meeting of the House, then previously the State in question was required to vote as one electorate – known as an election at large. However, where there was no alteration in a State's entitlement, in the case of an uncompleted redistribution for electoral imbalance within a State or in any event where there is a premature dissolution of the House of Representatives, the distribution previously applying was to be used.

The committee recommended the establishment of the Australian Electoral Commission as an independent statutory authority, part of whose responsibility was to be administration of the public funding and disclosure provisions and electoral redistributions.

The committee examined the need for parliamentary approval of proposed distributions. There have been instances where Parliament's lack of action prevented implementation of redistribution proposals. Events in 1975 provided a major example of the effect of parliamentary involvement in the distribution process. In 1975 a distribution was conducted for all States except Western Australia which had been redistributed in 1974. Motions approving the proposed redistributions were agreed to by the House and rejected by the Senate. The government, considering the redistributions to be of urgent necessity, submitted the proposals in the form of bills with respect to each State, each of which twice passed the House and was twice rejected by the Senate. There was strong support within the committee for provision to be made for the commissioners' report proposing distributions to be presented to both Houses of Parliament and to be subject to approval of both Houses. If Parliament failed to deal with the proposed distribution within a specified time (not expressed in sitting days) it would be automatically operative. If either House disapproved the proposed distribution, the commission would re-examine its proposals in the light of points raised in debate in both Houses, and any subsequent decision by the commission on the distribution would be final. However, the majority of the committee believed that, to reinforce to the maximum possible extent the independence of the commission and to ensure as much as possible the removal of its conclusions from the political sphere, the conclusion of the Electoral Commission with respect to redistributions should be final. The committee also recommended a

solution to provide a temporary redistribution to obviate any possibility of an election at large.

Increase in size of Parliament

The committee also considered an increase in the size of the Parliament.

Chapter 1 of the Australian Constitution concerns 'The Parliament'. Some of the provisions of Chapter 1 relate to the election of the first Parliament or to the early years of the federation, and can be regarded as transitional or capable of future adaptation, the 'transitional' provisions containing the words 'until the Parliament otherwise provides'. Other provisions of Chapter 1 were intended to have more enduring effect. Among the transitional provisions of the Constitution were those fixing the size of the Senate and the House of Representatives. It was obviously envisaged at the time of framing the Constitution that provision be made for increases in the size of the Parliament. Initially, the Senate was to consist of 36 Senators, the House of Representatives to have 75 Members. Parliament was authorised to alter the number of Senators for each State, so long as each original State retained equality of representation (section 7), and to alter the size of the House of Representatives (section 27) subject to the nexus provision that the number of Members be as nearly as practicable twice the number of Senators (section 24) and so long as each original State retained at least 5 Members (section 24). The Constitution Alteration (Parliament) 1967 proposal, intending to remove the nexus provision of section 24, was submitted to, and rejected by, the electors. The argument not to disturb the relationship between the Senate and the House of Representatives prevailed. In 1949 the size of the Senate was increased to provide for 10 Senators from each original State and the House of Representatives to as near as practicable to 120, and in 1973 legislation was introduced to provide Senate representation for the 2 mainland territories. However, territorial Senators are not counted for the purpose of the calculation to ascertain the State representation entitlements in the House.

The committee received several submissions and took evidence from several persons advocating an increase in the size of the Parliament, the main basis being preservation of the elected/electors ratio.

The arguments advanced to the committee by those wishing to maintain a ratio between electors and representatives were:

- that there had been no real increase in the size of Federal Parliament since 1949 while average House of Representatives enrolments have risen from 39 948 electors in 1949 to 74 989 in 1983
- that a larger Parliament would strengthen the operation of the

parliamentary system – a larger backbench would strengthen Parliament's independence in relation to the Executive. There would be a larger talent pool from which to choose the Executive
- that access to electors to political representatives would be more immediate
- the growing involvement by the federal Parliament in many additional issues since 1949. This more diverse range of responsibilities has not only resulted in a larger Executive but has put greater responsibility and work loads on the backbench members of the Parliament
- that the developing committee systems of both Houses, extremely important in our democratic system, require an increasing number of members. An increase in the size of Parliament would enable the systems to work more smoothly, and members would be more able to concentrate on becoming subject specialists
- the cause of 'one vote one value' would be advanced with smaller electoral divisions and more members.

The committee recognised that to adopt the cause of an increase in the size of the Parliament will never attract media and (possibly therefore) might not attract public support. Nonetheless, the committee believed that it had a duty to report with objectivity on matters of principle such as this. The majority of the committee therefore recommended that the size of the Parliament be increased by increasing the number of Senators to which each original State is entitled to 12, with a corresponding increase in the size of the House of Representatives (on the last population figures, a likely increase of 23).

Matters for further examination

Towards the end of the period in which the committee was required to report, several matters were identified for examination at greater length. These matters were:

- the broadcasting and television provisions concerning elections
- indirect public funding by means of the provision of 'free' radio and television time
- standards governing political advertising
- provisions of the Commonwealth Electoral Act concerning defamation of candidates
- industrial elections
- tax deductibility of political donations.

Shortly before the committee's report was presented, both Houses agreed to amendments to its resolutions of appointment to enable its members to hold office as a committee until the House of Representatives is dissolved or expires by effluxion of time, and to enable it to

report from time to time. The committee was thus empowered to retain its corporate existence after presentation of its initial report, and examination of the identified issues is continuing.

Implementation of recommendations

In presenting the committee's report, the chairman expressed the hope that it would provide a good basis for extensive amending legislation. The government in fact accepted the vast majority of the committee's recommendations in legislation passed before the Houses of Parliament rose for the summer adjournment in December 1983.

VIII. DESIGNATING THE OFFICIAL OPPOSITION, ALBERTA: A SPEAKER'S NIGHTMARE

BY VAUGHAN MYERS

Legislative Assembly, Alberta

Introduction

On 2 November 1982 the Alberta Electorate returned Premier Peter Lougheed's Progressive Conservatives to power with the largest House majority in Alberta's legislative history. Surrounded by seventy-five Tories, only four members would huddle in opposition. Of these four, two were affiliated with the New Democratic Party (NDP) and two had no party affiliation (the 'Independents'). Prior to disolution, these two Independents had sat as Social Credit Members, and Raymond Speaker, M.L.A. was the recognised Leader of Her Majesty's Loyal Opposition. While Premier Lougheed was basking in the aftermath of this incredible landslide, it is doubtful that even he forsaw the consequences of his victory. For not only would the Premier face one of the smallest oppositions in history, he would also face an opposition preoccupied with their own status. For this opposition was not opposing him: their sights were set on each other. The Independents and NDP had squared off against each other for the title of Her Majesty's Loyal Opposition and Leader of Her Majesty's Loyal Opposition. The increased salary, budget, prestige and special perks accompanying these two positions were the prize; and the research race was on, with submissions and counter-submissions.

Before beginning our journey into the statutes and parliamentary precedents, it is important to note the handicap the author encounters. While there is only limited resource material on the historic development of the two positions, there is even less with respect to the provincial legislative precedents. Not only did the Speakers of the various legislatures not give written reasons for their decisions, but in many of the relevant precedents there was no Hansard or written record to record the oral decisions. This has left many of the precedents to stand on their own, unexplained. Some of the submissions presented by the two sides were buttressed by the local newspapers of the day, but the author has found this an inaccurate and unsatisfactory method of supporting propositions. All that can be done is to present the most authorative reporting services and where these are unavailable, the contemporary news reports.

The development of Her Majesty's Loyal Opposition and the Leader of the Opposition

The history of Her Majesty's Loyal Oppositions stems from the Parliament of Great Britain. It appeared in different forms at different times and had different functions. The term 'loyal opposition' first appears in the reign of Elizabeth I.[1] The 'loyal opposition' was indeed 'loyal'; if not, the sovereign would deal swiftly and severely with those members who were 'over critical'. Indeed, 'as long as the sovereign exercised the right to punish critics in parliament, and ultimately to call out an army against them, a constitutional opposition in the modern sense could not develop'.[2]

The role of the opposition in Queen Elizabeth's reign was limited.

> In the general model of 'loyal opposition' that Elizabeth I posited for the House of Commons, Members of Parliament were permitted to present private, local and special grievances, petitions and bills in Parliament. It was recognized that Members of the House of Commons could safely oppose (and propose) on local and private matters. No member could presume with safety however to critize the government (i.e. the Crown) on any 'Great Matters of State', that the Crown chose to define as its perogative. Many great questions of public and national policy were to be considered the Crown's preserve, and were entrenched in its prerogative. Several 'Great Matters of State' such as the royal succession, the church, and foreign policy were, according to the Crown, denied to the Commons up to the end of Elizabeth's reign and, with varying degrees of ambiguity, until the Revolution. To oppose on these 'Great Matters of State,' was to trench on the royal prerogatives, according to Elizabeth, and therefore put Members of Parliament in danger of violent punishment.[3]

Punishment was indeed swift and violent, as exemplified by parliamentarian Wentworth's commission to the Tower. As Macaulay noted, 'It was . . . as safe to be a highwayman as to be a distinguished leader of the opposition . . .'[4]

It is important to note that there was 'nothing in parliamentary practice or in the British constitution . . . [that] assumed or required the presence of 'an Opposition'.'[5]

> There was no recognition in theory or in fact that local grievances or petitions were intrinsically 'in opposition' or in tension with the Crown. The idiom of the day spoke of 'opposition' to a Bill, a policy, or a ministry. A candidate encountered 'opposition' in an election. Those in the House intent upon wresting power from the Ministry were never designated as 'the Opposition' . . . other terms describe them: 'the Country party' or the 'discontented party', 'malcontents' or 'grumbletonians' were the appelations in commonest use. But none of these implied that opposition was a permanent institution of government. Nor was systematic party opposition frequent.[6]

While it appears that the City of London had paid parliamentarians acting as a pressure group,[7] this was the closest one got to an 'organised opposition.' Thus, in the 16th, 17th and early 18th century, no opposition as recognized today existed. The role of Parliament changed after the civil war and restoration. The period between 1724 and the beginning of the 19th century reflected the importance of Parliament, its

powers slowly increasing. Further, as Parliament's powers grew, its internal organization began to solidify. It is during this period that we see parliamentarians speaking on all issues, such as national and foreign policy, rather than strictly local matters.

While some form of opposition was legitimate in this period, it is clear that 'party opposition' was not. It seems clear that organised opposition to defeat government was acceptable, but only until that point, after which the opposition ought to disband.

> . . . throughout the 18th century most references to party as such were unfavourable, although some echoed Bolingbrokes' judgement that the efforts of a virtuous opposition were vital until, and only until, it triumphed.[8]

Therefore, while opposition to certain measures was acceptable, organised party opposition was not. The notion that 'The Opposition' could be the alternative government only developed with the 'party system'. In the 17th century, the notion of 'party' had few, if any, adherents.

> There had been baronial cliques, but never a parliamentary party, because parliament had possessed no esprit de corps and no self-consistency; it was a mere conference in which things were done by kings or by baronial factions.[9]

Sir Ivor Jennings in *The British Constitution* outlines the history of 'parties' in Britain. It appears that it was not until the beginning of the 19th century that party lines began to harden and independents became fewer in number.[10] It was not until 1846 that the Whigs began using the name 'Liberals' and 1832 for the Tories to adopt the term 'Conservatives'. Further, the Conservatives did not establish a central office until 1863 and the Liberals until 1865.[11]

> With the development of a strong and disciplined two-party system after the Second Reform Acts, Her Majesty's Opposition became the alternative government, but now normally unable to displace the Government during the life of Parliament. Its appeal must be to the electorate; and from the late 1860's the party leaders tended to base their campaign appeals on one or two issues. A generation later these were becoming 'programs'. The party contest of British representative democracy took form, an essential element of which is official opposition – opposition with a capital 'O'.[12]

It was not until much more recently however, that the party system 'in opposition' was recognised by the leading authorities on parliamentary procedure. In May's 13th Edition (1924), the author made no reference to 'official' or 'loyal' opposition or to the leader of the opposition. In fact, the only reference close to the topic of opposition was about seating arrangements for the 'front bench of the opposite side'.

> The front bench on the opposite side, though other members occassionally sit there, is reserved for the leading members of the opposition who have served in offices of state.[13]

This definition was relied upon in 1940 by the Speaker. In that year, Prime Minister Churchill had formed an overwhelming majority gov-

ernment by bringing into his cabinet Members from all parties. It was clear however, that the Independent Labour Party was the second largest party in the House, and the Liberals the third largest.[14]

After citing the above passage from May with approval, the Speaker stated:

> The qualifications thus appear to be twofold, being leading Members of the Opposition, and being ex-Ministers. The present circumstances are, as far as I know, unprecedented. It cannot be said that there is now an Opposition in Parliament in the hitherto accepted meaning of the words; namely, a party in Opposition to the Government from which an alternative Government could be formed. The principle, if not the only qualification which remains is that of being an ex-Minister. To meet these unprecedented circumstances, it is necessary to make some change in the usual custom, and I think the arrangement which would most nearly conform to the custom of the House, which I read just now, and having regard to the fact that there is no Opposition in the terms which I have described, would be that any ex-Minister outside the present Government, that is, an ex-Minister of any party, should be, if he chose, entitled to sit on the Front Opposition Bench. It will be noted, in the passage which I quoted from May as regards the Front Opposition Bench, that other members occasionally sit there. In recent years it has been the practice of the Opposition to invite a few prominent backbenchers to sit on the Front Opposition Bench, and I see no objection to that practice being continued as regards those who have already been invited to fill those positions. As I understand these choices and Members have been settled for the Session only, they can from time to time be re-considered.[15]

It appears from this precedent that two principles emerge. The first, which it is submitted is tenuous, is quoted in May's 15th edition (1950):

> The prevalence (on the whole) of the two-party system has usually obviated any uncertainty as to which party has the right to be called the 'Official Opposition'; it is the largest minority party which is prepared, in the event of the resignation of the Government, to assume office.[16]

May cites the 1940 precedent in support of this proposition. It is rather peculiar that a precedent which held that the largest opposition party (ie. the Independent Labour Party) was not entitled to recognition as the 'Opposition' or their leader as 'leader of the Opposition' should be cited in support of such a broad proposition. It is difficult to know whether the Speaker held as he did because of the Independent Labour Party's size or because of any unrecorded statement to the Speaker or government that the Independent Labour Party was not willing to attempt to form a government in the event of the fall of Churchill's government. Another reason may be that they stated that they would not oppose his government. One interpretation is that the Speaker held as he did because of the group's size, and this interpretation is supported by A.R. Mukherjea.

> On the other hand, in 1940, a small party lead by Mr Maxton, when there was no other party in opposition, was not recognised as the official opposition. Three things are, therefore, necessary before a party can be recognised as, and given the privileges . . . of the Official Opposition. It must be organised Opposition in the House, it must have the largest numerical strength, and it must be prepared to assume office. Where there are numerous small parties or groups, it cannot always be said that these three tests are

satisfied. In such circumstances the party which has the largest numerical strength among the Opposition Parties need not necessarily be recognised as the Official Opposition and its leader given the status of Leader of the Opposition unless all the parties unite as a single Parliamentary Opposition Party. Moreover, this is quite reasonable in that the other Opposition Parties would be deprived of the right of selection of subjects for debate and other privileges of the Opposition Parties.[17]

On the other hand, it is possible that the Independent Labour Party made an unrecorded statement to the Speaker or government that they were not willing to oppose the government or willing to form an alternative government. This position is possibly supported by Jennings, as it appears that between September 1st and 7th of 1939, 'the Opposition agreed not to oppose'.[18] However, this is not the period in which the Speaker's decision was made. It also appears the two members who took over the opposition leader's duties (by asking the questions as to the business of the House, etc.) were 'wholehearted supporters of the government'.[19] The only other evidence opposed to this view is the actual debate itself which appears to suggest the opposition was in fact demanding opposition status.

Out of this confusion, it is suggested that the 1940 UK precedent stands for the following two propositions:

(1) that to be recognised as the 'Opposition' in the classic sense, the party or group must be prepared to assume office in the event of the collapse of the government; and

(2) that there need not necessarily be an 'Opposition' or 'leader of the Opposition'.

While this precedent has some value in assessing the Alberta situation, it is questionable whether the Speaker in 1940 needed to restrict to 'parties' his decision as to who is entitled to form the opposition. It is submitted that he did not and that Mukherjea is correct when he uses the terms 'organised opposition in the House' and 'groups'. As we shall see later, there is no logical reason to exclude 'groups' from forming the 'Opposition' despite the presence of party members in opposition. Further, Alberta precedents have endorsed the view that 'independents' may form the 'Opposition'.

The statutory and constitutional context of the Speaker's decision

The decision as to who shall form Her Majesty's Loyal Opposition rests with the Speaker.

If any question arises as to which party in opposition has the greatest numerical strength, the Speaker has been given the power to decide the issue.[20]

It is submitted that while the author is correct in stating that it is within the Speaker's jurisdiction to decide who shall form the opposition, he has incorrectly incumbered his statement by prefacing it with the condition 'if any question arises as to which *party* in opposition has the

greatest numerical strength.' As will be pointed out later, Speakers have chosen groups of independent members as Her Majesty's Loyal Opposition and independent members as leaders of Her Majesty's Loyal Opposition. Further, May himself cites the situation where there are 'numerous small parties or groups, it cannot always be said that these three tests [to establish the official opposition] are satisfied',[21] implying that one of these 'small groups' may be able to meet the three tests. Whatever the interpretation, it will be shown that independents have formed groups and have been recognised as the 'official opposition' with an independent 'leader of the official opposition'.

The Speaker's constitutional power to choose Her Majesty's Loyal Opposition and leader thereof stems in part from his role as arbiter of a supreme body. The power to intervene in a Speaker's decision is exercisable by a court in only a limited number of situations. It is quite clear from the cases of *Stockdale* vs. *Hansard* (1839), *Bradlaugh* vs. *Gossett* (1884) *British Railway Board and others* vs. *Pickin* (1974) that the courts will not interfere with matters solely relating to the proceedings of either House. It is suggested that the designation of Her Majesty's Loyal Opposition and leader thereof is an internal proceeding wholly within the Legislature's jurisdiction. As this function is exercisable by the Speaker, it is suggested his decision is final and unappealable.

An interesting but spurious submission was made by the NDP in regard to this. The submission began by stating that the Alberta statutory scheme had changed since 1948 and 1959 (two situations where no member was recognised as the leader of Her Majesty's Loyal Opposition and all opposition members were recognised as Her Majesty's Loyal Opposition.) The NDP submission relied on the Legislative Assembly Act, RSA 1980, c.L-10, s.53(4) which stated the following.

> s.53(4) There shall be paid to the member of the Legislative Assembly who is the leader of Her Majesty's Loyal Opposition . . . a salary at the rate of $32,000 a year.

The NDP argued that the term 'shall' meant:

(1) That the salary must be paid to the leader of Her Majesty's Loyal Opposition, dictating that a leader of Her Majesty's Loyal Opposition must be chosen and that;

(2) only one leader of Her Majesty's Loyal Opposition could be chosen.

The NDP then cited a number of other sections of the Act which contemplated the existance and referred to a leader of Her Majesty's Loyal Opposition and concluded that one must be chosen. The NDP further claimed that the Legislative Assembly Act formed part of the 'Alberta Constitution' and as such was binding on the Speaker. They submitted that all the statutes referring to elections recognised 'parties'

and that only party leaders could be recognised as the leader of Her Majesty's Loyal Opposition. Again, they claimed the Speaker was constitutionally bound to recognise their group as Her Majesty's Loyal Opposition and the NDP leader as the leader of Her Majesty's Loyal Opposition.

The submission in this respect by the NDP was clearly incorrect. There is no legislation in existence to assist the Speaker in his decision. While the NDP claimed that there was 'special recognition' for 'parties' in other statutes in relation to the electoral process, the statutes apply as well to independent candidates. Also, the NDP contention that the Speaker was bound by the 'Alberta Constitution' to recognise a leader of Her Majesty's Loyal Opposition was stretching the Legislative Assembly Act beyond recognition. Again, there is nothing specific in the Act to dictate that a leader must be chosen. Further, even if the NDP submission was correct and the Speaker had to choose a leader, there would be nothing to stop the Speaker from recognising one leader one week and another leader the next week. This power to 'split' the position exists and will be examined later.

Next, the NDP submitted that the Speaker was bound by the Alberta Constitution to recognise a leader of Her Majesty's Loyal Opposition. This submission was unsupportable as the Legislative Assembly Act is not the 'Alberta Constitution'. While it could be argued that the Act is a 'quasi-constitutional' document, it is clear that the only position in the whole province which is unalterable by unilateral provincial authority is the office of the Lieutenant Governor.[22] Further, the supreme power of the provincial legislature as recognised in *Hodge* vs. *The Queen* (1883) 9 A.C. 117, clearly shows that the legislature is supreme in this sphere and may do anything it wishes within its jurisdiction.

It is further arguable that there exists specific legislation allowing the Speaker to make any decision which he deems appropriate. Section 33 of the Alberta Legislative Assembly Act reads:

> In the application of the Financial Administration Act, The Public Service Act or any other Act with respect to
> a) the officers and staff of the Legislative Assembly and
> b) revenues and expenditures of or relating to the Legislative Assembly, the Speaker and the Clerk of the Legislative Assembly have the powers, duties and functions of a Minister and a Deputy, respectively.

This section clearly covers the 'expenditure' involved in paying the leader of Her Majesty's Loyal Opposition as well as the extra research funds relating to Her Majesty's Loyal Opposition. Therefore, the Speaker has express statutory power to do what he deems appropriate with respect to the salary of the leader of Her Majesty's Loyal Opposition and the special funds made available to Her Majesty's Loyal Opposition. This legislation may not cover the non-recognition of a leader of Her Majesty's Loyal Opposition, as the Act does not define

what 'officers' or 'staff' are. Would this include the leader of Her Majesty's Loyal Opposition? While the question is interesting, it is moot, for the Speaker clearly has the constitutional power not to recognise a leader of Her Majesty's Loyal Opposition.

The question of status: independents vs. party

It would be fair to state that the major issue in debate between the two groups involved the question of party vs. independent status. How this issue was resolved by the Speaker would undoubtedly be the cornerstone of his decision.

A. *The statutory provisions*

As stated earlier, there is no specific legislation with regard to recognising Her Majesty's Loyal Opposition and leader thereof. Further, there are no specific provisions that indicate party status is to be preferred to independent status.

The NDP submitted that the 'statutory scheme' had changed since the earlier precedents relied upon by the Independents and that greater emphasis on 'parties' gave the NDP a preferred status over the Independents.

On review of the statutory provisions relied upon to support this contention, it appears to be unfounded. The Legislative Assembly Act remains relatively silent with respect to the issue of parties' status, with the exception of section 60, which works against the NDP position and which will be dealt with later. The next Act relied upon to support this proposition is The Election Act, RSA 1980 c. E-2. This Act governs the conduct of elections. The sections referring to 'parties' are sections 79, 129, 133, 157 and 159. Section 79 sets out how the ballots are to be printed, with reference to the name of registered political parties beside the candidates, or Independent printed where the candidate has no such party affiliation. Section 129 restricts advertising by political parties, registered political parties, candidates and official agents of candidates on the day preceeding polling day and polling day. Section 133 (1) sets restrictions on political advertising but allows the names, colours and logos of political parties and the names of candidates. Section 157 sets out the penalties for breach of section 129, and section 159 sets out offences and penalties as well as exceptions involving the giving of food and beverages to electors.

Throughout the whole Act, the provisions relating to 'parties' are equally applicable to independent candidates with the exception of section 133, which allows party colours and logos on political advertisements. To claim that this section gives parties 'preferred status', when it is contained in an Act with a wholly different purpose than to choose Her Majesty's Loyal Opposition and leader thereof, is untenable.

The final Act relied upon by the NDP to support their 'preferred

status' claim was The Election Finances and Contributions Disclosure Act, RSA 1980, c. E-3. This Act governs the collection of election contributions and a disclosure of election contributions and finances. This is the Act under which political parties may register and defines 'registered party' as a political party registered under the Act. Again, while this Act refers to political parties, it also refers to and governs the election financing of Independent candidates. Section 15 allows a higher limit of campaign contributions to a party than to individual constituency associations and registered candidates. The collection provisions regarding election finances are equally applicable to registered parties, registered constituency associations and registered candidates. Section 35 gives registered parties six months after polling day to file financial statements with the Chief Electoral Officer and three months for registered candidates. Finally, section 40 allows a higher maximum penalty to be levied against a registered party than to a registered candidate for breaches of section 34 and 35.

It is again submitted that this Act is not applicable to the question at hand, that being who to recognise as Her Majesty's Loyal Opposition and leader thereof. The Act's purpose is not even remotely concerned with this question. Further, the Act treats registered parties, registered constituency associations and registered candidates equally, with the exception of the above mentioned sections. While the Act takes cognizance of the fact that registered parties have more candidates and allows higher contributions from single sources than it does to individual registered candidates, it also allows higher penalties for breaches of the Act's provisions. While this may be a 'preferred' status for campaign purposes, it is submitted that this must be confined to this Act alone. Nowhere does the Act infer that 'party' designation has any bearing on the Speaker's decision to recognise Her Majesty's Loyal Opposition and the leader thereof.

As was referred to earlier, section 60 of the Legislative Assembly Act raises problems for the NDP. It reads as follows

Opposition Party
s.60(1) In this section 'recognised opposition party' means a party that
a) holds at least four seats in the Legislative Assembly, and
b) received at least 5% of the popular vote in the election immediately preceeding the year in which the allowance in subsection (2) is to be paid.
(2) There shall be paid to a member of the Legislative Assembly who is the leader of a recognised opposition party, except the leader of Her Majesty's Loyal Opposition, on and after November 1, 1979, an allowance at the rate of $5,000 a year.

The NDP did not manage to win the required four seats, although they did meet the second requirement of obtaining at least 5% of the vote. It is clear however, that both provisions must be met before recognition is given. The problem for the NDP was that if they did not meet the requirements of a 'recognised opposition party', how could

they claim to be recognised as Her Majesty's Loyal Opposition on the basis of party status? Their failure to meet the requirements as set out in section 60 may well have been critical to their reliance on party status.

A counter argument that was not presented by the NDP could have been that if this restricted their position, it was only in respect of a 'recognised opposition party' and not to Her Majesty's Loyal Opposition. The argument would proceed that as the leader of a 'recognised opposition party' is to receive a special indemnity *except if* he is the Leader of Her Majesty's Loyal Opposition, the recognised opposition party leader is distinct from the leader of Her Majesty's Loyal Opposition. As the two positions are distinct, the NDP could have argued that their failure to meet the requirements of a 'recognised opposition party' does not affect their ability to be recognised as Her Majesty's Loyal Opposition. Whether or not this fine distinction is logical is debatable. It appears that by the very provisions of the Act, 'party status' has been removed from the NDP arsenal. It must be remembered, however, that the Speaker's power to recognise Her Majesty's Loyal Opposition and leader thereof is virtually unlimited and this section would not, in all likelihood, prove insurmountable.

B. *The precedents*

i. *The 1940 Alberta Provincial Election and 9th Legislature*

This election and subsequent legislature was cited in support of the claim that independents do have status to form Her Majesty's Loyal Opposition and to be recognised as the leader of Her Majesty's Loyal Opposition.

During the previous eighth legislature, a number of Social Credit members left the Aberhart Government after a disagreement arose and sat as 'Independent Progressives'.[23]

While most of the dissidents returned to the fold after a reconciliation with the Premier, some did not. During the 1940 provincial election, 19 independent members were elected, along with one Liberal and one Labor member. All 21 opposition members sat in opposition to the government, and independent members undertook the duties in the House of leader of Her Majesty's Loyal Opposition. This precedent was relied upon by the Independents to show that an independent member could be recognised as the leader of Her Majesty's Loyal Opposition.

While it is clear that the independent members rotated who would act as leader, there are a number of differences which may affect the value of this precedent. One criticism raised was that the leader of Her Majesty's Loyal Opposition was not as important in 1940 and was not statutorily recognised (e.g. no special remuneration was given to the leader). This does not appear to affect the value of the precedent however, as it is clear that the leader's position was important well

before 1940, with duties and privileges which, while not remunerated, involved rights, for instance, to speak without time limits. The fact that no special remuneration was paid to the leader appears to be an invalid criticism.

Another difference between 1940 and 1983 was that in 1940 there was no statutory recognition of a 'party'. While the Liberals, Social Credit, Conservatives, Progressives, U.F.A., Communist and Labor groups called themselves parties, there was no formal recognition of parties and no statute to register under as there is today. It was, however, possible to have the ballots indicate which party one belonged to.

Again, this does not appear to affect the precedent. While party status is now recognised under certain acts, it is not referred to as being a criterion under any statute with respect to choosing Her Majesty's Loyal Opposition and leader thereof. The recognition of 'party' has been limited to certain Acts with different purposes, and the criticism appears unpersuasive.

A more substantial criticism of the ninth legislature's value as a precedent is the lack of conflict between the two party affiliates and the independents. It appears that the Liberal and Labor members agreed to caucus with the nineteen independents and it does not appear that they claimed any superiority over the independent members simply because of their party affiliation. The question of independent status vis a vis party status was not raised.

This does raise some problems. Since the question of party versus independent status was not raised, it does not directly support the proposition that independent and party members are equal. Clearly, the party members did not believe their status to be superior. All that can be said of this precedent is that it supports the proposition that an independent may be recognised as the leader of Her Majesty's Loyal Opposition, in a consent situation. But in the present situation, we do not have such consent between the two groups.

ii. *The 1944 Alberta Provincial Election and 10th Legislature*

This precedent was the most heatedly debated one submitted and argued by the two groups. It was originally raised by the Independents to support the proposition that independents have status to form Her Majesty's Loyal Opposition and leader thereof. The NDP claimed that the independents in this election were in fact a political party.

During the ninth legislature of the Alberta Legislative Assembly, the 19 independents and two party affiliates caucused together. During the 1944 election, however, the Liberal and Labor parties ran candidates under their party names. The independent members were not, however, happy with the conventional party system of the day. They felt party politics led to unprincipled decisions and that a member should be able to vote in accordance with the views of his constituents.

It was in this context that the two groups made their competing claims. After the 1944 election, three independent M.L.A.'s were elected along with two CCF M.L.A.'s. The independents were recognised as Her Majesty's Loyal Opposition and the group chose its leader, who was designated leader of Her Majesty's Loyal Opposition. The NDP claimed that this group of independents was in fact a party. Again, there was no registration of political parties in Alberta in 1944. There were, however, associations, which the Social Credit Party was and which the independents would later become. The NDP based their claim on the following facts:

Prior to the 1944 election, the independents had:

(a) an executive counsel;
(b) regular conventions;
(c) a leader; and
(d) candidates who espoused the same beliefs and ran in some constituencies throughout Alberta and sought to defeat the Social Credit government. Further, the NDP relied heavily upon the news reports of the day, which labelled the independents as the 'Independent Party'.[24]

The Independents submitted that these independents were not a political party. The basis of their contention stemmed from the fact that the group repudiated the label of party. Throughout the ninth legislature, the principal members of the group referred to themselves as the 'Independent Movement' and 'Independent Group'. This was evidenced by the designation on their official memos.[25]

The whole structure of the movement was summarised by the Independents as follows:

> Its whole function was to oppose the Aberhart Government, with no firm policies of its own. It was truly non-partisan, with no central authority shaping the movement, only strong autonomous constituencies with independent M.L.A.'s agreeing only to oppose the government and speak freely on all issues.
>
> What then is the difference from the situation at hand? We have Independents who are committed to opposition, free to speak on all issues according to their own conscience, autonomous constituencies, no formal party, and no designation as to party. It is submitted that the independents of 1944 were in a very similar situation as today and that the 1944 elections stands for the proposition 'Independents do have status'.[26]

This argument that the independents did not belong to a party was buttressed by political historians as well.[27]

It seems clear that the other leading text and reports series did not list the independents as a party but referred to them as a movement.[28]

Whether or not this movement will be considered a 'party' does not appear to effect the validity of the submission that 'independents have status' to form Her Majesty's Loyal Opposition and leader thereof, as they clearly did in 1940.

iii. *The 1959 Alberta Provincial Election and 14th Legislature*
This legislative precedent was cited by the Independents to support indirectly their proposition that independents have equal status vis-à-vis party members. After the 1959 election, four M.L.A.s' sat in opposition. Their affiliation and popular vote totals were as follows:[29]

1. One Progressive Conservative M.L.A., total provincial votes for party gathered 98,730;
2. One Liberal M.L.A., total provincial votes for party gathered 57,408;
3. One independent member, alone gathered 2,392 votes; and
4. One Coalition member, alone gathered 2,279 votes.

The Speaker did not recognise an 'official opposition' and stated that all four members would be recognised as members of the opposition. No one member was recognised as the leader and all shared the indemnity and duties of the leader.

This situation was cited by the Independents to support the proposition that not only was party affiliation not determinative of the issue of who would be the leader, but also for the proposition that popular vote was also not a consideration.

The NDP contended that the statutory scheme had changed substantially since then and that 'party' status had been elevated since that time. As stated earlier, the statutory scheme argument is unpersuasive.

The NDP also presented a constitutional argument to the effect that the Legislative Assembly Act had to be changed to allow all fou members to share in the split leader's indemnity. They argued that thi change had to be made to give the Speaker the 'constitutional authority to make the decision and that the constitution today made it mandatory for the Speaker to recognise someone as the leader. The NDP were clearly wrong in their assessment of why the 1960 Amendment was passed, as it was requested by the four opposition members. They requested the change to protect themselves from the possible problems that could have arisen by their receiving money for their position in the legislature as they were not designated leader of Her Majesty's Loyal Opposition.

An interesting criticism of the precedent was that Premier Manning appears to have been actively involved in the decision and made the comment that no one member had priority over any other. It also appears the individual opposition members did not seriously contest that they had priority over any other opposition member. Whether the decision would have been different had the Premier not been involved or had the members contested the decision is an interesting question, although it is suggested that all members are equal and the granting of greater privileges to one over another in this situation, on the basis of party status, would have been unwarranted.

iv. *The 1978 Yukon Territory Election and 24th Legislature*
After this election, two Liberals were elected in opposition with two independents and one NDP. The Liberals were given the title of official opposition and a leader chosen by the Liberal caucus was recognised as leader of Her Majesty's Loyal Opposition. Neither NDP or the Independents relied on this precedent as there was no contest by the independents for the position in the 1978 Yukon Territorial election. Further, it was unclear whether the two independents were willing to work together or even suggested such a proposal to the Speaker. Without the question being litigated, it would not be fair to cite this legislature for the proposition that independents do not have status to form Her Majesty's Loyal Opposition and leader thereof.

The arguments and precedents
A. *Incumbency*
The Independents' first argument in support of their position was the argument of incumbency. The argument could fairly be summarised as follows. The two Independents had been part of Her Majesty's Loyal Opposition in the previous legislature. Further, one of the Independents, Mr Raymond Speaker, was leader of Her Majesty's Loyal Opposition in the last legislature. The argument was that as the NDP had not gathered more seats than the Independents, they had not 'beaten them', and that they should be allowed to retain the position. The Independents cited three precedents to support their position. First was the 1909 B.C.* provincial election. In that election there were four opposition members elected. Two members were affiliated with the Liberal Party, the other two with the Socialist Party.[30] Prior to that election, the members affiliated with the Liberals had held twelve seats with three other opposition members.[31] In 1909, the Honorable Harlan C. Brewster, member affiliated with the Liberals, was recognised by the Speaker as the leader of the opposition.[32] It appears that Mr Brewster remained in that position up to the printing of the 1912 Canadian Parliamentary Guide as of February 15, 1912.[33]

The NDP claimed that this precedent did not support incumbency. They claimed that neither group was recognised as Her Majesty's Loyal Opposition.

This appears to be correct. However, it is clear that the Liberal leader was recognised as leader of Her Majesty's Loyal Opposition, despite the fact that his Liberal Party was not recognised as Her Majesty's Loyal Opposition. This clearly distinguishes the two positions of Her Majesty's Loyal Opposition and leader of Her Majesty's Loyal Opposition. It is clear that in this situation, the Liberal leader did not need his group to be recognised as Her Majesty's Loyal Opposition to be recognised as the leader of Her Majesty's Loyal Opposition. It was

* B.C. = British Columbia

sufficient for there to be an opposition to have a leader recognised. This is an important distinction which, as is submitted later, the Speaker of the 1983 Alberta legislature failed to recognise.

Second, the NDP argued that there were no reasons given for the Liberal choice. This is a fair criticism. Nowhere did the Speaker state that he was recognising Liberals on the basis that their group was the incumbent group. The precedent stands on its own, unexplained.

The second precedent cited in support of the incumbency argument was the 1937 B.C. provincial election. In that election, eight members affiliated with the Conservative Party gathering 28% of the popular vote were given the role of official opposition, whereas the CCF had seven members affiliated with them, the party gathering 29% of the vote. There were two other opposition members, one affiliated with the Labor Party and the other an independent.[34] During the sitting of this twelfth legislature, the leader of the opposition, Frank P. Patterson, died.[35] This left the two largest groups willing to work together at seven members apiece.[36] The Speaker recognised the incumbent Conservatives as the official opposition, and the Speaker recognised Mr Royal Lethington Maitland as leader of the opposition.[37] The two groups remained tied as of December 27, 1939, until a by-election in 1940. The vacancy was in Vancouver Centre, and was caused by the death of a sitting member, F. Crone, who was affiliated with the Liberals. Mr Jamieson, who was affiliated with the CCF., won.[39] This changed the standing to seven members affiliated with the Conservative Party and eight members affiliated with the CCF Party, [40] yet the leader of the incumbent group still remained the leader of the opposition.[41]

The NDP countered that the Independents had calculated the numbers incorrectly and that at no time did the CCF. have more members than the Conservatives, although the NDP. appear to be in error as the 1941 Canadian Parliamentary Guide clearly indicates the CCF did. The NDP. then claimed that the decision was based on the government's fear of the Socialists attaining recognition as the official opposition. Again, this is certainly a possibility and it is difficult to know whether this was a political or quasi-legal decision. It may also simply support the proposition that incumbency may be a factor during legislatures and not between legislatures. What the rationale would be to restricting incumbency to one situation and not the other is difficult to understand.

The third legislature cited in support of incumbency was the sixteenth Manitoba provincial legislature following the 1920 provincial election. In Manitoba during the fifteenth legislature, there were seven opposition members, five affiliated with the Conservative Party, their leader being the leader of the opposition. After the 1920 election and during the sixteenth legislature, the incumbent leader of the opposition remained, even though the party he was affiliated with had fewer

members than other affiliated groups (eleven members were affiliated with Labor and thirteen with Farmer). As well, Labor had more of the popular vote, 20.79% to the Conservatives 16.85%.[42]

This was the weakest precedent cited by the Independents and was justly criticised by the NDP. After the election, it appears that there were various factions in the Farmer caucus and that that group was not a cohesive caucus. It also appears that they refused to be recognised as the official opposition as they believed this detracted from their ability to represent their own constituencies.[43] It further appears that some of the Labor M.L.A.'s were still in jail following their participation in the Winnipeg General Strike. This left the Conservatives as the largest opposition group in the legislature and it appears that the leader of the Conservatives was recognised as the leader of Her Majesty's Loyal Opposition.

After due consideration of all three precedents, it is submitted that the two B.C. precedents do support the principle of incumbency, although they are silent as to the reason. This is inferred by the fact that there appears to be nothing distinguishing the two groups from each other, other than their incumbency.

B. *Seniority*

The seniority argument was formulated by the Independents and may be summarised as follows. The two Independents had 34 years of legislative experience between the two of them, the NDP group a total of 11 years. If all else is equal, the Independents argued, seniority should be considered. The Independents cited the 1944 election in support of this proposition. After that election, in which two CCF. and three independents were elected, the Speaker recognised J. Percy Page, the senior opposition member, as leader of Her Majesty's Loyal Oppostion. The Independents claimed that the seniority factor was also supported by logic as well. They stated that the senior member in opposition had endured the test of time, withstanding the hazards and jeopardies of elections. They argued these years of legislative experience were invaluable in assisting the member who would finally be recognised as the leader of Her Majesty's Loyal Opposition.

Quite correctly, the NDP. criticised the 1944 precedent cited on the grounds that it is the group which chooses their leader and not the Speaker. Therefore, the Speaker's recognition of the leader of Her Majesty's Loyal Opposition is limited to the member presented by the party or group.

The NDP. did not critisise the notion of seniority as being valid in the decision at hand, they simply stated that the consideration had never been used as a factor to base such a decision on and should not be used to decide this very important question.

C. *Party status*

The NDP. put forth the argument that it was its party status that gave it the edge in the debate. Their arguments were centered on the grounds that were mentioned earlier, that the legislative scheme had changed and 'party' had a new and somewhat higher status than did 'independent' status. As mentioned above, the debate centered on whether the 1944 opposition group was a 'party' or 'group'. The NDP. did not, however, concede that independents would never have status to form Her Majesty's Loyal Opposition, just that in this situation, party status should give them the edge. It was argued by the Independents that as the NDP. did not meet the requirements of a 'recognised opposition party', they could not argue that they were entitled to be recognised as Her Majesty's Loyal Opposition on the basis of party status.

The Independents also argued that after the 1959 Alberta provincial election, no individual was given priority because of their party status over an independent. They submitted that as the decision was not based on party status, although it could have been, the principle of 'party' status had no inherent rationale nor was it sanctioned by precedent. The NDP. again countered that the statutory scheme had been altered and that the Premier made the decision. Another criticism not raised by the NDP. could have been that no one, it appears, raised the argument that party status should be recognised as superior over an independent's status in 1959.

D. *Popular vote*

The NDP. argued that as nearly 200,000 Albertans voted for their party province-wide, (almost 18% of the electorate that voted) they should be recognised as Her Majesty's Loyal Opposition over the two Independents, who gathered roughly 1% of the popular vote. No authority was cited to support this proposition other than the fact that the Legislative Assembly Act, R.S.A. 1980 c. L-10 s. 60 lists the requirements of a 'recognised opposition party', one of the criterion being receiving 5% of the popular vote in the preceeding election. The NDP. argued that this Act had, by this section, recognised the importance of popular vote.

This argument is weak at best. Clearly, popular vote must be confined to the section it is found in, and its purpose is to define a 'recognised opposition party'. It is also important to note that the second qualification, that being the obtaining of four seats in the previous election, was not met by the NDP. The very section that they quote disentitled them from being recognised as a recognised opposition party. To claim that this section recognises popular vote for the purpose of choosing Her Majesty's Loyal Opposition and leader thereof, appears to be a misuse of statute law.

The NDP's claim was countered by the Independents with a number

of precedents. The first precedent cited was the 1948 Alberta provincial election and subsequent eleventh legislature. In that election, two members affiliated with the CCF. were elected, and two members affiliated with the Liberal Party were elected with one independent elected, all sitting in opposition. Province-wide totals for the political parties were CCF. 56,387 votes, Liberal 52,665 and the independent gathering 9,014 votes.[44]

The Speaker ruled on the question of which group would be recognised as Her Majesty's Loyal Opposition and leader thereof on 17 February 1949.

> Mr Speaker rose and addressing the Assembly, stated that he would recognise all members to his left as members of the opposition but that he would not recognise any one political party as the official opposition.[45]

The indemnity for the leader's position was split between the Liberal and CCF leaders until 1951, [46] wherein the Liberals won a by-election and had numeral superiority in the House. Precedent was cited by the Independents for the position that the total province-wide votes received or number of candidates affiliated with one group or party was not a relevant factor when considering who would be recognised as Her Majesty's Loyal Opposition and leader thereof, as the CCF. had a greater number in both categories.

The Independents also cited the 1959 Alberta provincial election and subsequent fourteenth legislature, wherein four opposition members were elected, the Progressive Conservatives gathering 98,730 votes and electing one member, the Liberals gathering 57,408 votes province-wide and electing one member, an independent elected gathering 2,392 votes and a Coalition member elected gathering 2,279 votes. As was stated earlier, no one member was chosen as Her Majesty's Loyal Opposition or leader thereof and no one was recognised on the basis of popular votes gathered province-wide.

The Independents also argued that popular vote should not be considered in determining Her Majesty's Loyal Opposition and leader thereof because of Alberta's electoral system. They argued the following:

> Alberta has at present a single member plurality electoral system which elects members to the legislature to represent their constituents. We do not have proportional representation which entitles political parties to representation based on the popular vote of any certain party. Such a notion is repugnant to our system whereby individuals represent constituencies. The principal of proportional representation has been fought on the grounds that it does not allow the constituents to choose its members.[47]

The argument concludes by stating that as all members are equal in the House as representatives of their constituencies, there is no logical ground for looking behind that member's mandate. Further, it is the member who is voted for and elected, and it is unwarranted to state that

all those who voted for an individual candidate voted for the party rather than the candidate himself. The NDP. did not respond to these criticisms.

E. *Margin of victory*

The margin of victory argument was expressly dismissed by the Independents as being irrelevant. The argument would have proceeded along the lines that the position of Her Majesty's Loyal Opposition and leader thereof should have been given to those who won their constituency by the largest percentage of votes.

The Independents did not argue this because they felt it would have been inconsistent with their proposition that popular vote, or matters outside the House, were irrelevant. The NDP on the other hand, felt no such restraint, and at the beginning argued margin of victory was irrelevant because all members, once elected, were equal. In the same breath, however, they argued that their popular vote gave them greater status. The two propositions are not logically compatible. It is interesting to speculate what the outcome would have been had the Speaker adjudicated on this question. It again was not argued by the Independents because:

1. it was incompatible with their stance on popular votes province-wide; and
2. there were no precedents supporting this position.

The Split

An interesting possibility which both sides believed would be the outcome was a split. How the split would work was open to question, although there were precedents for it. In the 1948 and 1959 Alberta provincial elections and subsequent legislatures, no one group was recognised as Her Majesty's Loyal Opposition and the leader's indemnities and duties were split amongst the opposition members in 1959 and between the leaders in 1948.

An interesting modern precedent employing the split was Saskatchewan in 1977. At the beginning of that legislature, the Liberals had 15 seats and the Progressive Conservatives had seven following the 1975 provincial election. However, by 1977, as a result of two defections and two by-elections, the Liberals and Progressive Conservatives tied at 11 members each. The Speaker based his decision on Section 24(1) of the Saskatchewan Legislative Assembly Act, R.S.S. 1965 c. L-11 as amended, which contemplated such a situation and which read:

s.24(1) In this section 'leader of the opposition' means member of the Assembly who is the recognised leader of two or more members constituting the largest group sitting in the Assembly in opposition tot he government, and in case of the equality of membership of two or more such groups, the allowance and the grant provided by this section shall be

divided equally between the respective leaders of those groups having the largest and equal membership.

The NDP. argued that no precedential value could be derived from this situation, as there was no specific legislative provision to this effect in Alberta. This was fair comment, as the Alberta statutes were clearly silent on the matter. The Independents, however, argued that while the statutory situation differed in Saskatchewan from Alberta, the situation in Saskatchewan could be viewed as a reasonable solution to such a problem. Further, they argued that not only did the Speaker have unfettered historical constitutional power to make such a decision, he also had express statutory power to do so. The Independents cited Section 33 of the Alberta Legislative Assembly Act, R.S.A. 1980 c. L-10, which read:

> In the application of the Financial Administration Act, the Public Service Act or any other act with respect to
> (a) the officers and staff of the Legislative Assembly, and
> (b) the revenues and expenditures of or relating to the Legislative Assembly, the Speaker and the clerk of the Legislative Assembly have the powers, duties and functions of a minister and a deputy, respectively.

Again, as stated earlier, while the expenditures relating to the leader of Her Majesty's Loyal Opposition are covered under this section, it is questionable whether the position of the leader itself is. Nowhere is 'officers' or 'staff' of the Legislative Assembly defined. It is clear, however, that the Speaker has the power to choose whom to recognise and any decision is within his power.

The Speaker's decision

The Speaker's decision was given on 11 March 1983. The Speaker recognised the NDP. as the 'official opposition' and its leader as the 'leader of Her Majesty's Loyal Opposition'. The Speaker dealt with the situation as follows.

To begin with, the decision was somewhat less than a judicial pronouncement. The Speaker began with a political defense of his position of cutting the opposition budget from the previous legislature and classified it as a significant increase. This should clearly have been left out of his decision as it detracted from what could have been a historic parliamentary-legal decision.

The Speaker went on to defend his position of waiting until his election in the House as Speaker before making his decision. There was great pressure on him by the NDP. and the press to make his decision sooner. But he withstood the pressure to await his official appointment in the House. He was clearly correct to do so. To have made a decision before his designation would have been similar to a lawyer making a

judicial decision before his swearing-in as a judge. His appointement in the House was a prerequisite to his decision.

The Speaker continued, stating that there was no 'directly applicable precedent or compelling answers to be found in the experience of any of the Commonwealths or in any of our rules or statutes'. It is questionable what 'directly applicable precedents or compelling answers' means. If the Speaker was referring to an identical situation under the identical legislation prevailing in Alberta as of today, he was correct. However, if he was referring to principles extracted from a number of decisions in the Commonwealth regarding certain principles which have been considered relevant, or in most cases irrelevant, he was mistaken. Clearly, popular vote has never been considered a relevant factor in any of the decisions where both groups competing for the title have been at the same numerical strength.

The Speaker continued, stating that there were precedents for not recognising any official opposition. 'In such a case, of course, there would be no leader of the official opposition.' Here, the Honourable Speaker erred. It is quite clear that in the 1909 B.C. legislature, as well as the 1948 and 1959 Alberta and 1977 Saskatchewan legislatures, there was no 'official' opposition recognised, yet there was a leader of Her Majesty's Loyal Opposition. In the 1909 B.C. legislature, a leader was recognised in spite of the fact that no one group was recognised as the official opposition. In the 1948 and 1959 Alberta legislatures, as well as the 1977 Saskatchewan legislature, there was no 'official' opposition recognised, yet the position of leader of the official opposition was filled by two or more members. The role, duties and indemnities of this position were shared by more than one member of the legislative assembly. The failure to distinguish between these two positions caused the Speaker to err in his decision. The failure of the Speaker to distinguish between the two positions was problematic for two reasons. The first was the rejection of the 'split'. The second was to treat both positions as the same and to use the same criterion to decide both positions.

The Speaker went on to discuss why such a designation (a designation for both a leader of the official opposition and the official opposition) must be made for and in the House.

The reasons the Speaker decided that there must be such a designation were five-fold. The reasons given were that certain provisions in the Legislative Assembly Act and standing orders of the House contemplated the existence of a leader. It is important to note that the reasons revolved around sections that contemplated the existence of a leader, but did not demand a leader be chosen. If the Speaker based his decision on the fact that these provisions were mandatory, he is clearly incorrect. If, however, he found these provisions assisted him in deciding that a leader should be appointed, they are not totally

unpersuasive. It should be remembered that the Speaker's constitutional powers give him the right, as well as certain statutory provisions (Section 33, Legislative Assembly Act) arguably give him the statutory and ministerial duty, to oversee and regulate the effective functioning of the Legislative Assembly. To do so, it could reasonably be argued, must entail his recognition of a leader of Her Majesty's Loyal Opposition. It is clear, however, he was not constitutionally or statutorily bound to recognise one, and it appears the Speaker's failure to distinguish between the leader of Her Majesty's Loyal Opposition and Her Majesty's Loyal Opposition forced him into this position.

The Speaker then stated that 'It is clear that if any reasonable basis can be found to recognise an official opposition and its leader, that should be done.' While it may or may not be clear, what is clear is the Speaker's decision to choose a leader of Her Majesty's Opposition and Her Majesty's Loyal Opposition. It appears to have been a matter of convenience, for it is quite clear that the Speaker was not bound to choose one. He may have deemed it politically expedient or for the better functioning of the Legislative Assembly. If so, this decision would have fallen within his broad constitutional powers. All that can be said is that he should have been so bold as to state the same, and not couched his decision under legal and parliamentary trappings.

The Speaker then stated that his decision was not a political matter. He was clearly wrong on this. His choice was 'political' in every sense of the word. He chose between two competing claims, and claimed he had no rules or guidelines to make the decision. In fact, the only basis for him to make his decision to choose Her Majesty's Loyal Opposition and leader thereof was his belief that it would be expedient to do so. Again, his choice was political, as was his decision to choose at all. And while he should not be criticised for making the decision itself, he is open to criticism for denying the political nature of his decision and for hiding it in legal – parliamentary trappings.

The Speaker went on to say that the question was one of status within a Parliament, 'and should if at all possible, be based on circumstances within this Assembly.' He further stated that 'no precedent or rule has been discovered or given to me where the designation of an official opposition has been based on circumstances outside a Parliament.' This is clearly correct. Using matters outside the legislature would have been an unprecedented step. The Speaker then stated however, that 'given *the need* to make such a decision, it does seem advisable that, if factors within these four walls do not provide a solution, one must go outside for an answer based on well known facts.'

Here, the Speaker changed his position. Previously, he held that 'if any reasonable basis can be found to recognise an official opposition and its leader, that should be done.' He now claimed there was a need to make such a decision, and further acknowledged he was taking the

unprecedented step of looking outside the legislature to make it. By doing so, he dismissed the 'split' option, and his dismissal of it stems from his political decision to choose one over the other as well as his misunderstanding that Her Majesty's Loyal Opposition need not exist for a leader or leaders of Her Majesty's Loyal Opposition to be recognised.

The Speaker then dismissed the Independents' incumbency argument and stated that no precedent showed incumbency or continuity to have been the deciding factor, or any real factor at all, in recognising an opposition leader. This is acceptable, as the precedents relied on by the Independents did not have written reasons or a ratio decidendi; they simply stood on their own.

The Speaker then suggested that 'if there were an incumbency argument, it would have to apply to individual members and the positions they previously held. However, here we are dealing with recognition of a group.' The Speaker again appeared confused as to the fact that the designation of Her Majesty's Loyal Opposition is different from that of the leader of Her Majesty's Loyal Opposition and that they are two different statuses. While stating that the group chooses its own leader, the leader is recognised as the leader of Her Majesty's Loyal Opposition by the Speaker and continues to be recognised in that capacity until the Speaker recognises another. The Speaker's dismissal of the incumbency argument on this ground is spurious, and there is nothing illogical in a member stating that his incumbency should be recognised as he was the previous holder. Again, while the Speaker chose not to put any credence in the incumbency argument, he clearly was indulging in illogical reasoning when he dismissed the argument in this fashion.

The Speaker also chose to dismiss the seniority argument, and classified it as another 'In-House' argument. He stated that 'this overlooks the essential that group recognition comes first and leader recognition is the decision of that group'. With the greatest of respect, this does nothing of the sort. The seniority argument was argued in both situations, that being for the status of Her Majesty's Loyal Opposition and the leader thereof. The Speaker's failure to distinguish the two positions results in his illogical statements.

Again, it is not possible to attack the Speaker's dismissal of the seniority argument on the basis that it does not have precedential authority, because the decisions previously made did not specifically refer to seniority as a factor.

The Speaker then reviewed the NDP's arguments. The Speaker dismissed the argument based on section 60 of the Legislative Assembly Act, which the NDP. had extrapolated to support their claim that party status was superior in this situation. The Speaker stated neither group met the requirements of a recognised opposition party and that

secondly, a recognised opposition party is a second opposition group over and beyond an official opposition.

This last ruling by the Speaker is interesting in that it may refute the argument of the Independents that if the NDP. could not meet the criteria of a 'recognised opposition party', how could they be recognised as Her Majesty's Loyal Opposition on the basis of party status. The Speaker's implied answer appears to be that a recognised opposition party is a second opposition group, above and beyond that of an official opposition, and therefore this section is not relevant in considering the official opposition and the leader thereof. This would imply that as party status is a criterion in choosing the official opposition, it has come from another source. It is still questionable that where certain criteria for recognition as a recognised opposition party are laid out, as in this Act, this should effect one group claiming the title of Her Majesty's Loyal Opposition on the basis of party status. The NDP. had failed to meet the requirements. Despite the fact that it does not bear on the question of Her Majesty's Loyal Opposition, it is the only section in the Act which refers to party status in opposition, and the only section which gives any sanctity to 'party status'.

The Speaker then dismissed the NDP's argument based on the Acts they referred to regarding parties (ie, the Election Finances and Contributions Disclosures Act and the Elections Act). The Speaker stated these had nothing to do with what went on in the House.

The Speaker then stated that 'None of the research has indicated any Act or rule which would provide a reasonable basis for a decision in the present circumstances'. This is so because the Speaker refused to extract principles for choosing, or more importantly, not choosing, Her Majesty's Loyal Opposition and leader thereof.

The Speaker went on to note that the NDP. had suggested that 'Customarily, the official opposition is composed of elected members of a party. That does, indeed, appear to be the case.' Why the Speaker mentions this as an NDP. submission is strange. Clearly, both sides recognised that *customarily* party members do form the official opposition. It is when you find the rare circumstances of this situation, that being four opposition members, both groups being equal in size, that you must search for situations where there have been small oppositions equal in number. Clearly, in this very rare situation, you cannot rely on broad generalities, such as *customarily* things are done this way or that. It is those specific situations the Speaker should have reviewed, and attempted to extract principals from to apply here. To this end, the Speaker failed completely.

The Speaker went on to discuss the 1944 Election when three independents were elected in opposition along with two CCF M.L.A.s. In that situation, the three independents were recognised as the official opposition and their leader the leader of Her Majesty's Loyal Opposi-

tion. The question had arisen as to whether these independents were members of a political party or not. The precedent was raised, along with the 1940 and 1959 Alberta Provincial Elections and subsequent legislatures to support the submission that independents had status to form Her Majesty's Loyal Opposition and leader thereof. The Speaker held that 'in many ways, the Independent "Movement", as it was sometimes called, acted as a political party.' The Speaker then went on to state the NDP. argument that where two groups have equality of numbers, the choice should go to the group whose members belong to the same party.

Why the Speaker referred to the 1944 precedent and not the 1940 precedent, where unquestionably independents formed the official opposition and had their leader recognised as the leader of Her Majesty's Loyal Opposition, is again very strange. Both were cited for the proposition that independents have status to form Her Majesty's Loyal Opposition and have their leader recognised as the leader of Her Majesty's Loyal Opposition. Indeed, later in the decision, the Speaker acknowledged that if there were three independents as opposed to two party members in this situation, they would be recognised as Her Majesty's Loyal Opposition and their leader, the leader of Her Majesty's Loyal Opposition. He therefore accepted the proposition that independents do have status to form the official opposition and have their leader recognised as such.

The Speaker then stated that the 'limited validity of that idea (recognising party members over independents where the groups' numbers are the same) must be recognised.' He called it limited because if there were three independents, they would clearly form Her Majesty's Loyal Opposition over two party members.

It is quite clear the Speaker recognised the tenuous ground upon which he based his decision, for he stated that 'one ought to hesitate to make a decision in this matter on the narrow point just mentioned.' He then added, however, that another factor weighed in his decision, and that was that 'party organisations outside the assembly are known to assist members with their work in the Assembly'. He stated he took this into account because of the equality of members in the House.

Again, this is clearly not based on any precedent or rule he found. This also clearly points to the political nature of his decision. It is arguable that party organisations are important and, as a new criterion, are worth considering. To argue however, that his decision is not political, in the sense of applying new and selective criteria instead of old established ones is not correct. The Speaker's total decision, while arguably correct on some moral grounds, was clearly a novel but political one.

The Speaker also referred to the popular vote argument. The Speaker's decision is so unclear on this submission that it is questionable

whether he accepted it as valid or not. He simply stated that the argument is somewhat overstated when a claim is made that all of those who voted for the candidates of a certain party throughout the province are represented by the candidates of that party who were elected.

While being totally unclear on this issue, it is also questionable whether the Independents should have forsaken their argument that they had larger margins of victory in their own constituencies. They had dropped this argument in favour of being consistent with their own view that popular vote was not a factor (ie. 'Out-of-House' factors). Whether the Speaker would have placed any weight on this argument or not is debatable.

The Speaker went on to state that 'given the *need* to designate an official opposition so its leader may serve as leader of the official opposition,' he recognised the NDP. as the official opposition and Grant Notley, NDP. leader, as the leader of Her Majesty's Loyal Oppostion. Again, the Speaker translated his belief that a leader should be chosen, if on a reasonable basis one can choose, into *a need* to choose one.

The Speaker prefixed his designation with 'for the time being'. The prefix was required as the Speaker acknowledged that three independents willing to work together would clearly be designated over two members, regardless of party affiliation. He also quoted the NDP. where they suggested that this was correct, although the NDP. must have been quite surprised to learn that they would be bound by the suggestion in the future without the benefit of further debate. Thus, the Speaker held that while three independents versus two party members would be a victory for the independents, two independents versus two party members was not a tie. The Speaker then concluded with a general defence of himself, specifically as to the delay in his decision. Again, this would have been unnecessary had this decision been a legal – parliamentary one, and unfortunately again pointed to the political nature of the decision.

Conclusion

The Speaker's decision of 11 March 1983 as to the designation of Her Majesty's Loyal Opposition and leader thereof could have been one of the most important decisions in the history of the British Commonwealth's parliamentary practice. With the relative absence of material and decisions on the matter, the Speaker could have prepared a decision which would have been recognised as the bench-mark for other Speakers, as well as being of great assistance to scholars. Unfortunately, the Speaker failed completely to meet either goal.

The Speaker began his decision by defending his cutting back funding for both opposition groups. His decision to cut back funding on the basis of a spurious comparison with back bencher funding, something that had never been used to calculate opposition budgets, should have been

left in the political arena and not brought into this historic decision. It unfortunately set the tone and showed the decision would be political and not based on the copious research presented by both sides.

The mistakes by the Speaker were many. The major one was his failure to distinguish between the two positions of Her Majesty's Loyal Opposition and the leader of Her Majesty's Loyal Opposition. The historical precedents show there may be a leader without any one group being designated as Her Majesty's Loyal Opposition, and indeed, the position had been shared in the past, meaning all were designated as opposition members with some or all sharing the role of the leader.

The Speaker stated that if he could find any reasonable basis for recognising an official opposition and its leader, it should be done. The Speaker further realised that the decision should, if possible, be based on circumstances within the Assembly. There is nothing wrong with either decision up to this point. The mistake the Speaker made was in rejecting the Independents' claims as not being supported by precedent, yet failing to decide if these 'In-House' factors formed a reasonable basis. His failure to state it or even refer to their submissions' 'reasonableness' is unfortunate, for he did assess the 'reasonableness' of the NDP. arguments, and stated that while they too were unsanctioned in precedent, he found them persuasive in light of the lack of 'In-House' precedents. His failure to deal with the reasonableness of the 'In-House' arguments, before proceding to conditions outside the House, suggests his decision-making process did not consider the Independents' arguments on the basis of 'reasonableness'.

The Speaker further failed to grasp the incumbency argument of the Independents, as evidenced by his decision that it would have to apply to individual members and not recognition of a group. The incumbency argument was suggested to the Speaker to apply to the leader itself, and simply because the group chooses its leader does not logically take any of the merit of the argument away. The Independents' leader was arguing incumbency over the NDP's leader, who did not have incumbency on his side. The argument was dismissed in a most unsatisfactory fashion. The same error was committed with the seniority argument. The Speaker's failure to realise the difference and severability of the statuses of Her Majesty's Loyal Opposition and leader therof led him to dismiss the argument by his irrelevent statement, 'group recognition comes first and leader recognition is the decision of the group.' The seniority argument was argued in support of both titles (ie. Her Majesty's Loyal Opposition and leader thereof) and could logically be submitted to buttress the group's claim. Second, had the Speaker applied the argument to his decision as to Her Majesty's Loyal Opposition and held that it was not persuasive in favour of the Independents, he still could have applied it to the two competing members in relation to the leader of Her Majesty's Loyal Opposition, as

the precedents showed a leader or leaders may be recognised without one group being recognised as Her Majesty's Loyal Opposition. The failure to distinguish the two led the Speaker to err.

Finally, another disturbing point in the Speaker's decision was that he had a neutral opinion prepared and failed to present it to either side. This was a marked departure from the format he established in the beginning, which was basically that both groups would make submissions, be informed of each others submissions and given copies of them, with the end result hopefully being that the truth would be arrived at by rational debate over the contentious issues. It was unfortunate, to say the least, that the neutral position was not presented to allow both sides to check its accuracy. Even if this criticism is countered by the argument that publishing of neutral opinions is not often done in the litigation process, the Speaker should have made reference to the factors used to base his whole decision upon. The limited and cursory fashion in which he discussed the arguments presented by both sides was completely unsatisfactory in what should have been a landmark decision.

Before concluding, it is important to state that the scope of this paper is not to criticise the actual outcome of the Speaker's decision. Indeed, he has laid a new and arguably relevant criterion, namely that party organisation outside the legislature may assist members in their effectiveness as opposition members. The acceptance of this new criterion certainly falls within the Speaker's mandate of being the final arbiter of rights and privileges of all members and the overseer of an effective House and, consequently, of an effective opposition. But clearly, this decision is political. It is not political in a derogatory sense whereby patronage and personal preference is exercised; it is however, political in the sense that competing claims are adjudicated with no reference to rules as to what should and, more importantly, what should not be considered in choosing Her Majesty's Loyal Opposition and leader thereof. The decision was made on policy considerations, the central one being that recognition of Her Majesty's Loyal Opposition and leader thereof was preferable and important in the better functioning of the legislature. It must be remembered that the Speaker, through his failure to recognise the difference between Her Majesty's Loyal Opposition and leader thereof, forced himself to discard the 'split decision', which had been used and found workable in other jurisdictions at other times. The criticism is that the Speaker should have stated the policy considerations that he based his decision on and stated that they were policy considerations. A legal-parliamentary decision this was not.

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2. A. Foord, *His Majesty's Opposition 1714–1842*, (Oxford, 1964), p. 8.
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4. T. B. Macaulay, *Critical and Historical Essays*, (Boston 1900), Volume 2, p. 350.
5. Hockin, supra f. n. 1, p. 55.

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7. J. E. Neale, *The Elizabethan House of Commons*, (London 1949) p. 383–386.
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11. Ibid, p. 43.
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13. Erskine May's *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 13th Edition (London: Butterworths and Company, 1924) p. 176. It was however, possible to arrange block seating for a party. See 44 H. C. Deb. 5 s. 2267. 2507.
14. H.C. Deb. (1939–40) 361 c.29. It appears however, that all but five Members of the House entered Churchill's coalition government, leaving only the four Independent Labour Party Members and one Communist M.P. outside the government supporters.
15. Ibid, c.28.
16. Erskine May's *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 15th Edition (London; Butterworths & Co., 1950) p. 245.
17. A.R. Mukherjea, *Parliamentary Procedure in India* (Oxford University Press, 1967) p.33.
18. Ibid, p. 88.
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20. Ibid.
21. Ibid, p. 34.
22. Section 41 of the Canada Act, 1982, Canada Gazette, Part 3, 21st September, 1982.
23. H. L. Malliah, *Socio-Historical Study of the Legislature of Alberta, 1905–67* ph.d. Dissertation, University of Alberta, 1970 TP p. 60.
24. Edmonton Journal, Alberta Bulletin and Calgary Herald.
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26. November 25, 1982, Independent Submission to the Speaker, '1944 Election', p. 3.
27. Meir Serfaty, *Structure and Organisation of Political Parties in Alberta, 1935–1971*, Ph.d. Dissertation, Carlton University, p. 141.
28. As can also be seen from the vote tallies in the Canadian Parliamentary Guide and the Canadian Guide of Electoral History and Leadership, 1867–1976, Madden, Wayne D., Provincial Elections Results: A Survey of Canadian Provincial Election Results, 1905–1976, by Lorren M. Simerl, Reprinted in Chapter 18 of Politics Canada, Fourth Edition, by Paul W. Fox, and in Canada Votes, a handbook of federal and provincial election data, by Howard A. Scarrow, the movements' votes were never tallied under a party banner until after the 1948 election.
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33. The 1913 addition of the Canadian Parliamentary Guide was unavailable.
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36. As of December 27, 1939, both Conservatives and C.C.F. had seven members, Canadian Parliamentary Guide, 1940, p. 428.
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39. Canadian Parliamentary Guide, 1941, p. 424.
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41. Canadian Parliamentary Guide, 1941, p. 424.
42. Canadian Parliamentary Guide, 1921, p. 439.
43. W. L. Morton, *Manitoba, A History*, (University of Toronto Press): 'the Norris Government' (p. 377).
44. Canadian Parliamentary Guide, 1949, p. 427.
45. Alberta Legislative Assembly Journal (1949–50, 1951–52) (p. 14).
46. Canadian Parliamentary Guides, 1950 (p. 418), 1951 (p. 417), 1952 (p. 421) and 1953 (p. 421).
47. November 25th, 1982, Independents Submission to the Speaker, p. 6.

IX. THE MAINTENANCE OF PROCEDURAL RECORDS –SOME PAST PRACTICES AND NEW PROPOSALS

BY MARK McRAE

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Every legislature must, at some stage, face the problem of devising and maintaining a set of procedural records to allow ready access to its own rulings, precedents and case history. No doubt there are many approaches to this and what follows is an account of how the Australian House of Representatives has endeavoured to maintain records in the past and is proposing to use computerised word processing and information retrieval technology in the future.

The production of *House of Representatives Practice* during the years 1976 to 1981 drove home the importance of the compilation of a thorough and accessible set of procedural/parliamentary records and whilst this article will concentrate on the maintenance of a comprehensive record of rulings from the Chair and precedents, steps were also taken during those years to develop a comprehensive procedural/parliamentary library including a Research and Information System (consisting of over 800 papers), sets of parliamentary journals, a departmental file analysis and a parliamentary bibliography.

Currently, the records of rulings and precedents and matters of broader parliamentary interest extracted from *Hansard*, the *Votes and Proceedings* of the House of Representatives and the *Journals of the Senate* (where relevant) are maintained on both a system of standing orders cards and a compilation of summary extracts from *Hansard*.

Standing Orders Cards

Since the adoption of permanent standing orders in 1950 the Department has maintained a comprehensive card record of rulings and precedents indexed by standing orders. This was based on an earlier card system based on a subject index which had been maintained since 1901. On each of the current cards are brief references to rulings and precedents of note relevant to the particular standing order. The cards are updated periodically from *Hansard* and the *Votes and Proceedings*.

Hansard extracts

The *Hansard* extracts consist of references to events reported in *Hansard* which are of procedural or parliamentary interest. They have been compiled since 1955 and are circulated weekly during sittings to

officers of the House and occupants of the Chair. *Hansard* extracts have a dual role. First, they record items of current or continuing interest for the benefit of their selected readership and, secondly, they, together with the index to the *Votes and Proceedings*, give a comprehensive guide to any developments in the practice of the House over a given period.

The criteria followed in compiling the extracts are:

- all rulings and precedents of note are recorded; rulings of a common or generally accepted nature, such as a simple direction to a Member to remain relevant, are discarded;
- objectivity is maintained, the extracts referring to proceedings as they happen, i.e. both 'good' and 'bad' rulings are recorded;
- matters covered in the *Votes and Proceedings* are not included as a general rule although matters of a more important procedural and parliamentary nature, such as privilege, are covered in both the *Votes and Proceedings* and *Hansard* extracts, an extended descriptive summary of proceedings being given in the extracts;
- a full account of each proceeding is not given; a brief intelligible but concise summary is preferred and the user can then refer to *Hansard* for fuller details;
- matters of a broader, non-procedural parliamentary nature are also recorded (e.g. broadcasting and televising of Parliament, the new Parliament House, facilities available to Members, staffing matters, the ministry and political parties, and the roles of the House and of Parliament). Criteria used in selecting such matters are their possible future departmental use (e.g. preparation of briefing notes or for use in a future edition of *House of Representatives Practice*) and their possible interest to recipients of the extracts;
- points of order are only referred to if they are procedurally noteworthy;
- Senate proceedings are noted if they have direct relevance to, or are of procedural interest to, the House or if they are of general parliamentary interest;
- any reason given by the Chair for ruling a question without notice or notice of motion out of order is recorded, and
- reference to withdrawals is made in the text when other matters arise out of such incidents.

Since 1979 the *Hansard* extracts have been coded and sorted on word processors using a primary (subject) code of 57 headings and a secondary code of 5 headings. What this has meant is that officers have access by subject to printouts of (a) rulings and (b) precedents and other noteworthy parliamentary matters. For example, officers can check a summary of all rulings regarding references in debate to the judiciary or all references in the House to the administration of the Parliament.

New proposals

Proposals to amalgamate the 2 sets of records are currently being considered. It is proposed that the coding system be expanded to approximately 120 headings and, where appropriate, include the relevant standing order number. Following circulation of weekly *Hansard* extracts, additional extracts containing a brief commentary on certain notable precedents in the *Votes and Proceedings* (as currently included in the standing orders cards, though some refinement may be necessary) would then be added to the central data base in disc storage. These will be coded by standing order number and, if appropriate, by subject, on the same basis as *Hansard* extracts.

The central base would then contain durable *Hansard* extracts (those of long term interest) and additional entries as currently included on the standing orders cards.

On a regular basis the following would be extracted and maintained in hard copy form:

- standing order 'precedents' (rulings and precedents listed by standing order and indexed, if necessary, by sub headings as on current standing orders cards), and
- subject compendiums of (a) rulings, and (b) precedents and matters of parliamentary interest.

These listings will be printed regularly and available in as many copies as are required for distribution. The information would continue to be stored in machine readable form permanently in word processor storage, to which our Procedure Office will have access via a terminal, for updating.

On-line Hansard trial

Internal plans which will use the Department's word processing system have been discussed above. A major project in which the House of Representatives is also involved, along with the other parliamentary departments, is the on-line *Hansard* pilot study. The *Hansard* typesetting tapes from the Government Printer are mounted into a free-text database and used and accessed through a software package known as STATUS. This database is 'searchable' from computer terminals throughout the Parliament building. As well as the *Hansard* debates of both Houses from 1982, the *Votes and Proceedings* of the House of Representatives and Senate *Journals* from 1982 and the text of *House of Representatives Practice* are incorporated on a trial basis. This project is well under way and is now operational on an experimental basis and for training purposes. The objective of the pilot study is to test the practicality and usefulness of a large scale computer-based free-text information storage and retrieval system.

On-line access to procedural records

Although at the moment the plans for rationalisation of procedural records will result in printed output, it is envisaged that the procedural database and other indexes may eventually be properly searchable on-line via terminals in various locations. This could be done either by upgrading word processor software or, for example, by translating the content of the database into STATUS format so that it can be searched from the same terminals and by the same search methods as *Hansard* on-line. This is not the immediate aim and the way in which we go will depend very much on the success or otherwise of the current STATUS trial.

Summary

Present intentions are to rationalise procedural records and to get them into machine readable form. The future after this stage is very much open. The advent of computers, huge databases and on-line searching facilities will in no way get rid of the intellectual work and professional judgement necessary for the creation of our procedural records. Computerisation will reduce the repetitive clerical and typing work involved, but the main advantage is that computers will greatly facilitate the ease and speed of access to the procedural information on which we are so dependent.

X. THE FAMILY BACKGROUND OF SIR THOMAS ERSKINE MAY

BY W.R. McKAY

A Deputy Principal Clerk in the House of Commons, Westminster

The parentage of Sir Thomas Erskine May, the best known and most able of nineteenth century Clerks of the House of Commons, has long been a mystery. It remains so. A certain amount of desultory research over a number of years has failed to reach a conclusion on a matter on which May himself was evidently not prepared to be frank. Nevertheless, it may be of interest to his successors and others to know what progress has been made, what avenues have been closed, and which remain open.

Though reticent about details, May was not averse from letting certain assumptions be made. The traditional view in the Department, which may go back to May himself, is that he was the illegitimate son of Lord Erskine (1750–1823), a Scotsman who enjoyed a meteoric career at the English bar, and was briefly Lord Chancellor. If May is the son of Lord Erskine, his outstanding ability and energy can in some senses be accounted for. Among his ancestors he would be able to claim such eminent Scottish legal families as the Erskines and the Dalrymples; political figures like the Stewarts of Goodtrees, including a strongly pro-Covenant Lord Provost of Edinburgh; the man who gave the order for the Masacre of Glencoe; an intellectual countess of Buchan with enough energy after bringing up a family in a tenement in the Old Town of Edinburgh to enlist as a private pupil with the renowned mathematician Colin Maclaurin; and the lady who was the original Bride of Lammermoor. May never seems to have claimed to be Erskine's son in so many words. The nearest he came was to quarter the arms of the earls of Buchan in his own, a hint clear enough to those who were aware that Lord Erskine was the son of the 10th earl. If he said nothing in public, however, May seems to have made a private claim to the Buchan family which they accepted. Between 1834 and 1837, May corresponded with Sir David Erskine who had married a daughter of Lord Erskine's first marriage, and was himself an illegitimate son of the 11th earl of Buchan. Sir David clearly came to accept that May was a kinsman, but in the extant letters neither side makes clear what the degree of relationship was.[1] Sir David Erskine speaks of 'our family' to May, and takes an interest in May's sisters. He passes on Buchan family gossip, and when the young May qualified for the bar, Sir David wrote, 'long may (the sun) shine upon you, that you may revive the lustre of the Erskines at

the bar of old England.' May had plainly convinced a man who may have been both his cousin and the husband of his half-sister that he too was a member of the Buchan family. Yet Sir David was the only member of that family with whom May was ever in contact, so far as can be deduced from his papers. He kept published offprints of some of Lord Erskine's speeches; but there are no letters to or from those who may be his half-brothers or sisters.

There is one other small but important indicator which should be mentioned at this point. In part of May's wife's family, which was also that into which one of his sisters married, there is a tradition that the son of that sister claimed that his grandfather was Lord Erskine.[2]

The case for (or rather against) Lord Erskine therefore seemed fairly well founded if not quite conclusive until there came to light in the baptismal register of St Martin in the Fields under 21 September 1815, an entry referring to Thomas Erskine May, son of Thomas May, attorney, and Sarah May.[3] Both parents lived in Kentish Town. Though this is still some way from complete identification, what is certainly known of May is fully consistent with the details in the register. In the 1851 Census, he acknowledged that he was born in Kentish Town. On another occasion, he claimed to have been born in February 1815 in Highgate, which adjoins – but was presumably considered more desirable than – Kentish Town,[4] And there certainly was a Sarah May who was living in Kentish Town in 1815.[5] If the Clerk were really the attorney's son, this would explain the surname, something the Erskine claim has never successfully done. Fully conclusive identification would be found if May's sisters (for whom see below) could also be shown to be the children of Thomas and Sarah May: but though their ages can be more or less precisely estimated, these baptismal records have not yet been found, and there is a possibility that for one sister at least, no such record exists at all.[6]

There is one other elusive indication that the unknown attorney Thomas May could be a more satisfactory candidate for paternity than Lord Erskine. When in 1839 May's father-in-law was dying, May was summoned to Chippenham in Cambridgeshire by a family friend, Rev George Mingaye, who mentioned that his – May's – parents were there already[7]: but by then Lord Erskine had been dead for sixteen years.

Pending some evidence capable of putting May's paternity beyond reasonable doubt, much will turn on Lord Erskine's circumstances between 1794 – when it seems that the eldest of May's sisters was born – and his own death in 1823. He had the means and the motive: did he also have the opportunity?

Lord Erskine's first marriage ended with the death of his wife in 1805. Thereafter his biographers, one of whom had known him personally, hint at or openly deplore a discreditable pattern of life, in which the birth of an illegitimate son in 1815 would come as no surprise.[8] It was common

knowledge in political society that Lord Erskine was far from settling down to *otium cum dignitate*. It would hardly have been expected of a man whom Mrs Mure of Caldwell called, 'a charming, entertaining creature, and by much the happiest man in London . . . the best looking, young-like creature I ever saw.'[9] On the other hand, there is evidence to suggest more stability in Erskine's life than society gossip believed.

Soon after the death of the first Lady Erskine, he began living with Sarah Buck.[10] A number of stories have been told about her background, but it seems clear that she was the daughter of a respectable tradesman in the West End of London who had fallen on hard times. When they met, she was apprenticed to a straw bonnet-maker.[11] 'He said his name was Thomas, and that he was a private gentleman,' the second Lady Erskine sadly reflected later. If Lord Erskine is to be regarded as the most likely father of May, the natural candidate for mother would be Sarah Buck, especially as they lived together for thirteen years or so before marrying. But for a variety of reasons, the case for Sarah Buck will not stand up.

There is direct evidence of four children of Erskine and Sarah Buck. The first was born in 1805 or 1806, the last in 1817.[12] In October 1818, for reasons not now clear, Lord Erskine decided that his children should be legitimised. He and Sarah Buck went to Gretna, together with the four children that we know of, and were married *per verba de praesenti*. Under Scots law, all children were thereby legitimate from their birth, a benefit the law of England could not have supplied at the time.[13] Throughout this incident, there is no trace of Thomas Erskine May. And if he were an otherwise unknown child of Erskine and Sarah Buck, the events at Gretna would have removed the stigma of illegitimacy from him as they did from the others, and there would have been no reason to conceal his parentage. He was now as legitimate in England as he was in Scotland: the law had recently been made quite clear on that score.

Not long afterwards, Lord Erskine engaged in further legal activity to put the legitimacy of his children beyond doubt, by participating in what may be a collusive suit in the Commissary Court in Edinburgh[14] just as he was bringing an action of divorcement against his second wife in the same court, in July 1820.[15] He alleged adultery, and she argued in reply that the cause of the disagreement was a trivial domestic dispute, though afterwards she was to attribute it to mental disturbance.[16] Lord Erskine's heart hardly seems to have been in the business, for as soon as his wife's solicitors raised a feeble technical point he abandoned the case. In May 1821, however, the battle was renewed in the English courts, and this time Lady Erskine alleged adultery on the part of her husband, naming her niece as the co-respondent.[17] It is of course possible that there were good grounds for the allegation, and it may be to this relationship that we should look for May's parentage. At the same time, however, there are problems involving May's sisters in such a solution

(see below) and in any case, both sides soon withdrew their petitions, and agreed to a judicial separation. If May had been the offspring of an adulterous union with Sarah Buck's niece or anyone else, his existence would have been the strongest possible point in Sarah Buck's favour. But in the course of two divorce cases, she seems never to have alluded to a child of her husband's by someone else.

Two years after the second case, Lord Erskine died. Even after his disappearance from the scene, facts about his association with Sarah Buck continued to emerge, and none of them supported a link between Erskine and May. Though Lady Erskine was to speak of a legacy of £300, the fact was that her estranged husband's death left her penniless.[18] The three oldest children Erskine Thomas, Alfred, and Agnes Stewart Sarah were grown up or had been provided for.[19] The fourth, Erskine Hampden, remained with her, but she was unable to provide for them both by her needlework. An attempt by George IV to look after the family of his old crony broke down when, in the course of a dispute over the upbringing of the youngest, Lords Rosslyn and Duncannon interrupted the payments and threatened to resign as trustees. As a result, Lady Erskine appeared faint with hunger and in rags before the Lord Mayor's court, introduced as an object of charity by a chimney sweeper who happened to be present. The *Times* set forth details of a series of hearings with growing indignation.[20] At the end of the proceedings, Lady Erskine received a small lump sum raised by subscription, including contributions from the inmates of Whitecross Street debtors' gaol. She died in London many years later, in 1856, still apparently in very poor circumstances.[21]

Not only is May not among the children known to be born to Sarah Buck who were legitimised at Gretna, in a ceremony which was obviously of importance to their father, but he does not appear among those admitted to by the second Lady Erskine when pleading for the necessities of life in the mid-1820's. Had May been her responsibility, he would at that time have been no more than ten, and would surely have figured in the case.

May appears to have had three sisters, details of whose background might have been of assistance with consideration of his own. Unfortunately, though some facts about the sisters have come to light, a full picture is not yet possible. Two of the sisters are mentioned in his wills, Maria Erskine May, who was born about 1794–95[22]; and Lavinia, born in 1799. The third and youngest sister predeceased May. Her name was Anne Agnes May, and in 1833 she married a half-brother of the lady whom May himself was to marry six years later. In 1847, she died at May's house in Chester Square.[23] Whether all three sisters were related to May in full blood is uncertain. Their mother's childbearing period would have to be from 1794 to 1815: this is long, though not impossibly so. It would however rule out Sarah Buck's niece as mother of all four,

since it would be unlikely the niece had Maria Erskine May in 1794, while the aunt's first child was born in 1805. There is no help to be gained from May's wills, which simply mention the two eldest as his sisters; and the will of one of the sisters calls May her brother only.[24] The difficulty about assuming that all four are related in full blood and that Lord Erskine is their father is that we should thereby have to suppose a third liaison nearly as long-lasting as each of his marriages, which began well before his first wife died and continued through most of his association with Sarah Buck. It may be so, even if Sarah Buck made no mention of it in the divorce proceedings; but in default of positive evidence, and taking into account Erskine's claim that he had never concealed his relationship with Sarah Buck[25] a third and otherwise unknown lady seems unlikely.

May's papers and writings have nothing to say on his early years which would throw light on any of this. There is mention neither of the poverty of Sarah Buck – who may after all have been May's father's wife – nor of her death in 1856. When May was sent to Bedford School, it cannot have been to get him temporarily out of the way as a family embarrassment. The appointment of Brereton as headmaster in 1811 had given the school an enviable reputation beyond the locality. The scholarship to Oxford of which May speaks in his Journal[26] looks as if it was a school award; whatever happened to prevent him from taking it up in 1831 remains a mystery. There is nothing in the life of Sarah Buck or the Erskine family to explain it. He can hardly have been called upon to support his sisters on the death of a parent, since all three were rather older than he was.

On present evidence, we are still far from being able to make a confident judgment between the claims of Lord Erskine and Thomas May the attorney – or indeed anyone else. Both the major possibilities have much to commend them. As Hugh MacDiarmid wrote in quite another context, 'I doot it needs a Hegel Sic opposites to fuse.' But if a synthesis has to be suggested, might it be that Sarah May the attorney's wife was an illegitimate daughter of Lord Erskine?

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1. Erskine May papers (EMP) in the House of Lords Record Office, Sir David Erskine to May, 15 January and 23 July 1834; 1 June and 8 and 23 July 1837. (EMP 16/1 to 16/3).
2. The claim was made by Colonel A.F. Laughton, the son of Anne Agnes May and Dr Richard Laughton. I am indebted to Mrs C M B Stalham for this information.
3. This important discovery was made by Mrs Anne Boulton, to whom my thanks are due for bringing it to my notice.
4. Mrs Boulton drew my attention to the 1851 Census entries. The claim to have been born in Highgate appears in the 1879 edition of the *Biograph* but when May revised the text for the 1882 edition – which is the one usually quoted – the only change he made was to excise the reference to his place of birth. 5. At 2 Spring Row (see Rate Book in Holborn Public Library.)
6. Henry Duffell to May, 13 April 1867 (EMP sect 13), relating almost certainly to the baptism of Lavinia, implies that her birth can be calculated only by reference to that of her sister.
7. Rev George Mingaye to May, 22 October 1839, EMP 16/10, but the value of this evidence is diminished by the fact that Mingaye appears to have been ignorant of May's Christian name.
8. *Lord Campbell*, Lives of the Chancellors, vol.ix, pp.27–28 (1868); *E. Walford*, Speeches of Lord Erskine (1880); and *L.P. Stryker*, For the defense (1947).
9. *Alex Ferguson*, Hon Henry Erskine (1882) p. 347. Sir Walter Scott was a good deal less taken with Erskine: 'Tom Erskine was positively mad . . . [his wit] was moody and muddled. But I never saw him in his best days.' (*J.G. Lockhart*, Life of Scott, vol. vii, pp 189–90 (1838).)
10. The chronology can be established partly by the Instrument and Declaration of Marriage in October 1818 (National

Library of Scotland, Ms 3813, f.60) and partly by the age of the eldest child in 1826 (*Times*, 22 July 1826, p. 9, col. 6).

11. *Times*, loc. cit.
12. The birth dates of the first two children are uncertain. The third was born on 24 November 1812, and the last on 5 December 1817. Mrs Anne Boulton kindly communicated to me the details of the baptism of the last two; it seems that Agnes Stewart Sarah was christened in three separate churches, Erskine Hampden, more canonically, only once.
13. It is possible that marriage and legitimation were in Erskine's mind as early as 1811, when he congratulated Sir William Scott on an important judgment in Dalrymple v. Dalrymple that marriages in Scotland may be challenged only under Scots law. (Erskine to Scott, 29 November 1811, N L S Mss 11000, ff. 53–55.)
14. N L S Mss 3813, f.60.
15. The papers are in the Scottish Record Office, CC8/6/12.
16. ibid. and *Times*, 22 July 1826, p.3, col 6.
17. *Times* 26 May, 28 May and 6 June 1821.
18. *Times*, 12 July 1826, p. 3, col 4.
19. Sarah Buck herself at one point spoke of only three children, (*Times*, 12 July 1826) but her solicitor mentioned four the following day. The two eldest boys were in the services, and Agnes 'under the protection of an amiable lady.'
20. *Times*, 12, 14, 22, 24 July 1826.
21. Not, as the *Scots Peerage*, Ruvigny, *Mortimer-Percy* p.224, and other authorities have it, at Dalswinton in 1825.
22. The date can be deduced from her death certificate. She married Rev Adam Roxburgh, a minister in the Presbyterian Church of England.
23. G M [illegible] 1847, p.666.
24. The elder two sisters are recognised as such in May's first will of 1858 (EMP 13/1, 13/3). Maria recognised May in her own will: she died in 1886.
25. In the Instrument of Acknowledgement and Declaration of Marriage, Erskine states that the four children by Sarah Buck were 'registered in my own name in the baptisms, and were never considered by me . . . as my natural children, nor were introduced to the world or assumed as such.' (N L S Mss 3813, ff. 60 and ff.)
26. ed. D. Holland and D. Menhennet, Erskine May's Journal: *Diary of a great Parliamentarian, 1857–82* (1972) p. 42.

XI APPLICATION OF FREEDOM OF SPEECH IN PARLIAMENT IN RESPECT OF ACTIVITIES OF A ROYAL COMMISSION

BY D. M. BLAKE

Clerk of the Australian House of Representatives

In April 1983 a Russian diplomat was expelled from Australia after the Government decided that his continued presence in this country posed a threat to national security. That event, seemingly remote from the privileges of the Parliament, was in fact to have significant repercussions for the Parliament culminating in the resignation and subsequent re-instatement of a Minister and, significantly from the point of view of this article, a decision by the Speaker of the House of Representatives (joined by the Deputy President of the Senate) to be represented by senior counsel before a Royal Commission to ensure that there was no infringement of Members' rights of freedom of speech in the Parliament.

Following the expulsion of the diplomat, rumours began to circulate o the effect that the Government had directed that its Ministers were ɔ have no contact with a former senior official of the Australian Labor ˡarty (the Government's own political party) in his capacity as a ıobbyist. The matter was raised in the House and the Prime Minister later confirmed that such a direction had been given because of the lobbyist's involvement with the expelled diplomat.

The Government's handling of the affair became a matter of a good deal of controversy. It was said that the way in which the case had been dealt with had resulted in the lobbyist being denied natural justice and the decision that Ministers were not to have contact with him (and the publicity that had flowed from this) had destroyed or endangered his livelihood. As a consequence the Government elected to establish a Royal Commission to inquire into Australia's security and intelligence agencies but, as a first priority, to have the Royal Commissioner inquire into and report upon (1) the circumstances surrounding the expulsion of the diplomat, (2) the involvement of the lobbyist in the issue and (3) the actions of the Government in those matters.

Statements made in the House (and to a lesser extent in the Senate) were of particular interest to the Royal Commission and during the winter adjournment it sought and obtained the Speaker's approval to adduce the relevant *Hansard* reports into evidence. The letter conveying the Speaker's approval stated:

'Mr Speaker's approval is given on the understanding that Counsel assisting the Royal Commissioner are aware of and will have proper regard to the limitations imposed by Article 9 of the Bill of Rights, as applied by section 49 of the Constitution'.

(The privileges of the Australian Parliament are those applicable to the U.K. House of Commons as at 1 January 1901, until otherwise declared)

During the course of its proceedings, the Royal Commission issued a statement of issues which it saw as requiring resolution. Two of the issues identified were:

(1) Was the disclosure by the Prime Minister in answer to a question in the House of Representatives on 10 May 1983 of [the lobbyist] as a person with whom Ministers should not associate in respect of lobbying proper, and

(2) Was the statement made in the House of Representatives by the Prime Minister on 11 May 1983 made pursuant to any agreement or understanding between the Attorney-General and [the lobbyist].

When he became aware of the issues that had been identified, Mr Speaker became concerned that, if pursued, these matters could pose a threat to the privileges of the House in that they purported to question the actions of Members in the House. No doubt a factor in Mr Speaker's concern was a belief that, the Royal Commission having been established by the Government, it was unlikely that the Prime Minister and other Ministers who were to appear before the Royal Commission as witnesses would seek to invoke their privilege lest it be thought they were attempting to hide behind a screen of immunity from the Royal Commission's inquiries.

Mr Speaker's concern about some of the identified issues was conveyed to Counsel assisting the Royal Commission and amendments to, and omissions from, the statement of issues were made. However, given the nature of the inquiry, Mr Speaker felt that there was a real and substantial danger to Members' right of freedom of speech in the House and he, joined with the Deputy President of the Senate, sought and was granted conditional approval to be represented by senior counsel before the Commission.

The question of parliamentary privilege was argued before the Royal Commission and justification of the Speaker's action was almost immediately forthcoming when counsel for one of the parties informed the Commission that

'. . . we want to question Ministers about statements made by them in the house . . .'

Whilst the Royal Commissioner immediately indicated that this *prima facie* would be within the scope of privilege, it was clear that the Speaker's representation before the Commission and argument put by

counsel on the Speaker's behalf served to assist in clarification of the application of the law of parliamentary privilege in respect of matters before the Royal Commission. Mr Speaker continued representation during the relevant portions of the Commission's proceedings when Ministers gave evidence to it and the same representation was continued by the President of the Senate when Senators appeared.

When the House resumed after the winter adjournment Mr Speaker made a statement outlining the action he had taken and concluded with the following remarks:

> 'I should say that the somewhat unique action I took was designed to help ensure that no action was taken or decisions made before the Royal Commission which would have the effect of eroding the privileges of this House. Freedom of speech is an essential of a free parliament in a democratic society. To allow any action which would result in members of this House being questioned by outside authorities in respect of statements made by them in this House or their motives in making those statements would amount to a serious weakening of that privilege. Such action is reserved for the House itself. Finally, it must be remembered that the privilege is that of the Parliament as a whole and not that of an individual member or of the collection of members who, for the time being, constitute the membership of the Parliament. For me to have ignored the potential threat to the privilege of this institution would have been a very serious dereliction of my duties and my responsibilities to this House as its Speaker'.

The Speaker's action and his statement to the House were endorsed by all sections of the House.

XII DECLARATION OF INTEREST: ANSWERS TO THE QUESTIONNAIRE

The Questionnaire for Volume LII of the Table asked:

DECLARATION OF INTEREST: Please give details of your parliament's procedure under which Members make a declaration of interest (see May, 20th ed., pp. 435–9).

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: Federal Parliament

The question of declaration of private interests of Members of Parliament has been the subject of considerable scrutiny in the Federal Parliament over the last decade, culminating in resolutions passed by both Houses in October 1983.

The Joint Committee on Pecuniary Interests of Members of Parliament was established in 1974 on the initiative of the then Labor Government. The recommendations presented by that Committee in its Report on Declaration of Interests, whilst differing in some important aspects, resembled the system of registration of interests introduced by the House of Commons of the United Kingdom in 1975. Notices of motion to accept and implement the Committee's recommendations lapsed with the dissolution of both Houses in 1975, and fresh notices again lapsed in 1977.

In February 1976, Prime Minister Fraser formally requested all Ministers to present him with a declaration of interests, which he would keep on a strictly confidential and personal basis. The registration of Ministers' interests has since become standard procedure.

The formation of a Committee of Inquiry into Public Duty and Private Interest was announced by Prime Minister Fraser in 1978. The Committee, chaired by Sir Nigel Bowen, Chief Judge of the Federal Court of Australia, concluded that there was insufficient justification at that time to introduce a compulsory system of registration of interests. It recommended for adoption a Code of Conduct which included a requirement for *ad hoc* declarations of interest for all members. However it also recommended that a system of registration of Ministers' interests should continue. The Bowen Committee report was tabled in 1979, gaining broad acceptance of its recommendations.

The election of the Labor Government in 1983 was followed by fresh attempts to formalise a system of declaration of interests. Resolutions

passed in both Houses in October 1983 provided for the introduction of a comprehensive register whereby all Senators and Members would provide similar statements of their private interests, including as far as practicable those of their families.

The private interests of Senators and Members were accordingly to be lodged in a public register on an annual basis, with amended statements being provided if circumstances changed. Notwithstanding the lodgement of statements by members and their incorporation in a public register, individual members would declare any interest which appeared to be relevant whilst participating in a debate or voting in a division.

General categories of interests referred to in the Resolutions include:

- shareholdings in public and private companies (including holding companies);
- family and business trusts and nominee companies;
- directorships in private companies;
- partnerships;
- real estate;
- liabilities (excluding short-term credit arrangements);
- bonds, debentures and like investments;
- savings or investment accounts;
- any other assets (including collections, but excluding household or personal effects) each valued at over $5000;
- any other substantial sources of income;
- gifts valued at over $250 received from official sources, or at more than $100 where received from other than official sources;
- hospitality or sponsored travel; and
- any other interests, such as memberships of organisations, where a conflict of interest with a member's public duties could foreseeably arise or be seen to arise.

During debate on the two resolutions, the Government also brought to the attention of the Parliament the fact that it had introduced a new practice in relation to the declaration of Ministers' interests. Ministers were asked to provide to the Prime Minister statements of their private interests, as well as those of their families as far as was practicable; copies were then presented to the Parliament as a matter of public record.

Ministers therefore made *two* statements of private interests: the first being similar to those made by ordinary members, the second an annual statement to the Prime Minister declaring the values of individual interests (whether income, assets or liabilities).

The questions of what changes to Standing Orders would be required to give effect to the above measures, as well as the desirability of adopting other provisions contained in the Bowel Committee Report relating to Senators and Members (excluding constitutional matters, but

including the Code of Conduct), have been referred to the Standing Orders Committee of each House. The Government also proposed that Senate Standing Orders be amended to require all Senators to declare a relevant interest if they participate in a debate or vote in a division in the Senate. The Standing Orders Committee has not yet presented a report in relation to these matters.

New South Wales

The Constitution (Disclosures by Members) Amendment Bill was passed by both Houses of the New South Wales Parliament on 12 May 1981 and was subsequently approved at a referendum on 19 September 1981. The Bill was assented to on 29 January 1982, and introduced a new section 14A into the Constitution Act, 1902 (NSW). Subsection (1) of section 14A provides that the Governor may make regulations for the disclosure by Members of either House of Parliament of all or any of the following pecuniary interests or other matters:

(i) real or personal property
(ii) income
(iii) gifts
(iv) financial or other contributions to any travel
(v) shareholdings or other beneficial interests in corporations
(vi) partnerships
(vii) trusts
(viii) positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations.
(ix) occupations, trades, professions or vocations
(x) debts
(xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, Members
(xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations.

Subsection (4) provides that a regulation made under subsection (1) must apply equally to Members of the Legislative Council and the Legislative Assembly.

Subsection (5) provides that the Governor, before making a regulation, shall afford Committees of either House (established for the purpose) the opportunity of considering and making representations to the Governor with respect to the proposed regulations.

Subsection (6) provides that a regulation can only be disallowed by resolution of both Houses of the Parliament. In November, 1982, Committees were established in both Houses to consider and make representations to the Governor, who was bound to take these representations into account before making the regulation.

Under the Constitution (Disclosures by Members) Regulation, 1983, (published on 6 May, 1983) Members are required to disclose certain pecuniary interests and other matters of the kinds enumerated in section 14A of the Constitution Act (referred to above).

Members are at liberty to disclose any interests which are not obligatory.

The Regulation does not require the disclosure of the value of an interest except in the indirect sense that some interests (e.g. gifts, contributions to travel, debts) must be over a certain value before their disclosure is required. The scheme of disclosure of pecuniary or other interests only applies to Members of both Houses; spouses and others are exempted.

The Clerks of the respective Houses are responsible for receiving Members' disclosures and maintaining separate registers.

Within three months of taking the oath or making an affirmation following election, a new Member must complete a primary return disclosing his interests. All Members must subsequently furnish their declarations within three months following the 30 June each year in relation to the preceding twelve months.

The registers, which will eventually contain returns of Members (in alphabetical order) lodged within the previous eight years, are open for inspection by Members and the public during office hours; and by Members at any time the House is sitting. Persons desirous of inspecting he registers are required to make an appointment, identify themselves ınd record their attendance in writing.

Within 21 days after the last day for the lodgment of returns each year, the Clerks arrange for tabling of the register by the respective Presiding Officer and publication as a parliamentary paper.

Section 14A (2) of the Constitution Act provides that if a Member wilfully contravenes any regulation the House may declare his seat vacant.

Declaration in proceedings of the House or its Committees

Standing Order 126 of the Legislative Council provides that a Member is not entitled to vote in any Division upon a Question in which he has a direct pecuniary interest, not in common with the rest of Her Majesty's subjects and on a matter of state policy.

Under Standing Order 238 a Member cannot sit on a Select Committee if pecuniarily interested in the inquiry before the Committee.

So far as debates are concerned, it is left to the discretion of the Member concerned to declare details of any relevant interest during his remarks.

Northern Territory of Australia

Legislative Assembly (Register of Members' Interests) Act 1982
(Act No. 49 of 1982)

Members are required to disclose their interests in a return submitted to the Clerk for inclusion in a register within 90 days after 30 June each year and within 60 days after being sworn in as members. The return shall contain, under Section 5(1) of the Act –

(a) the name and description of each company, partnership, association or other body in which the member holds or held during the return period, a beneficial interest;

(b) a concise description of each trust in which the member or his family holds or held during the return period, a beneficial interest;

(c) the address and description of all land in which the member has a beneficial interest;

(d) the name of each company or other body in which the member holds or held during the return period, an office of any kind;

(e) any other substantial interest of the member or of his family of which the member has knowledge, whether of a pecuniary nature or otherwise, and which the member considers might appear to raise a conflict between his private interest and his public duty as a member;

(f) in the case of a return of a member pursuant to section 4(1)* –

(i) where the member receives or is entitled to receive a financial benefit during any part of the return period – a statement of the income source of the financial benefit;

(ii) the source of all significant contributions made in cash or otherwise (other than a contribution by the Territory or a statutory authority of the Territory) to an travel beyond the limits of the Territory undertaken by the member during th return period; and

(iii) particulars of all gifts of or above, or in total of or above, the amount or valu of $500 received by the member during the return period from a person other than a person related to the member or his sponsor; and

(g) in the case of a return of a member pursuant to section 4(2)** or (3)*** – a statement of all income sources that the member has or expects to have in the period commencing on the date of the return until 30 June next following.

Sub-section 2 provides that –

'(2) Nothing in this section shall require a member to disclose the amount of a financial benefit entered in the Register in relation to the member or a member of his family.'

A member is required to notify the Clerk of any change occurring in relation to information in the Register, except a change occurring after 1 April in each year, and the Clerk is to amend the Register accordingly.

A person may, on providing his name and address to the Clerk, inspect the entries made in the Register in relation to a particular member and his family. The Clerk is to record in the Register, so that it is readily available to any other person who later inspects the relevant entries, the name and address of each person who has inspected those entries and the date on which the inspection was made.

A person shall not publish or comment on information contained in the Register unless the information published constitutes a fair and accurate summary, or the comment is a fair comment, and it is published or made, without malice, in the public interest.

* Annual return.
** Member on date of commencement.
*** Return following swearing in.

The Act also provides that a wilful contravention of a requirement of the Act is a contempt of the Assembly and may be dealt with accordingly.

Queensland

Queensland Standing Order No. 158 provides that –

'No Member Pecuniarily Interested May Vote
A Member shall not be entitled to vote either in the House or in a Committee upon any Question in which he has a direct pecuniary interest, and the vote of any Member so interested shall be disallowed.'

On 30 October 1929 the Speaker ruled that the Standing Order referred to transactions 'as a result of which a member is going to put something into his own pocket in some particular way.' (Qld. V. & P. p.304).

On 23 November 1978, Mr Speaker Houghton ruled in relation to this Standing Order and said that 'carried to its extreme this Standing Order could have prevented Members in years gone by from voting on Bills to increase their salaries.'

'Without a register of Members' interests the Chair is not in a position to know the pecuniary interests of Members. However, I do believe that it is incumbent upon any Member who has a direct personal pecuniary interest in any measure before the House or the Committee, to declare such interest and refrain from voting.'

'The House of Commons Standing Order states – "A Member may not vote on any Question in which he has a direct pecuniary interest." If he votes on such a Question, his vote may on Motion be disallowed.'

'This requires an objection to a vote to be raised upon a substantive Motion which can be debated but, as our Standing Order omits the words 'may, on Motion' and substitutes the word 'shall', I believe that it would be quite competent for a Member having evidence of another Member's pecuniary interest in a matter before the House or the Committee, to raise the Question with the Chair immediately after a Division had been taken.'

Mr Speaker also drew attention to a 1946 ruling made by Speaker Brassington, when a Question was raised as to what constituted a direct 'pecuniary interest'. In that ruling the Speaker quoted the evidence of a Select Committee of the House of Commons, and in particular the definition 'that there must be direct pecuniary interest of a private and particular and not of a public and general nature, and where the Question before the House is of a public and general nature and incidentally involves the pecuniary interest of a class, which includes Members of the House, they are not prevented by the rule of the House from voting.'

On a private members' motion, to the effect that legislation be introduced to forbid Cabinet Ministers or their immediate family from holding shares in companies which could be expected to have dealings with the Government through a Member of Cabinet, the Speaker ruled, on a point of order, that the provisions of S.O. 158 did not apply to the motion (Q'ld. V. & P. 22/7/1971, pps.7/8).

In 1980, before the Second Reading of a Bill entitled the State

Housing (Amendment of Freeholding Provisions) Bill, the Opposition spokesman on housing said – 'having considered the contents of the Legislation in detail since it has been tabled in this Assembly, and as a business venture I am associated with is on Crown land, I have reason to believe that I could be involved. Irrespective of my right to speak, I wish to disassociate myself from the debate and the vote, and to withdraw forthwith from the Chamber so as to leave no doubt as to my integrity in this matter.'

South Australia

Standing Order No. 214 of the House of Assembly states –

'No Member shall be entitled to vote in any division upon a question in which he has a direct pecuniary interest, and the vote of any Member so interested shall be disallowed.'

The obligation is upon the Member to declare his personal pecuniary interest. He may only be challenged after a vote has been taken and if it is proved that the Member does have a personal pecuniary interest then his vote is disallowed.

In 1983 the Parliament passed the Members of Parliament (Register of Interests) Act which requires Members to lodge a return showing their families and their own interests. The Act requires that a return shall contain the following information –

(a) the name or description of any company, partnership, association or other body in which the Member required to submit the return or a member of his family holds a beneficial interest;
(b) the name of any political party, any body or association formed for political purposes or any trade or professional organization of which the Member is a member;
(c) a concise description of any trust in which the Member or a member of his family holds a beneficial interest and a concise description of any discretionary trust of which the Member or a member of his family is a trustee or object;
(d) the address or description of any land in which the Member or a member of his family has any beneficial interest other than by way of security for any debt;
(e) any fund in which the Member or a member of his family has an actual or prospective interest to which contributions are made by a person other than the Member or a member of his family;
(f) where the Member or a member of his family is indebted to another person (not being related by blood or marriage) in an amount of or exceeding five thousand dollars – the name and address of that other person;
and
(g) any other substantial interest whether of a pecuniary nature or not of the Member or of a member of his family of which the Member is aware and which he considers might appear to raise a material conflict between his private interest and the public duty that he has or may subsequently have as a Member.

A Member is not required to disclose the actual amount or extent of any financial benefit, gift, contribution or interest.

The Register of Members' Interests is compiled from the returns made by the Members in accordance with the foregoing requirements. The Clerk of each House of Parliament is the Registrar for that House's

particular Members and is responsible for the collating and safekeeping of the records. The Registrar shall cause a statement, constituting a compilation of the information provided in the returns, to be laid before the House of Parliament for which he is Registrar.

Members of the public may inspect and obtain a copy of any information contained in the Register.

A person shall not publish whether in Parliament or outside Parliament –

(a) any information derived from the Register unless that information constitutes a fair and accurate summary of the information contained in the Register or statement and is published in the public interest;

or

(b) any comment on the facts set forth in the Register or statement unless that comment is fair and published in the public interest and without malice.

The penalties for an offence against this section provide that Members would be guilty of contempt of Parliament and other bodies or persons would be liable for penalties including imprisonment and fines.

All proceedings for an offence against the Members of Parliament (Register of Interests) Act shall be disposed of summarily.

Tasmania: Legislative Assembly

A Member declares interest in a matter before the House, usually when the matter is brought on for discussion. For example, if it was legislation by which a Member would benefit financially, he would declare his interest and may participate in the debate but not vote.

Tasmania: Legislative Council

1. 'Office of profit' is detailed in Section 32 of the Constitution (25 Geo V No. 94 as amended).

Council Standing Order No. 200 reads:

200. A Member shall not be entitled to vote, either in the Council or in Committee, on any Question in which he has a direct pecuniary interest, such interest being of an immediate and personal, and not merely of a general or remote character; and the vote of any Member so interested shall be disallowed; but any such Member shall not be precluded from proposing any Motion or Amendment relating to such Question.

Members are expected to declare interest from their place. The situation is clearly indicated by Items 2 and 3 of Votes and Proceedings of Thursday 11 June 1981:

2. Bill No. 185 of 1980: DECLARATION OF INTEREST – Mr Batt sought a Ruling on his eligibility to vote on the Lands Resumption Amendment Bill 1981, and tabled an opinion as follows:-

SOLICITOR-GENERAL'S CHAMBERS,
HOBART
10 June 1981

The Attorney-General
The Honourable B. K. Miller, M.L.C.

Re: Members' Interest in Bill

In my opinion there is no difficulty in Mr Batt voting on the Lands Resumption Bill. He has no direct pecuniary interest of an immediate and personal nature in the outcome. (I assume he has made no claim). See Standing Order 200.

His interest is in common with all members of the public who might be affected and in any event the question arises on a matter of State policy (May 18th Edition page 407).

I advise that he declared his interest as one which he perceives to be general only and in any event he declares his intention to vote in favour of the Bill and thus against the possibility of him ultimately deriving any benefit from the result.

R. C. JENNINGS, Solicitor-General.

3. Bill No. 185 of 1980: PRESIDENT'S RULING – The President said :- 'The Honourable Deputy Leader himself would know if he has a pecuniary interest. He has taken advice upon the matter and, if he has no interest within the meaning of the law, can vote on this. It is for the Honourable Deputy Leader to satisfy himself as to whether he is entitled to vote because the adverse consequences, if any, would fall upon his shoulders and not upon the shoulders of any other Honourable Member in the Parliament. I would not rule whether the Honourable Member was entitled to vote. I think he probably is but the responsibility for voting is the Honourable Deputy Leader's personal responsibility and he must face up to the consequences, if there are any consequences.'

Victoria

Members of each House are bound by a code of conduct laid down in the Members of Parliament (Register of Interests) Act 1978, section 3(d) of which imposes the following obligation with regard to disclosure of interests:

A Member shall make full disclosure to the Parliament of –
(i) any direct pecuniary interest that he has;
(ii) the name of any trade or professional organisation of which he is a member which has an interest;
(iii) any other material interest whether of a pecuniary nature or not that he has –

in or in relation to any matter upon which he speaks in the Parliament.

In addition, the Act requires a formal Register to be maintained by the Clerk of the Parliaments. Members must declare their interests under several headings prescribed by regulations made pursuant to the Act. In summary, the following information is required to be recorded in the Register:

- The source of any income received, other than Parliamentary salary, &c.;
- Any office held in a company;
- The name of a company in which a beneficial interest exceeding $500 is held;
- Membership of a political organisation or trade or professional group;
- The description of a trust in which a beneficial interest is held;
- The description of a trust of which the Member is a trustee and in which a family member holds a beneficial interest;
- The description of land in which beneficial interest is held, other than as security for a debt;
- The source of significant contributions received towards travel, other than from public funds;
- Any gift exceeding $500 received from a person not related by blood or marriage; and
- Any other substantial pecuniary or other interest held by the Member, or by a family member, which might appear to raise a material conflict in relation to public duty.

A newly-elected Member is required to submit a return within 30 days of taking his seat. Thereafter returns are submitted annually, although casual notice of alterations may be given at any time.

Access to the actual Register is not provided for, but a summary of Members' returns (which in effect virtually reproduces the details as submitted by Members) is prepared by the Clerk of the Parliaments for presentation to the Houses 'as soon as practicable after their receipt'. Following presentation that summary becomes available publicly.

Wilful contravention of any of the requirements laid down by the Act shall be a contempt of the Parliament and may be dealt with accordingly. In addition to any punishment which may be awarded on that account, the appropriate House may impose a fine not exceeding $2000 and, if payment is not effected within the time specified by the House, the Member's seat shall become vacant.

Western Australia

Members of Parliament (Financial Interests) Bill, 1983.
This Bill would have required members of the Western Australian Parliament to register publicly their financial interests.

Public disclosure of members of Parliament's financial interests is a longstanding commitment of the Labor Party, both at state and federal levels.

The effects of the Bill, which is based mainly on the New South Wales regulations, may be summarised as follows:

Clauses 4 and 5 prove the scheme of the Bill. Disclosure is initially by a primary return, and subsequently by annual returns lodged not later than August 31 in each year. Returns are lodged by a member with the Clerk of the appropriate House, who maintains a register for that House.

Clauses 6 to 14 require disclosure of wide ranging financial interests. These include real property, sources of income, trusts, gifts, contribution to travel, interests and positions in corporations, positions in trade unions and professional or business associations, debts, and dispositions of property.

Clause 15 provides that a member in his discretion may disclose any other interests which appear to the member to raise potential conflict between his private interests and his public duty as a member.

Clauses 16 and 17 provide for the maintaining of registers by the Clerks, and the inspection of the register by the public during office hours.

Clause 18 provides that the Clerk of each House shall furnish to the Presiding Officer of the particular House, a copy of the register for laying before the House, and subsequent publication as a parliamentary paper by the Government Printer.

Clause 19 provides that a member shall not publish in Parliament, nor any person outside Parliament, any information derived from a register unless that information constitutes a fair and accurate summary of the information contained in the register, and is published in the public interest. Any comment on the register must be fair, in the public interest, and without malice.

Clause 20 provides for the failure of a member to comply with the disclosure provisions. Sanctions imposed are a penalty not exceeding $2000 or, in certain circumstances, vacation of the member's seat.

Clause 21 provides that where a member fails to pay a fine imposed under either clauses 19 or 20, results in vacation of the member's seat.
The Bill passed all stages in the Legislative Assembly, but was defeated at the second reading stage in the Legislative Council.

Canada: Manitoba

The Legislative Assembly and Executive Council Conflict of Interest Act was enacted on August 18, 1983 and will be proclaimed before the next Session of the Legislature (expected mid-March, 1984).

Yukon

Standing Orders state:

9(1) No member is entitled to vote upon any question in which he has a direct pecuniary interest.

By practice, a member states at the beginning of any remarks on a topic in which he has a pecuniary interest that he has such an interest.

Pursuant to section 8 of the Legislative Assembly Act, members must file annually a disclosure statement.

Saskatchewan: Legislative Assembly

It is a basic premise that when a person is elected a member of the Legislative Assembly of Saskatchewan he ceases to be a private citizen and becomes a servant of the public. As the scope and complexity of government expands, particularly in areas formerly thought of as 'business', it becomes increasingly difficult for members of the Legislative Assembly to distinguish between private interests and public duties. As a result The Members of the Legislative Assembly Conflict of Interests Act, Stat. Sask. c. M–11.2 (hereinafter referred to as the 'Act'), was introduced to address the issue of conflict between a member's private interest and his public duties and responsibilities. The Act provides the perimeters within which the members of the Legislative Assembly are required to conduct their activities so as to avoid conflict.

All Section references are to The Members of the Legislative Assembly Conflict of Interests Act, as amended.

Prohibited offices, commissions and employment

Section 3 prohibits a member of the Legislative Assembly from holding any position under the Crown. Therefore, if any member holds any job, office or place of profit with the public service or any corporation, board, commission, committee, agency or any other body that is a servant or agent of the Government of Saskatchewan or receives any remuneration for such service, his election as a member is void and he cannot sit or vote in the Assembly.

There are the following exceptions to this general prohibition listed in subsection 3(2):

Speaker, Deputy-Speaker of the Assembly.
Leader of the opposition parties and
Whips of the Assembly.
Members of the Executive Council.
Legislative Secretaries.
Justices of the Peace.
Notaries Public.
Official auditors.

Official Trustees.
Registrars of Vital Statistics.
Commissioners for Oaths.

Section 11 of The Legislative Assembly and Executive Council Act also sets out instances where members are not disqualified when they accept offices or remuneration from or under the Crown. In addition to the exceptions set out in The Members of the Legislative Assembly Conflict of Interests Act this list includes, deputy whips and members of the Executive Council appointed as a chairman, vice-chairman, director or member of a Crown Corporation.

Section 4 prohibits a member of the Legislative Assembly from holding the office of Governor General, Lieutenant Governor of a Province, or a federally or provincially appointed judge.

Section 10 of The Legislative Assembly and Executive Council Act provides that Senators and Members of the House of Commons are not eligible to stand for election to the Legislative Assembly.

Participation in Government contracts prohibited

Section 6 prohibits a member of the Legislative Assembly fro participating, *in a personal capacity*, in a government contract. Mo specifically, the Act states that if a member 'is, or has a right to becom in his personal capacity, a party to or beneficially interested in a government contract' he is participating in that contract and is therefore in contravention of that Act. Illustrations of this type of conflict would be a member renting his house to the Saskatchewan Arts Board as an Art Gallery, or the member performing legal services for which he is reimbursed by the Crown (certain legal services are exempt – Clause 7(b)) or a member selling some equipment to the Department of Government Services.

Section 6 would not prohibit a member from participating in a government contract by virtue of the fact he is a shareholder, partner, director, manager or other officer of, or has an interest in a business, or its subsidiary, that has an interest in the contract. Also, section 10 states that the spouse or any dependent child of the member is not prohibited from participating in a government contract as long as they are not participating for or on behalf of the member.

The prohibition against personal participation in a government contract is modified by section 9 which permits such participation where the aggregate value of the remuneration or other consideration received from the Crown by the member pursuant to all government contracts in which the member participated in the course of the year does not exceed $1000 in that year. Therefore, if a member was involved in two government contracts and the money he received for the goods he sold to the Crown or the services he rendered to the Crown for both

contracts in that year was less than $1000, he would not be in contravention of the Act.

Section 7 has specified certain exemptions from the prohibition against participation in a government contract by a member in his personal capacity.

Section 8 specifies further exemptions to the prohibition against a member personally participating in a government contract. Section 8 provides that a member may participate or continue to participate in a government contract if his participation commenced before his election as a member or if his participation commences through operation of law or as a result of his becoming a devisee, legatee, executor or administrator. For example, if a member becomes a beneficiary under a Will and as a result finds himself participating in a government contract, he would not be in contravention of the Act providing that the member ceased participating in the contract as soon as possible after his election as a member or after the commencement of his participation, as the case may be.

However, if the contract falls within an exemption listed in section 7 or if the criteria of section 9 (the $1000 exemption hereinbefore referred to) applied, or if section 11 (hereinafter referred to) applied, the member would not have to cease participation in the government contract.

If the member is unable to cease participation in a contract which commenced before his election or which commenced after his election but through operation of law, or as a result of his becoming a devisee, legatee, executor or administrator, he may apply to a judge for a certificate that would allow him to continue to participate in the contract. (subsections 8(2) to (6) inclusive).

The Act has one other exception to the prohibition against the personal participation of a member in a government contract. Section 11 basically provides that a member may participate in a government contract that pertains to the acquisition or disposition of land by the member from the Crown or by the Crown from the member, or that pertains to land owned by the member and damaged by the Crown.

However, such participation is allowed only if the contract is in writing and the member obtains a certificate from a judge validating the contract.

In conclusion then, a member is prohibited from participating in a government contract *in his personal capacity* unless:

1. he falls within the $1000 exemption provided for in section 9;
2. he falls within an exemption set out in section 7;
3. his participation commenced before his election or through operation of law or as a result of becoming a devisee, legatee, executor or administrator, and he ceases his participation as soon as possible;

4. he falls within the section 11 exemptions.

If a member is in contravention of the prohibition against personal participation in a government contract he is liable to be convicted of an offence under the Act. Further if as a result of his participation in the government contract he is a person within the meaning of subsection 3(1), that is a person who holds an office or place of profit under the Crown or who is employed for remuneration, his election as a member is void. Also, any profit received by him could be recoverable by the Crown. (section 27).

Disclosures of interests and assets

Section 19 of the Act requires each member of the Legislative Assembly to file a report disclosing the member's or the member's family's interests and assets. These disclosure provisions are completely independent of the prohibitive provisions of the Act and are to be fulfilled without regard to any other prohibition, directions or exemptions contained within the other parts of the Act.

A new member must file a report which covers the period which commences 60 days after he takes office and ends the following December 31st. Re-elected members must file for all of the calendar year 1982. In either case, the report must be filed on or before April 30th, 1983.

Thereafter, each member shall, on or before April 30th in each year, file an update of the original report.

Section 19 requires that members disclose the following in their declaration:

1. Participation by a member, or a person in his family, in any government contract. This disclosure provision contemplates participation, in a personal capacity, by a member or a person in his family. However, clause 20(b) provides that participation contracts exempted under section 7 do not have to be disclosed nor does participation in contracts for which a special report has been filed under section 20.1 have to be disclosed (section 20.1 is discussed later).

Every other contract in which a member or a person in his family participates must be disclosed including contracts:

(a) where the aggregate value of the remuneration or other consideration from the Crown is less than $1000;

(b) where the participation commenced prior to the member's election or through operation of law as a result of his becoming a devisee, legatee, executor or administrator;

(c) for which the member secures a certificate of continuance from a judge pursuant to section 8(2) or pursuant to sections 11 and 12;

2. The name of any business or person that owes money to the member or any person in his family where the indebtedness exceeds

$5000 in the aggregate. Debts which result from a deposit in a bank or credit union or debts which represent a homeownership or retirement savings plans as defined under the Income Tax Act (Canada) do not have to be disclosed. (Clause 19(1)(d)).

3. Any right, title, estate or interest that the member or any member of his family had in, or with respect to, any real property whether situated within or outside Saskatchewan. This provision contemplates any type of interest whasoever that a member or any person in his family has in land and/or buildings within or outside the province and includes a leasehold interest, an interest in mineral rights, a right arising from easement, caveat, mechanics lien, a life interest or any other interest whatsoever. (Clause 19(1)(e)).

4. (a) The name and address of the head office or principal place of business of any business, of which the member or any person in his family was a shareholder, partner, director, manager or other officer, or in which the member or any person in his family had an interest. (Clause 19(1)(f)). Under the Act a member has an interest in the businessif he is a creditor of the business whose indebtedness was incurred other than in the ordinary course of trade. (subsection 5(2)).

If a member or a person in his family is a nominal shareholder in a company he does not have to disclose the name of that business if the total amount of the value (the definition of the value of participation share is discussed later in this booklet) of all the participation shares held by the member plus his family during the period in respect of which the report was made does not exceed $5000 and the total number of such participation shares held by the member plus his family during that period does not exceed 5% of the total number of the participation shares of the business.

Participation shares are defined in clause 2(1)(h) as any unit of interest in a business which entitles the holder to participate in the profit of the business or any assets of the business upon its dissolution.

Subsection 2(4) states that the value of the participation share is:

(i) in the case of a corporation, where participation shares are traded publicly on a stock exchange, the highest closing trade price of that participation share on any stock exchange on the day on which the value is determined;

(ii) in the case of a business other than a corporation where the participation shares are traded publicly on a stock exchange, the amount obtained when the total fair market value of all the property of the business, including any good will arising out of the government contract, is divided by the total number of participation shares of the business.

(b) A member must disclose further particulars of any instances where the business(es) referred to in clause 4(a) of this booklet, or its

subsidiary, was or had a right to become a party to or beneficially interested in the government contract. Participation by a business in contracts mentioned in section 7 do not have to be declared nor do contracts in respect of which a special report has been filed under section 20.1 have to be declared.

Every government contract entered into by one of the businesses referred to above must be disclosed. This includes such things as development inventives given to businesses through the Government of Saskatchewan, whether the incentive is a specifically repayable incentive, a provisionally repayable incentive or a loan guarantee. At this time the members are urged to make reference to the interpretation section of the booklet for the meanings of government contracts, business and Crown as defined by the Act.

5. The particulars of any subsidy received from the Crown by the member or any person in his family or any business referred to above. This provision does not apply to grants or subsidies which were paid pursuant to a government contract or grants or subsidies paid pursuant to an Act or regulation where the payment is not subject to the discretion of a member of the Executive Council or a person acting for or with the authorization of such a member, but where it is subject to standard terms and conditions. (Clause 19(1)(g)).

Special report

With certain exceptions, a member who is a shareholder, partner. director, manager or other officer of, or has an interest in a business tha is, or has the right to become, a party to, or beneficially interested in, a government contract or whose subsidiary is or has a right to become a party to, or beneficially interested in a government contract must fill a special disclosure report under section 20.1.

This special report must be filed within 60 days of the day the contract is executed or entered into by the Crown.

Offences and penalties

The Act provides that any person who contravenes the Act is guilty of an offence and liable on summary conviction to a fine of not more than $10,000. The Attorney General must authorise all prosecutions for offences under the Act and the proceedings shall be instituted for an offence against the Act within four years from the date of the commission of the offence. If the member is convicted of an offence under the Act he shall within sixty days after the date of his conviction, cease any act, or remedy any omission, for which he was convicted. If he fails to do so, he is liable to further charges and fines and he is liable to be disqualified from sitting as a member.

The Act further provides in section 22 that no member shall for his own gain or for the gain of any other person, use or supply to any

person, information that is not available to the public and that is acquired by the member in the performance of his duties as a member. A contravention of section 22 would render the member liable for prosecution.

Lastly, if any person receives any profit or financial benefit in contravention of the Act, that profit or financial benefit is a debt due to the Crown and can be recovered by the Crown.

Bermuda

The Legislature (Qualification and Disqualification) Amendment Act 1979 amended the Legislature (Qualification and Disqualification) Act 1968. The Amendment Act was considered necessary because of constitutional changes in Bermuda since 1968, when the first written Constitution of Bermuda became law, the Bermuda Constitution Order 1968 having been made by Her Majesty-in-Council, under the Bermuda Constitution Act 1967 of the United Kingdom.

Isle of Man: Tynwald

Standing orders of Tynwald:

(1) Standing Order 71 provides that a member may not take part in the discussion or vote, either in Tynwald or in a Committee, upon any question in which he or any partner of his or any Company of which he is a Director has a direct pecuniary interest not held in common with the rest of the subjects of the Crown, and shall withdraw from Tynwald or a Committee while the vote on such question is being taken.
(2) Standing Order 72 provides that no Member of Tynwald shall take part in the discussion of or vote upon any matter with regard to which he or any partner of his is acting, or has in any way acted professionally, or may, directly or indirectly receive any professional remuneration.

Personal or pecuniary interests of Tynwald members

On the 24 June 1969 the Standing Orders Committee of Tynwald were asked by the Governor to advise on the application of Standing Order 71 which concerns the disqualification of Members from voting in matters in which they have a direct pecuniary interest. The specific example mentioned was whether farmers should be precluded from any debate on agriculture.

The Committee read a memorandum of Attorney General Lay and were aware of the ruling by Speaker Kerruish on 24 June 1969 (86 Debates 1988) in connection with Standing Order 93 of the then Standing Orders of the Keys which is identical to Standing Order 71 of the Standing Orders of Tynwald. This ruling drew the conclusion that, while the direct interest of a Member may reasonably deprive him of a vote, it was doubtful whether anything but a patently direct association with a motion giving such a Member a favourable advantage (or

withholding it from him) would be held of sufficient substance to deprive him of the right of participation in the debate on the matter.

The same principle, the Committee considered, obtains with regard to Standing Order 72 and, after consulting Erskine May's Parliamentary Practice, they had no doubt that a distinction is made in the Commons between speaking and voting on a issue in which a Member was directly interested. There was also no doubt that there should be a distinction between a direct interest and an interest held in common with other members of the public, and that there could be no more objection to a Member of Tynwald who is a builder discussing building policy in Tynwald than to a hotel director who is a Member discussing licensing policy.

The Clerk of Tynwald had the opportunity of consulting the Clerk of the Overseas Office of the House of Commons and it was established that an interest must be immediate and personal for it to debar a Member from voting. A specific example would be the case of a Member who had held a substantial block of railway shares not being precluded from voting against railway nationalisation since the matter was of too big and general a nature. This is based on a case in 1947 when Members who held large blocks of railway shares were not disbarred from voting against the Bill to nationalise the railways and vest their assets in the state – such a financial interest not being limited to them but spread widely over a large section of the public.

The practice of the House of Commons still rests on Mr Speaker Abbott's ruling of the 17 July 1812, which states:

'This interest must be a direct pecuniary interest and separately belonging to the persons whose votes were questioned and not in common with the rest of His Majesty's subjects or on a matter of state policy'.

The Committee perused a copy of the evidence given by Sir Edward Fellowes (at that time Clerk of the House of Commons) on the 26 April 1956 to the Committee on the House of Commons Disqualification Bill. This concerned the whole question of personal and pecuniary interest.

Research revealed that on the 30 April 1883 the House of Keys considered the Foxdale Railway Bill in Committee. On a motion by Mr E. C. Farrant and Col W. J. Anderson that the Bill as amended pass, Capt R. Penketh rose on a point of order. He pointed out that the Chairman of the Directors of the proposed company, the majority of its Board, its Secretary and a number of shareholders happened to be Members of the House. He asked the Speaker whether, as such, these Members were competent to vote on this issue. He pointed out that by Standing Order 32 (of the Standing Orders of 1867) 'no member is entitled to vote upon any question in which he has a direct pecuniary interest'. Mr J. A. Mylrea strongly supported Capt Penketh's view. Mr W. Farrant, however, pointed out that if Standing Order 32 was carried

out to the letter, the House would be reduced to half its present proportions and undertakings infinitely more important than the Foxdale Railway line might be condemned to remain in abeyance for generations – 'this is one of the penalties we are occasionally paying for being a small community'. He proposed that the Standing Orders be suspended. The Speaker (Mr J. S. Goldie Taubman) gave his opinion that, under Standing Order 53, twenty-four hours' notice of suspension was required. Mr E. C. Farrant, however, was of the view that this notice referred merely to the proposal that Standing Orders be altered and not just suspended. The Speaker admitted that outside the House his position in the particular matter between the Foxdale Railway Company and the Isle of Man Railway Company was partisan. In the circumstances, he had written to Sir Erskine May and told him that he, the Speaker, was interested, being a director of one of the companies engaged. Sir Erskine May had said that none of the directors nor indeed the promoters of other lines had a right to vote on this issue. In the circumstances, the Speaker asked the House to excuse him from voting. Mr J. R. Cowell considered that Standing Order 53 was plain – that there should be no alteration, that is to say no change in the meaning and intention of a Standing Order without notice. On the motion that Standing Orders be suspended being renewed, Capt Penketh suggested that this was contrary to the Speaker's ruling. The Speaker replied: 'No. I have not ruled but the motion is contrary to my opinion'. The motion that Standing Orders be suspended was carried by 15 votes to 5 and the Bill, as amended, was passed by 15 votes to 3.

(This account is a summary of the Report of the debate in the Isle of Man Times of the 12 May 1883. The decision of the House to suspend their Standing Orders in this way was widely criticised by all sections of the insular press and on the 26th of April, 1884, the Isle of Man Times made a very barbed comparison of the House of Keys' conduct on this issue with the procedure of the House of Commons in April, 1884, when considering the Stockton Railway Bill).

Amendment or motion by a Member with pecuniary interest

The Committee took cognizance of what appeared to them a discrepancy in our procedure, namely that despite the Standing Order which precludes a Member from taking part in a discussion on any matter in which he has a direct pecuniary interest, a Member can nevertheless move an amendment or motion. This relates to the ruling given in Tynwald on the 19 February 1963, when Mr Bolton moved an amendment to reduce the vote of the Manx Electric Railway to build shops which would be in the vicinity of shops owned by a company of which he was director. He was at that time allowed to move the amendment but he did not vote. Practice is of course always a guide but at Westminster Standing Orders override practice; and the effect of the ruling of 19

February 1963, appears to subordinate the Standing Order of Tynwald to a practice which obtains at Westminster. The Committee felt that they must draw attention to this point in their memorandum.

To sum up the conclusions of the Committee in this matter, they advised the Governor that there appeared insufficient evidence at this juncture to warrant a change in Standing Order 71.

With regard to His Excellency's particular reference to agricultural Members, whilst the Committee found it impossible to formulate a hard and fast rule, it was their view that those Members should not be debarred either from participation in debate or on voting on motions relating to agriculture unless it is a specific matter in which one member only is concerned.

Registration of Members' interests

The Register of Members' Interests is maintained by the Clerk of Tynwald under the following Resolutions –

1. At a Tynwald Court holden at Douglas the 22nd day of October, 1975 –
RESOLVED:

(1) That the report of the Select Committee on Members' Interests and the Annex thereto be and the same in hereby received.

(2) That the following recommendations emboddied in the Report and the Annex thereto be and the same are hereby approved.

(a) That a Committee (to be designated the Declaration of Members' Interests Committee) be constituted comprising the First Deemster (Chairman), one Member of Council elected by Council and three Members of the Keys elected by the Keys to supervise the compilation, maintaining and accessibility of the Register of Members' Interests, to consider any specific complaints made in relation to the registering or declaring of interests, and to report, from time to time to Tynwald, on these and any other matters relating to Members' interests.

(b) The Register shall record any directorships, occupations, employment or trades from which a member derives a pecuniary benefit.

(c) The Register shall record the name of any customer or client to whom a member has personally rendered a service arising out of or related in any manner to his membership of Tynwald, and in respect of which he has received or will receive a pecuniary reward or other benefit.

(d) The Register shall include particulars of financial sponsorships undertaken by a member, or on his behalf.

(e) The Register shall include details of land and property of substantial value or from which substantial income is derived.

(f) The Register shall record the names of companies in which a member and/or spouse holds shares and if the interest of the member and/or spouse exceeds 10% of the total capital of the company this fact should be recorded.

(g) The Clerk of Tynwald shall be the Registrar.

(h) A member shall be responsible for supplying information from time to time for inclusion in the Register.

(i) The Register shall be available for inspection at all reasonable times by Members of Tynwald.

(3) The purpose of the Register of Members' Interests is to provide information of any pecuniary interest or other material benefit which a Member of Tynwald may receive

which might be thought to affect his conduct as a Member of Tynwald or influence his actions, speeches or vote in Tynwald.'

2. At a Tynwald Court holden at Douglas the 18th day of November 1975 –

'RESOLVED

WHEREAS on the 22nd October 1975 Tynwald resolved, inter alia, that a Committee "to be designated the Declaration of Members" Interests Committee be constituted comprising the First Deemster (Chairman), one Member of Council elected by Council and three Members of the Keys elected by the Keys to supervise the compilation, maintaining and accessibility of the Register of Members' Interests, to consider any specific complaints made in relation to the registering or declaring of interests, and to report, from time to time to Tynwald, on these and any other matters relating to members' interests.

AND WHEREAS it is expedient that the composition of such Committee be varied.

RESOLVED: That in accordance with Standing Order 184 the Committee consist of two Members of Council elected by Council and three Members of Keys elected by the Keys.'

3. At a Tynwald Court holden at Douglas the 21st of June 1977 –

'RESOLVED

The Register of Members' Interests shall be a public document and all reasonable facilities shall be afforded the public to peruse it subject to the condition set out in section 8 of the annex to the report on the subject approved by Tynwald on 22nd October 1975.'

Section 8 of the Annex to the Report reads:-

'8. The Register shall be available for public inspection in the Department of the Clerk of Tynwald during normal office hours subject to the following conditions:-

(a) Access to the Register on its completion by members of the general public shall be permitted on prior appointment being made with the Registrar. Any appointment made by telephone shall, save in exceptional circumstances, be confirmed in writing and normally at least 48 hours notice of the proposed inspection shall be given.

(b) Before granting an appointment the Registrar shall ask the applicant to furnish in writing his name and address.

(c) Members of Tynwald shall be able to inspect the Register without prior appointment during office hours.'

Entries in the Register disclose only the sources and not the amounts of the remuneration and benefit.

Members are required to name clients to whom they give personal service arising out of, or related in any way to, their membership of their Branch. It is appreciated that this may cause some difficulties for those who practise as members of a profession in their constituency as for such a Member there is no means of knowing whether the clients come to him because he is a Member or not. There is therefore no general obligation to register the names of clients. The Member, however, is clearly required to register the name when he has no doubt that his personal services to the client 'arise out of or are related in any manner to his membership of Tynwald'.

Registration in no way releases the Member from the sanctions imposed by Standing Orders 71, 72 and 73 of the Standing Orders of Tynwald or Standing Orders 106, 107 and 108 of the Standing Orders of the House of Keys.

The third category of registrable interests concerns financial sponsorship undertaken by a Member or on his behalf. It is not necessary for a Member to register the fact that he is supported at an election by his local constituency party.

Overseas visits undertaken on behalf of the Commonwealth Parliamentary Association or similar body or any Committee of Tynwald or of the House of Keys or any visit paid for by the Isle of Man Government, H.M. Government or by any institution of the European Economic Comunities need not be registered. When registering an overseas visit which is sponsored the Member should, however, disclose the sponsor thereof.

Any pecuniary interest or other material benefit (including gifts where appropriate)

should be declared. This category would clearly include pensions and annuities but with the following exceptions to the general rule, namely –

(1) state pensions;

(2) Members' pensions;

(3) pensions and annuities paid in respect of interests which have themselves been registered.

When as required by sub-paragraph (2)(e) of the Tynwald Resolution, details of land and property are sought to be registered, such details should be in general terms but should indicate the town or parish in which the land is situated, e.g. farmland in Santon, house in Douglas.

With regard to particulars about company shareholdings, this is only intended to refer to companies which are registered or carrying on business in the Isle of Man.

India: Lok Sabha

Rule 371 of the Rules of Procedure and Conduct of Business in Lok Sabha relates to 'Objection to Vote of a Member on grounds of personal, pecuniary or direct interest' – *Appendix-I.*

A Member having a personal, pecuniary or direct interest in a matter before the House is required while taking part in the proceedings on that matter, to declare the nature of that interest. He is, however, required to avoid the reference of such a matter while speaking on the subject.

It is expected of him as a matter of propriety, to decide for himself whether by casting his vote in a division in the House on that matter, his judgement is likely to be deflected from the straight line of public policy by that interest.

It has not been the practice in Lok Sabha for the Speaker to take upon himself the responsibility to get the relevant declaration from the Members.

2. Objection can also be taken to the inclusion of a member in a Parliamentary Committee on the ground that the member has a personal, pecuniary or direct interest of such an intimate character that it may prejudicially affect the consideration of any matters to be considered by the Committee. – [See Rule 255 of the Rules of Procedure and Conduct of Business in Lok Sabha – *Appendix - II* and Direction 52A of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha – *Appendix - III*]

Appendix-I

Rule 371 of the Rules of Procedure and Conduct of Business in Lok Sabha (Sixth Edition, 1980 reprint).

371. If the vote of a member in a division in the House is challenged on the ground of personal, pecuniary or direct interest in the matter to be decided, the Speaker may, if he considers necessary, call upon the member making the challenge to state precisely the grounds of his objection and the member whose vote has been challenged to state his

case and shall decide whether the vote of the member should be disallowed or not and his decision shall be final.

Provided that the vote of a member or members is challenged immediately after the division is over and before the result is announced by the Speaker.

Explanation – For the purposes of this rule the interest of the member should be direct, personal pecuniary and separately belong to the person whose vote is questioned and not in common with the public in general or with any class or section thereof or on a matter of State policy.

Appendix-II

Rule 255 of the Rules of Procedure and Conduct of Business in Lok Sabha (Sixth Edition, 1980 reprint).

255. Where an objection is taken to the inclusion of a member in a Committee on the ground that the member has a personal, pecuniary or direct interest of such an intimate character that it may prejudicially affect the consideration of any matters to be considered by the Committee, the procedure shall be as follows:-

(a) The member who has taken objection shall precisely state the ground of his objection and the nature of the alleged interest, whether personal, pecuniary or direct, of the proposed member in the matters coming up before the Committee;
(b) after the objection has been stated, the Speaker shall give an opportunity to the member proposed on the Committee against whom the objection has been taken to state the position;
(c) if there is dispute on facts, the Speaker may call upon the member taking objection and the member against whose appointment on the committee objection has been taken, to produce documentary or other evidence in support of their respective cases;
(d) after the Speaker has considered the evidence so tendered before him, he shall give his decision which shall be final;
(e) until the Speaker has given his decision the member against whose appointment on the Committee objection has been taken shall continue to be a member thereof if elected or nominated and take part in discussion, but shall not be entitled to vote; and
(f) if the Speaker holds that the member against whose appointment objection has been taken has a personal, pecuniary or direct interest in the matter before the Committee, he shall cease to be a member thereof forthwith:
Provided that the proceedings of the sitting of the Committee at which such member was present shall not in any way be affected by the decision of the Speaker.

Explanation – For the purposes of this rule the interest of the member should be direct, personal or pecuniary and separately belong to the person whose inclusion in the Committee is objected to and not in common with the public in general or with any class or section thereof or on a matter of state policy.

Appendix-III

Rule 52A of the Rules of Procedure and Conduct of Business in Lok Sabha (Sixth Edition, 1980 reprint).

52A. (1) Where a member of a Committee has a personal, pecuniary or direct interest in any matter which is to be considered by the

Committee, he shall state his interest therein to the Speaker through the Chairman of the Committee.
(2) After the Speaker has considered the matter he shall give his decision which shall be final.

Uttar Pradesh

The Uttar Pradesh Ministers and Legislators (Publication of Assets and Liabilities) Act 1975 provides for annual publication of a statement of assets and of liabilities of all Ministers and legislators and of members of their families.

Section 2 defines 'assets' as:

(i) his right, title or interest in immovable properties whether as owner, mortgager, lessor, lessee or otherwise;
(ii) his right, title or interest in any business, trade or industrial or commercial venture, whether conducted with profit motive or not;
(iii) any sum of money (in excess of five thousand rupees) kept in cash;
(iv) bank balances, including fixed deposit;
(v) shares, stocks, debentures and other securities;
(vi) motor vehicles, as defined in the Motor Vehicles Act, 1939;
(vii) insurance policies;
(viii) jewellery (other than rings, ear-rings, bangles, buttons, cuff-links, watches, watch straps and like articles which such person normally wears every day);

Jersey

(1) Where any member of the States has a direct pecuniary interest, being an interest which is immediate and personal and not merely of a general or remote character, in the subject matter of any proposition submitted to the Assembly, he shall, as soon as practicable, declare his interest and withdraw from the Chamber during the consideration of and voting on the proposition.

(2) Where any member of the States has a direct pecuniary interest, being an interest which is immediate and personal and not merely of a general or remote character, in any contract proposed or awarded or in any other matter which is under consideration by a Committee of the States, he shall, as soon as practicable, declare his interest and withdraw from the Committee meeting during the consideration of and voting on the question.

(3) Every declaration made in pursuance of paragraphs (1) and (2) of this Order shall be recorded in the minutes of the States or of the Committee, as the case may be.

(4) In the case of married persons living together, the interest of one spouse shall, if known to the other spouse, be deemed for the purpose of this Order to be also an interest of the other spouse.

New Zealand

The Standing Orders prohibit any member voting in a division in

which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown, and a member's vote may be challenged on this ground on a question of privilege raised immediately after the vote is cast. A member is not deemed to have a pecuniary interest if an interest is held by him as one of a limited class and a question of public policy is involved. There is no recorded instance of a member's vote being disallowed on the grounds of pecuniary interest. Members are under no obligation to make a declaration of interest when speaking in debate or taking part in any other proceedings in the House or a Committee.

In 1956 a parliamentary select committee formulated principles and rules to be observed by Ministers in the arrangement of their private interests while holding ministerial office. These covered – the resignation of directorships and disposal of shares where holding such office or retaining such shares could give rise to a conflict with the Minister's public duties, or the appearance of such conflict; the ceasing to carry on professional practice or to carry on on a day to day basis any personal business interests; and disclosure to Cabinet of any private or personal interest which the Minister had properly retained if any matter of public business comes up for consideration which impinges on it. In these circumstances the Minister should take no part in the discussion or be a party to the decision on that matter.

In 1980 a Commission of Inquiry into allegations of impropriety in the granting of loans by a statutory authority to persons related to a Minister, recommended procedures for Ministers handling representations by relatives or personal friends. These included the Minister informing the permanent head of his department and his private secretary of such representations and having a verbatim record made of the meeting at which this is done. One copy of this record was to be sent to the Speaker who was to bring it to the attention of the leaders of the parties in the House, and to make arrangements to ensure that it was available to all members of the House. To date these recommendations have not been implemented.

Singapore

1. Disclosure of a direct personal pecuniary interest is laid down in section 31 of the Parliament (Privileges, Immunities and Powers) Act (Cap. 49) which reads:

> Member to disclose pecuniary interest
> 31. A Member shall not in or before Parliament or any committee take part in the discussion of any matter in which he has a direct personal pecuniary interest without disclosing the extent of that interest and shall not in any circumstances vote upon any such matter.

2. The relevant Standing Order 62 reads:

62.(1) Apart from the provisions of law requiring a Member to disclose the extent of any direct pecuniary interest, a Member shall not vote on any subject in which he has a direct personal pecuniary interest.

(2) A motion to disallow a Member's vote on this ground shall be made only as soon as the numbers of the Members voting on the question shall have been declared.

(3) In deciding whether a motion for the disallowance of a Member's vote shall be proposed by the Speaker or Chairman, the Speaker or Chairman shall have regard to the character of the question upon which the division was taken and to the consideration whether the interest therein of the Member whose vote is challenged is direct and pecuniary and not an interest in common with the rest of the citizens of Singapore or whether his vote was given on a matter of State policy.

(4) If the motion for the disallowance of a Member's vote is agreed to, the Speaker or Chairman shall direct the Clerk to correct the numbers voting in the division accordingly.

3. A Member would normally declare his interest at the beginning of his remarks.

United Kingdom: House of Commons

On 22 May 1974 the House of Commons agreed to two resolutions relating to the declaration of interests of Members –

That in any debate or proceeding of the House or its committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.

That every Member of the House of Commons shall furnish to a Registrar of Members' Interests such particulars of his registrable interests as shall be required, and shall notify to the Registrar any alterations which may occur therein, and the Registrar shall cause these particulars to be entered in a Register of Members' Interests which shall be available for inspection by the public.

Thus it is now a rule of the House for every Member to declare any relevant pecuniary interest or benefit that he may have had, may have or may be expecting to have. This rule applies to almost all proceedings of the House or its committees in which Members have an opportunity to speak, such as debates in standing committees, presentation of public petitions and meetings of select committees at which evidence is heard. It does not apply, however, to the asking of supplementary questions. The definition of relevance is left to the discretion of the Member concerned. The extent to which details of the relevant interest are disclosed is also a matter for the Member. A Member will normally declare his interest at the beginning of his remarks.

The tabling of a question, a motion or an amendment does not require to be accompanied by any declaration of a relevant interest. The same applies to the adding of a Member's name to a motion or amendment already on the Order Paper.

So far as voting in the House or a committee is concerned, the recording of an interest in the Register of Members' Interests is by itself regarded as sufficient disclosure.

The report of the Select Committee on Members' Interests (Declaration), which was endorsed by the House on 12 June 1975, defined the purpose of the Register as follows:

'to provide information of any pecuniary interest or other material benefit which a Member of Parliament may receive which might be thought to affect his conduct as a Member of Parliament or influence his actions, speeches or vote in Parliament'.

Within that general purpose, the Select Committee identified nine classes of pecuniary interest or other benefit which were to be disclosed in the Register. They are:

(1) remunerated directorships of companies, public or private;
(2) remunerated employments or offices;
(3) remunerated trades, professions or vocations;
(4) the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the House;
(5) financial sponsorships, (a) as a parliamentary candidate where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (b) as a Member of Parliament, by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage direct or indirect;
(6) overseas visits relating to or arising out of membership of the House where the cost of any such visit has not been wholly borne by the Member or by public funds;
(7) any payments or any material benefits or advantages received from or on behalf of foreign Governments, organisations or persons;
(8) land and property of substantial value or from which a substantial income is derived;
(9) the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital.

A Member is only required to enter the source of the remuneration or benefit and not the amount received.

United Kingdom: House of Lords

When speaking in the House, Lords may indicate that an outside body agrees with the substance of the views that they are expressing, but they speak for themselves and not on behalf of outside interests.

If a Lord decides that it is proper for him to take part in a debate on a subject in which he has a direct pecuniary interest, he should declare it. A Lord who is a member of a public Board should inform the House of his interest if he decides to speak on a matter affecting the Board

concerned. If a Lord employed by a public Board or nationalised undertaking holds a view different from that of the Board to which he belongs, it is generally considered undesirable for him to speak at all during a discussion in the House relating to the Board. He should inform the House of his interest if he wishes to intervene during such a discussion.

Zambia

The procedure under which Members in the Zambian Parliament make declarations of interest is covered by Standing Orders 51 and 60 which read as follows:-

'*SO 51:* (1) No member may speak on any matter in which he has a direct pecuniary interest without disclosing the nature of that interest.
(2) Any member who may speak or vote in the National Assembly on any matter in which he has a direct pecuniary interest without disclosing the nature of that interest shall be liable to a penalty not exceeding one hundred kwacha or such other sum as may be prescribed by Parliament for each occasion on which he so speaks or votes in the Assembly, which shall be recoverable by action in the High Court at the suit of the Attorney-General;
(3) This Standing Order shall not apply to any debate concerning any remuneration or allowance to be received by members in their capacity as such or to any interest which a member may have in any matter in common with the public generally or with any class or section thereof, or to any debate on a matter involving a question of public policy.'
'*SO 60:* (1) No member shall, in the House or any committee of the House, vote upon any matter in which he has a direct pecuniary interest. A motion to disallow a member's vote on this ground may be made without notice, as soon as the numbers have been declared and at no other time.
(2) This Standing Order shall not apply to any vote concerning any remuneration or allowance to be received by members in their capacity as such or to any interest which a member may have in any matter in common with the public generally or with any class or section thereof, or to any vote on a matter involving a question of public policy.'

Under these Standing Orders members are required to declare their interests in matters which come either to the House or any of its committees, where they know that they have a direct interest, before they can speak or vote on it.

XIII APPLICATIONS OF PRIVILEGE

AUSTRALIA

HOUSE OF REPRESENTATIVES

Claim that party political processes constituted intimidation of Members – When the House of Representatives met on 8 November 1983, the Government Party had just completed consideration of its policy in respect of uranium mining and export, an issue of considerable interest to many citizens. Although this was a matter of party room consideration rather than public debate in the Parliament, it had been accompanied by considerable public lobbying, and publicity was given to a reported statement by the Minister for Defence Support (the Hon B. L. Howe) that the Prime Minister (the Hon R. J. L. Hawke, AC) had been involved in intimidation of Government Members on the matter. The President of the Australian Council of Trade Unions was also reported as stating that the Prime Minister had '. . . put pressure on all sorts of people in relation to the Caucus vote . . .'. This matter of alleged wrongful intimidation was raised as one of privilege by an Opposition Member (the Hon W. M. Hodgman) at the first opportunity, and Mr Speaker was required to consider it and give his ruling. It seemed that we were here looking at a clear head of privilege, but one with rather unclear boundaries.

In his subsequent statement on this matter Speaker Jenkins noted the relevant authorities on the general question of intimidation, noted the absence of specific precedents and mentioned that no Member had complained that he had been intimidated or harassed in the performance of his duties as a Member. Mr Speaker then referred to views expressed by Speakers Morrison (at the time of the Suez crisis) and Selwyn Lloyd (at the time of the Common Market referendum campaign), each of whom indicated that the operations of the parliamentary party processes, and the 'usual channels' were considered unlikely to raise questions of privilege. Speaker Jenkins concluded that, in his view, a *prima facie* case had not been made out. (H.R. Deb. (8.8.83) 2361-2; H.R. Deb. (9.8.83) 2460)

(Contributed by the Clerk of the House of Representatives)

NEW SOUTH WALES LEGISLATIVE ASSEMBLY

Possible restriction of free speech – On 23 August 1983, the Honourable Member for Illawarra, Mr Petersen, raised the question of the possible restriction of free speech in parliament following events in the South Australian Parliament.

In that case, a Member of the South Australian Parliament made a speech in which he referred to certain matters under inquiry by a Commonwealth Royal Commission. The Royal Commissioner referred details of that speech to the Commonwealth Attorney General to determine whether a speech made under Parliamentary Privilege was in contempt of the Commission. The Attorney General then referred the matter to the Commonwealth Solicitor General for advice on the suggested conflict between parliamentary privilege in State parliaments and the law relating to contempt of Commonwealth Royal Commissions. The question of privilege attaching to publication of details of the Member's statement was also raised.

Mr Petersen asked Mr Speaker to advise the House of the rights and privileges of Members of the New South Wales Parliament when they appear to conflict with Commonwealth law.

On 14 September, 1983, following consideration of the matter, Mr Speaker made a statement to the House.

Mr Speaker said that as members were aware, a Select Committee of both Houses was currently enquiring into Parliamentary Privilege so far as the New South Wales Parliament was concerned and he did not wish to intrude upon, nor cut across, that inquiry in any way.

However, the matter implicit in the question of the Honourable Member for Illawarra was of such importance and of grave concern to the members of this House that he felt notwithstanding those considerations so far as the Select Committee was concerned, that he should make one or two short observations.

Mr Speaker said that he believed that the freedom of the press to provide fair and accurate reports of the proceedings of Parliament was a fundamental right which should be cherished by all members and one he was sure that they and the general public would insist upon and demand the retention of.

In common with most, if not all members of Parliament and he felt sure the majority of the public, Mr Speaker believed that freedom of speech within the Parliament was one of the basic tenets upon which had been built the principles of parliamentary democracy. He did not feel that any statute – be it of this or any other State or of the Commonwealth – should, as had been stated elsewhere, 'take precedence over Parliamentary Privilege in this State'. Indeed freedom of speech within the Parliament was basic to democratic government as we knew it and, as Speaker of the House, he would strenuously resist any attempt to restrict members in that basic right in this House.

Mr Speaker continued by saying that he felt that we were now at a most important stage in Parliamentary Government in Australia – any attempt to make a Parliament subservient to a judicial authority would be a retrograde step and one which should be denied. Likewise any attempt to restrict, by a Federal Statute, freedom of speech within a

State Parliament was not to be countenanced and should also be denied.

As Speaker of this historic House he wished to make his view crystal clear: the privileges of Members of this House were not liable to be influenced or diluted by external authorities, judicial or non-judicial, whether constituted by State or Federal laws.

He thought it appropriate that the House express its view.

The Honourable Member for Gladesville, Mr Cavalier then moved the following motion:

'That the Legislative Assembly expresses profound concern at recent statements reflecting upon the Privileges of Members of Parliament and, as a constituent House of the Legislature of the sovereign State of New South Wales –

(1) reaffirms its undoubted rights and privileges including the fundamental right of every member to freedom of speech in Parliament; and

(2) asserts that, in the public interest, the media should be untrammelled in their reporting of the proceedings of Parliament.'

Following debate, the Motion was agreed to.

TASMANIA HOUSE OF ASSEMBLY

Premature publication of a Select Committee's alleged findings – A case of privilege arose in October 1983 by publication of a Select Committee's alleged findings before tabling in the House (Journals of 1983, pages 195, 217, 230, 324 refer).

In summary: a Select Committee on Local Government Reorganisation had between 1981 and 1983 investigated the desirability of local government amalgamation in Northern Tasmania. The subject was contentious, divisive and of intense local interest. By October 1983, it was known that the Committee had agreed on a Report, the Chairman intending to table it on Tuesday, 18 October. A local morning newspaper published on the same day, details which were well-nigh identical with the Report tabled that evening.

The matter was referred to the Privileges Committee, it being necessary to temporarily replace 3 Members as these had also been Members of the Select Committee.

The Privileges Committee tabled its Report on 15 December 1983, and made the following findings:

(a) The newspaper reporter who wrote the story failed to answer a question which would have disclosed his source of information; by so doing, the penal provisions of the Parliamentary Privilege Act could have been applied; no action is recommended against him.

The Committee stated –

'It must be acknowledged that there is a longstanding tradition that a Member who speaks to a journalist on lobby terms can be confident that his identity will be secure should the published information subsequently prove embarrassing. That tradition, or convention, works to the mutual advantage of both Member and journalist.'
(b) The Chairman of the Select Committee is guilty of contempt in that he disclosed the Committee's recommendations to the Premier of Tasmania before the Report was tabled.
(c) The Leader for the Government in the Council (being a Member of the Select Committee) is guilty of contempt by giving false evidence to the Privileges Committee.

The following paragraphs of the Privileges Report are of interest:

41. Your Committee's enquiries have revealed two deliberate breaches of the confidentiality of a Committee's recommendations, but have not revealed a direct link to any media representative. Were there any such link which was not directly from a Member or Officer of the Council, your Committee and the Council itself would be powerless to do anything about it.

8. 'Colonial' legislatures 'do not have any inherent constitutional right to the privileges belonging to the Houses of the United Kingdom Parliament. The Judicial Committee of the Privy Council has held that they are entitled only to such privileges as are reasonably necessary for them to carry out their legislative functions, and that these privileges do not include the power to try and punish those who offend against parliamentary law. On the other hand, a colonial or dominion legislature having power to legislate for the peace, order and good government of the territory is entitled to pass legislation conferring on the constituent parts of the legislature privileges co-extensive with those enjoyed by the Houses of the United Kingdom Parliament, and, if need be, wider privileges' (see Enid Campbell's 'Parliamentary Privilege in Australia' p.12).

9. The Council can act against persons who are not its Members or Officers only where the actions of such persons are defined by statute as breach of privilege, or contempt, or come within that definition as inherent from the Constitution. The privileges of the Council as against such persons are to be found in – (a) the Constitution Act 1934 and the inherent privileges arising from that Act, which secure due order in the Council and prevent interruption of its debates.
(b) the Parliamentary Privilege Acts of 1858, 1885 and 1957.

42. Your Committee has carefully considered its recommendations. Our Standing Orders provide three courses of action against Members in contempt. They are admonition, reprimand, or incarceration for any period not exceeding the duration of the Session.

43. The giving of false evidence is a contempt but is also an offence against the Evidence Act.

45. Evidence indicated generally that security in the conduct of the Select Committee was not tight.

46. Members of your Council will all be aware of a long-established and well-accepted convention that embargoed copies of Committee Reports are given to journalists some hours before tabling, in order that the journalists may prepare their stories for publication or broadcast at the earliest possible moment after the Report is placed in possession of the House. Never, to our knowledge, has the trust placed in a journalist been misplaced. We cannot but agree with the Chairman of the Committee on Local Government Reorganisation, that had an embargoed copy of the Report been given the media, the trust would have been honoured and the requirement for our investigation would never have arisen.

47. The maintenance of Select Committee security may be viewed in a different context from former years by recent moves for Committees to sit with open doors.

48 Standing Orders in their totality are undergoing a major review, and have not yet been amended to allow for that situation. That is not to say that breaches of Standing Orders are in any way to be condoned, but it seems to us that to penalise the Members whom we have named as having been guilty of contempt in the present investigation, may be to make scapegoats of them.

49. In view of this, and of our recommendation that the Parliamentary Privilege Act be amended (which would lead automatically we believe, to amendment of Standing Orders) we recommend that, in this instance, no action be taken.

WESTERN AUSTRALIA LEGISLATIVE COUNCIL

Advertisement in a newspaper – The *Tobacco (Promotion and Sale) Bill* introduced into the Parliament during the Autumn Session, proved to be a most contentious piece of legislation.

This Bill had a stormy and turbulent passage through the Parliament with the Opposition dominated Upper House amending the Bill in an unacceptable manner to the Government. Eventually a Conference of Managers was formed, who could not reach agreement, and the Bill was lost.

While the battle raged in Parliament, a great deal of public comment arose outside, with those people who were 'for' and those 'against' inserting large full-page advertisements explaining their particular stand in the various newspapers.

This battle resulted in a Select Committee of Privilege being established in the Legislative Council as a result of an advertisement appearing in the *Geraldton Guardian*.

The report of the Select Committee of Privilege is reproduced below.

Report of the select committee of privilege appointed pursuant to the resolution of the legislative council on the 18th October 1983

1. *PREAMBLE*

.1 The Select Committee of Privilege was appointed pursuant to a resolution of the Legislative Council on the 18th October, 1983.

It comprised the Hon. Peter Dowding as Chairman, Fred McKenzie, I. G. Medcalf, G. C. Mackinnon and Robert Hetherington.

On the 30th November 1983 the Hon. I. G. Medcalf resigned and was replaced by Hon Ian Pratt. On the 6th December, 1983 the Hon Robert Hetherington resigned and was replaced by the Hon Kay Hallahan.

.2 The terms of the Resolution were:

That the advertisement published in The Geraldton Guardian on October 11, 1983 under the authority of the Australian Council on Smoking and Health be referred to a Select Committee of Privilege to inquire into and report as to whether or not the content of that advertisement constitutes a contempt of this House.

.3 The Committee was empowered to:

(a) send for persons, papers and records;

(b) sit on days on which the Council stands adjourned

(c) constitute a quorum with any three of the said members;

(d) report not later than Tuesday, November 1 1983.

.4 On the 26th October 1983 the date for report was extended to the 6th December 1983 and again on the 6th December 1983 further extended to the 20th March 1984.

.5 The Committee met on 20th and 26th October 1983, 1st, 7th and 20th December 1983

.6 The Committee met with the Hon Tom McNeil, M.L.C., the Hon Margaret McAleer M.L.C. and Mr Steve Woodward of the Australian Council on Smoking and Health.

.7 The Committee received advice on the issue of parliamentary privilege from the Clerk of the Legislative Council by memorandum of the 19th and 25th October 1983.

2. *PRIVILEGE*

.1 Parliamentary Privilege exists, inter alia, to protect the House and its Members from improper influence and molestation.

.2 In the context of the matter referred to this Committee it examined Section 8 of the Parliamentary Privilege Act 1891 and Section 61(2) of the Criminal Code as well as the non- statutory precedents of the House of Commons.

3. *COMPLAINTS*

.1 The Hon. Tom McNeil raised the complaints that:-

Many of his constituents had commented on the advertisement.

The figures quoted in the advertisement of death by smoking caused disease were 'rule of thumb'

The general tone of the advertisement did not give a member a reasonable option in determining how to exercise his vote.

The advertisement was inserted to influence him as a Member but that he did not believe the advertisement exceeded a general invitation to electors to contact their local member.

The advertisement spoke of a life or death issue and it was obvious that no one voted for death.

.2 The Hon Margaret McAleer raised the following points:

the advertisement was couched in terms she would not use

the advertisement was misleading, exception was taken to the use of figures where n check was made on the correlation of figures

people rang Miss McAleer assuming that she had authorised the advertisement

Miss McAleer thought the advertisement was unfair and untrue but she did not know if it was a breach of privilege.

4. *INTERVIEW WITH MR WOODWARD*

.1 The Committee invited Mr Steve Woodward to participate in discussions about the advertisement. He said he had prepared and arranged for the insertion of the advertisement. He claimed that the advertisement was designed to urge people to contact their local Members of Parliament to express their support for the principles of the relevant Bill.

.2 He said the Australian Council on Smoking and Health was set up in 1971 and from July 1981 Mr Woodward had been a full time employee of it. He claimed the advertisement was a statement of fact about what was happening and the contents of it were accurate to the best of the scientific knowledge available.

.3 The advertisement was not intended to directly influence the vote of the member but to 'mobilise' people to ring their Member and express a point of view.

5. *CONCLUSION*

.1 The Committee considered the matters put forward to it in discussion and the terms of the advertisement and believed that the only way in which a breach of privilege could occur would be if there was an improper attempt to influence the members of the House.

.2 The Committee accepted that we live in a democratic society in which robust political discussion was acceptable and that it would require a clear case of breach of privilege to call for action by the Legislative Council.

.3 The Committee accepted that it was inappropriate for it to comment on the taste of the relevant advertisement or the propriety of the type of advertisement the subject of the complaint.

.4 It is the view of the Committee the advertisement did not constitute such impropriety and accordingly did not constitute a breach of the privileges of the House.

6. *RECOMMENDATION*
.1 The Committee recommends that no action be taken by the Legislative Council save that –
.2 The Council adopt the Committee's report.
Dated 20th December 1983

INDIA: LOK SABHA

Increase in prices of certain petroleum products on the eve of the Budget Session – Facts of the case and ruling by the Speaker

On 16 February, 1983, Prof. Madhu Dandavate, a member, gave notice of a question of privilege against the Minister of Energy and Petroleum (Shri P. Shiv Shankar) for issuing notifications increasing the prices of certain petroleum products 'just 4 days before the commencement of the Budget Session of Parliament.'

On 22 February, 1983, when the Speaker (Dr Bal Ram Jakhar) called upon the Minister of Energy and Petroleum to lay the Notifications (regarding the increase in the prices of petroleum products) on the Table of the House, several members raised objections to the laying of the said Notifications, on the ground that it amounted to impropriety and contempt of the House.

The Speaker then observed as follows:-

'Sarvashri Chitta Basu, Ram Vilas Paswan, Somnath Chatterjee and Sunil Maitra have sought permission to raise certain objections in regard to papers to be laid on the Table by Shri O. Shiv Shankar.

In this connection, I would like to draw attention to Rule 305 C of the Rules of Procedure and Conduct of Business in Lok Sabha which reads as under:-

'305C. A member wishing to raise any of the matters referred to in sub-rule (1) of rule 305B shall refer it to the Committee and not raise it in the House'.

I would also like to observe that Government have issued the notifications increasing the prices of petroleum products under the powers conferred on them by the relevant Act and the rules framed thereunder.

The Members, if they so wish, may write to the Committee on Papers Laid on the Table.

I share the Members' feelings. It would have been more appropriate to announce the increase in prices in the House as the Lok Sabha was scheduled to sit from 18th February, 1983.'

On 23 February, 1983, when Prof. Madhu Dandavate sought to raise the matter again as a question of privilege, the Speaker observed that he had already observed in the House that it was 'an impropriety'.

The matter was, thereafter, closed.

Shouting of slogans and throwing of a piece of cloth containing some printed matter thereon from the Visitors' Gallery on to the floor of the House – Facts of the case and action taken by the House

On 10 May, 1983, the Deputy Speaker (Shri G. Lakshmanan) informed the House as follows:-

'As the House is aware, at about 14.50 hours today, a visitor calling himself Ram Sarup son of Shri Gainda Lal shouted slogans and threw a piece of cloth containing some printed matter thereon from the Visitors' Gallery on the floor of the House. The Watch and Ward Officer took him into custody immediately and interrogated him. The visitor has made a statement but has not expressed any regret for his action.

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

The Deputy Minister in the Department of Parliamentary Affairs (Shri Mallikarjun) then moved the following motion which was adopted by the House:-

'This House resolves that the person calling himself Ram Sarup, son of Shri Gainda Lal, who shouted slogans at about 14.50 hours today and threw a piece of cloth containing some printed matter thereon from the Visitors' Gallery on the floor of the House, and whom the Watch and Ward Officer took into custody immediately, has committed a grave offence and is guilty of the contempt of this House.

'This House further resolves that he be let off with stern warning on the rising of the House.'

Alleged manhandling of a Member by some people and inaction on the part of police authorities – Facts of the case and reference to the Committee of Privileges

On 5 November, 1982, Dr Golam Yazdani, a member, made[1] the following statement under rule 377 of the Rules of Procedure and Conduct of Business in Lok Sabha, regarding his alleged manhandling by some people at Malda and inaction on the part of police authorities on 8 October, 1982:-

'I miraculously escaped from an attempt on my life at about 9.15 p.m. on the 8th October, 1982. On that night, I was coming from the northern side of Chanchal P.S. of Malda district in West Bengal by a motor cycle, after some party work. Another person was driving it. As we reached Chanchal proper and were entering the bazaar, I saw an assembly of many people at the "Sukanto Mor", a notorious spot with many shops belonging to the ruling party men. The motor cycle was stopped by a man. I got down, and saw a crowd with lathis, etc. advancing towards me. Some people warned me that there was a great danger in my staying there and that I must not go forward. While I was running across the field, I could hear some people shouting "there goes the doctor; catch hold of him". I ran and approached a house on the southern side of the field, where two persons were standing in front of the door. I begged them for giving me shelter, and they took me inside through the front door and closed it. After a few minutes, one man entered again and told me that the police was informed and also told me that he was a ruling party man, and he searched my pockets and bag; and finding that I was not having any arms whatsoever, he went out and closed the door again. Then again after some time, one of the two men who gave me shelter entered the room, and said that his house was gheraoed by my followers, and he was facing great danger; and he, therefore, asked me to go away. He physically dragged me towards another door which was on the road side, and where the miscreants were on the look out for me. He pushed me out of the door and closed it. Immediately, the door through which I was thrown out opened and a ruling party man with a lathi came near me and hit me twice. I tried to defend myself but failed and I sustained severe injuries in both of my hands and head. In the meantime one well-wisher

of mine came near the door and asked me to go inside. I went inside the same room. On entering the room I found a policeman standing at the entrance of the other door of the room. Police asked me to accompany him. When I was brought out in the field and asked by police to ride on the jeep I found other policemen there. Only at that time I saw my clothes were all wet with blood. I then got on the jeep. I was taken to the Chanchal Hospital where stitches were given to my head injury and other injuries were attended to. On 10.10.82 I was removed to District Hospital of Malda where stitches from my head were removed on 15.10.1982 and I was discharged on 16.10.82 I was removed to District Hospital of Malda where I was discharged on 16.10.82 with advice to take rest for three weeks. I went home but all along I had a feeling of insecurity and apprehending that I would be risking my life if I stay there, I decided to come back to Delhi and therefore I came to Delhi with my family on 20.10.82 and as per the advice of the C.G.H.S. Doctor of South Avenue, I was admitted to the Nursing Home of Dr Ram Manohar Lohia Hospital where investigations are still being carried out and from where I have come with the permission of the doctor to make a statement today. This incident occurred by the ruling party men and with the knowledge of the police. So, I request you and through you the Hon Home Minister to make a thorough investigation into this particular case by the CBI. I also request you that the matter may kindly be referred to the Privileges Committee as I feel that I am unable to discharge my duties as MP from that area unless the situation improves. I, therefore, seek your protection as my life is in threat.'

After taking the sense of the House, the Speaker (Dr Bal Ram Jakhar) referred[2] the matter to the Committee of Privileges.

Findings and recommendation of the Committee

The Committee of Privileges, after examining Dr Golam Yazdani, in their Seventh Report, presented to the House on 20 December, 1983, reported *inter alia* as follows:-

(i) 'Dr Golam Yazdani, MP, in his evidence before the Committee deposed:

"On the 8th October, I was at home, in my constituency. On that very day, I had a programme to start for Delhi to attend the Parliament session. I had my railway booking also at Malda Station to catch Tinsukia Mail on 9.10.82 at 4.21 early in the morning . . .. On that very day, in the afternoon, I went to the northern part of my constituency, because I was coming to Parliament and I wanted to find out the people's grievances, problems etc. – whatever they may be so that I might raise them in Parliament. So, I went in the afternoon on a motorcycle. I did not drive the motorcycle; it was driven by a man named Sanaullah. I went there and I returned to Chanchal at about 9 P.M., which is about 1 km from my home . . .. Some people from there told me: 'Doctor Sahib, CPM people have conspired to finish you. Don't proceed further. You run backward to save yourself'. So, I was confused and sensing danger I did not go forward. I started running backwards".

When Dr Golam Yazdani was asked that "your grievances are against some members of a particular party. Will you kindly explain how and due to what reasons do you think that breach of privilege has occurred?", he stated: ". . . they just did this injury to me fully knowing well that I had to come to Parliament". To a specific question: "On that day were you on your way to Parliament", Dr Yazdani replied: "I had to come home which was 1 kilometre away and at that night I had to come to Malda Station to catch Tinsukia Mail".'

(ii) 'When Dr Golam Yazdani was asked to identify and give names of persons who had allegedly assaulted him, he stated: ". . . the fellow who just assaulted me I can recognise him but I cannot tell you the name immediately".'

(iii) 'The Committee find that cases relating to the alleged assault on Dr Golam Yazdani are pending in Court of law. The Committee considered the precedents in which the Committee had postponed consideration of a question of privilege when a case based on the same facts was pending in a Court of law. The Committee are, however, of the view that the jurisdiction of the Committee of Privileges and of the Courts of law are quite

different even where the facts are the same; the issues to be decided by the Court are absolutely different from the issues that are to be decided by the Committee of Privileges. The Court cannot decide on privilege, and the right to privilege is not subject to fundamental right; and that the rule of *sub judice* does not apply to privilege matters. The Committee have, therefore, considered the matter on its merits without waiting for any decision of any Court.'

(iv) 'The Committee note that Dr Golam Yazdani, MP, has not been able to mention the names of any of his assailants either in his statement in the House or during the course of his oral evidence before the Committee. The Committee, therefore, feel that it is not possible for them to proceed further in the matter.'

(v) 'The Committee are of the opinion that taking into account the facts and circumstances of the case, no question of breach of privilege or contempt of the House is involved in the matter.'

(vi) 'The Committee, however, deprecate such incidents of assaults on the elected representatives of the people.'

(vii) 'The Committee desire that as requested by Dr Golam Yazdani, the Ministry of Home Affairs should arrange with the State Government of West Bengal to provide suitable protection to his life and property, who apprehends danger to his life.'[3]

(viii) 'The Committee recommend that no further action be taken by the House in the matter and it may be dropped.'

No further action was taken by the House in the matter.

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1. L.S. Deb., dt. 5.11.1982, cc. 354–56.
2. *Ibid.*, cc. 356–57
3. The Ministry of Home Affairs intimated *vide* their Office Memorandum No. I/13012/81/82-IS(D.III), dated 17 January, 1984, that the 'Government of West Bengal have since reported that in compliance with the orders of the Committee of Privileges, an armed police guard has already been provided at the residence of Dr Golam Yazdani, MP at Malda and personal security guard has also been provided'.

Alleged undignified and unbecoming behaviour with a member by the Vice-Chancellor of a University at a meeting of the Court of that University – Facts of the case and reference to the Committee of Privileges

On 4 April 1983 Shri Mohd. Asrar Ahmad, a member, gave notice of a question of privilege against the Vice-Chancellor, Aligarh Muslim University for his alleged undignified and unbecoming behaviour with him at a meeting of the Court of Aligarh Muslim University held on 26 March, 1983.

Shri Asrar Ahmad had, *inter alia* stated in his notice as follows:-

'That in the course of meeting I sought permission of the Chair (Vice-Chancellor) to express my views. However, as soon as I addressed the Chairman and had not completed even the first sentence, the Vice-Chancellor interrupted me and in an extremely harsh tone asked me to lower my voice. He further said that whenever I speak he feels that his head is being hammered. I pointed out to him that my hearing capabilities are not normal. I pointed to the hearing aid I use, and also explained that it is normal that such persons speak with raised voices and even in Parliament I speak like this. On this the Vice-Chancellor told me contemptuously that this is not Parliament House and he is not hard of hearing. He further said that he will interrupt me again and again.

Because of the above mentioned behaviour of the Vice-Chancellor, I am finding it difficult to discharge my duties as a representative of this hon'ble House on the Court of Aligarh Muslim University.

I feel that by acting in this unbecoming manner the Vice-Chancellor has committed breach of privilege and contempt of the House.'

On 29 April, 1983, Shri Mohd. Asrar Ahmad raised the question of privilege in the House and moved[1] the following motion which was adopted by the House:-

'That the matter be referred to the Committee of Privileges with instructions to report by the first week of the next session.[2]'

Findings and recommendations of the Committee

The Committee of Privileges, after examining Shri Mohd. Asrar Ahmad and Shri Saiyid Hamid, Vice-Chancellor, Aligarh Muslim University, in their Sixth Report presented to the House on 17 November, 1983, reported *inter alia* as follows:-

(i) 'Shri Mohd. Asrar Ahmad, MP, during the course of his evidence stated *inter alia* as follows:-

"I was asked there to speak slowly. 'Don't speak so loudly. When you speak, it appears that someone is hammering on our ears'. Then I said 'I am hard of hearing, I speak loudly. I speak loudly in Parliament also'. He said that it was not Parliament".

Shri Mohd. Asrar Ahmad, MP, added that on being pointed out by him that before him other persons had also spoken loudly, then why he was interupting him only? The Vice-Chancellor told him "you would be interrupted again and again". To a question: "You went to University Court on behalf of Lok Sabha and when you were participating in the meeting how can you say that you were obstructed by VC from discharging the duties for the fulfilment of which you had gone there?" Shri Mohd. Asrar Ahmad replied: "So far as the question of obstruction is concerned neither was I allowed to speak nor to discharge my duties".'

(ii) 'Shri Saiyid Hamid, Vice-Chancellor, Aligarh Muslim University, in his evidence before the Committee deposed that "the allegations made against me are unfounded. I have the highest respect for Parliament and I have invariably behaved with decorum and respect towards all the members of the Court including the members sent to the Court of the University by Parliament". Shri Saiyid Hamid added that he had a span of 37 years as a civil servant and the Committee could get his entire record of service from the Department of Personnel and they would not come across any incident in which he had behaved indecorously with a member of the Central Legislature or the State Legislature.'

(iii) 'In reply to a question: "was there any reference to Parliament on that day?" Shri Saiyid Hamid stated: "I did not make any reference to Parliament. I did not utter the word 'Parliament' at all". When it was pointed out to Shri Saiyid Hamid that "have you not said this to him that 'your voice falls like a hammer and this is not Parliament'." He stated that "what I said was this. It is an idiom, it is a witticism: translated into English it might seem a little offensive; otherwise it is just a witticism; idiom based. That witticism unfortunately, which should have made him less tense, was misconstrued. He appears to have felt hurt on that basis. It was an unfortunate thing that it was misconstrued. I had absolutely no intention of hurting him or saying that he was doing any damage to the ear-drums of the audience. That was never my intention." When asked: "you said, you would interrupt him again and again", Shri Saiyid Hamid said: "Sir, this is a highly inconceivable thing. This can only be attributed to an urchin in a street brawl who would pull up his sleeves and say I will never allow you to speak. I never adopted a menacing or intimidating sort of attitude". In reply to another question: "was there any incident earlier where hot words or exchange of words had taken place between you and the MP?" Shri Saiyid Hamid stated: "No, I would not dub it as an exchange of hot words when I uttered a witticism which was unfortunately misconstrued . . .. Never in my long career before taking over the office of Vice-Chancellor, has anybody accused me of being indecorous or rough or short-tempered".'

(iv) 'After careful consideration of the evidence of Shri Mohd. Asrar Ahmad, MP and

Shri Saiyid Hamid, Vice-Chancellor, Aligarh Muslim University, the Committee feel that there had been some misconception about the use of words, "when you speak loudly, your voice falls like hammers on the ears of audience", by the Vice-Chancellor while requesting Shri Mohd. Asrar Ahmad to speak in a lower tone. During the course of his evidence, Shri Saiyid Hamid clarified more than once that he had absolutely no intention of hurting the feelings of Shri Mohd. Asrar Ahmad or obstructing him from speaking at the meeting of the Court.'

(v) 'The Committee feel that as a Presiding Officer of the Court, the Vice-Chancellor had certain duties and powers to conduct and regulate the proceedings of the Court and that Members of the Court including the Members representing Parliament are expected to extend their cooperation to the Vice-Chancellor. A Member of Parliament would naturally have to discharge his functions in the meetings of the Court like other members, within the parameters of his position as a Member of the Court as distinct from his duties as a Member of Parliament in Parliament.'

(vi) 'The Committee note that the Vice-Chancellor has categorically denied that he made any reference to Parliament at all, least of all in a contemptuous way.'

(vii) 'The Committee are of the opinion that taking into account the totality of the facts and circumstances of the case, no further notice need be taken of the matter.'

(viii) 'The Committee recommend that no further action be taken by the House in the matter and it may be dropped.'

No further action was taken by the House in the matter.

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1. L.S.Deb., dt. 29.4.1983, c. 273.
2. On 28 July, 1983, a motion was adopted by the House, extending the time for presentation of the Report up to the last day of first week of Thirteenth Session of Lok Sabha.

India: Rajya Sabha

Many of the cases raised as matters of privilege during 1983 were held by the Chairman as not fit enough to call for action under rule 187 of the Rules of Procedure and Conduct of Business in the Rajya Sabha. An example of one such case in which the Chairman was called upon to rule on certain alleged derogatory references made by a journalist member of the House towards members of the Parliament is given below:

Alleged derogatory remarks about members made by a noted journalist and a member of the House

On August 9, 1983 four Members gave notices of breach of privilege against Shri Khushwant Singh, another Member of the House and a noted journalist from a write-up in the newspaper 'Hindustan Times' dated August 6, 1983 under the weekly column 'With Malice Towards One and All . . . . . .' In this write-up he made some sweeping observations about both the Houses of Parliament and their members under the sub-headings 'More money for MPs.' and 'What is a Dogsbody?' Under the first sub-heading Shri Singh, in the context of a Bill then before Parliament providing for a hike in Members' salaries, had extracted certain passages from the writings of an English author Auberon Waugh who had made a scathing criticism of British MPs. for

voting in favour of a substantial hike in their salaries in the background of general public disapproval of such a move. Shri Singh applied this criticism to the Indian MPs without directly castigating them. Shri Singh felt that even if the Members of Parliament went on increasing their perquisites too often, there was hardly going to be any voice of dissent either in the Houses themselves or even in the media just as it had happened in UK. He wrote:

'Indians do not have a high opinion of their politicians. The commonest expression used for them is *Sab Chor Hain*: they are a bunch of thieves . . .'

In the second part of the article captioned 'What is a Dogsbody?' Shri Singh went on to say:

'Our two Houses of Parliament are full of dogsbodies. As a matter of fact I would include all members of the ruling party not made ministers in this category. I have no doubt that if the Opposition were at some future date to form Government, junior members of their parties would also become dogsbodies.

What justifies this canine appellation for the politician *chamcha* (sycophant)? They lick the hands of their patrons, wag their tails when they recognise people with pahunch (approach) yap with unconcealed joy at the silliest jokes made by their leaders, snap and snarl at rivals, bark angrily at those who criticise their party. But once they gain their objective, they lift their hind legs on the very people who raised them from obscurity to eminence.'

The members who gave notice of breach of privilege called this writing more especially the use of the word 'dogsbody' as very insulting.

The Chairman by his ruling dated August 16, 1983, withheld his consent to the raising of the matter as a question of breach of privilege, *inter alia* with the following observations:

'. . . Thus Shri Khushwant Singh has used another writer's words but described the original context in which they were used and in this clever manner not exposed himself. As he is a member of Parliament and thus potentially a politician, what he says applies to him also. He is careful enough not to say anything directly about any Member and has only drawn a parallel. He reminds one of Dr Johnson who wishing to criticise a lawyer said, 'Sir, I could say many things about him but I must not forget that he is an attorney.' Shri Khushwant Singh is aware of the privileges of this House and thus merits the description of Addison by Pope 'willing to wound but afraid to strike'. He may be left to his wishes and also to his fears. If politics is bad and membership of Parliament is not to be commended, it is good for him to remember that a man is known by the company he keeps.

A dog is a dog, whether he be shaggy or smooth because, as Macbeth said, they are all 'clept by the name dog'. Therefore, for one dogsbody to call another dogsbody names savours of a mild case of Dogberryism. Indeed there are many doggerels and lampoons written on Members of Parliament. One such is very famous but I will not recite it here. Such writings are not worth serious notice and I have, therefore, decided to drop this matter with these remarks'.

(R.S. Deb. Vol. CXXVII dt. 16.8.83 cc. 233–236).

Disturbances in the Visitors' Gallery

During the year 1983 there were two cases of contempt of the House, which are detailed below:

(1) On August 26, 1983, a visitor attempted to shout from the Visitors' Gallery. He was promptly taken into custody by the Security staff. The matter was reported to the House by the Deputy Chairman with the following announcement:'

'I have to inform Members that today at 6.15 P.M. a young visitor calling himself Vijay Kumar Kesarwani S/o Shri Radhey Shyam, resident of 287, Muthi Ganji, Allahabad tried to shout from the Public Gallery. Before, however, he could cause any disturbance, he was apprehended by our Watch and Ward and security staff, with commendable promptitude and exemplary presence of mind. From the statement he has furnished it appears that his intention was to draw attention to the alleged injustice done to him by not giving him any award by the Government for information about income-tax evasion passed on by him to the authorities concerned. Whatever may be his motive, I feel that if the House agrees, we may let him off with a stern warning by our Watch and Ward Officer.'

The House agreed with the Deputy Chairman's suggestion.

(2) On November 21, 1983, a visitor shouted a slogan in the Visitors' Gallery and hurled a *chappal* (low shoe) therefrom on the floor of the House. He was apprehended by the Watch and Ward Staff. Thereafter the Leader of the House (Shri Pranab Mukherjee) moved the following motion which was adopted by the House:-

'This House resolves that the person calling himself Subhash Chandra S/o Shri Vijay Shankar of Village & Post Office Khanwar, Police Station Nagara, District Balia (U.P.) who raised a slogan in and threw a chappal from the Visitors' Gallery on the Floor of the House at about 12.35 P.M. today and whom the Watch and Ward Officer took into custody, has committed a grave offence and is guilty of the contempt of this House.

This House further resolves that Subhash Chandra be sentenced to simple imprisonment till the conclusion of the current Session of the Rajya Sabha and detained in the Tihar Jail, New Delhi.'

The motion was unanimously adopted by the House and the contemner was accordingly committed to jail.

(R.S.Deb. Vol. CXXVII dt. 26.8.83 cc. 500–501 & R.S.Deb. Vol. CXXVIII dt. 21.11.83 cc. 415–418)

MAHARASHTRA LEGISLATURE

An editorial containing derogatory remarks against the Speaker – On 11th December 1981, three members of the Maharashtra Legislative Assembly gave a notice of breach of privilege arising out of an editorial published in the issue of 'Maharashtra Times' daily published from Bombay dated the 10th December 1981. According to the members, a particular portion in the said editorial clearly meant that the Speaker yielded to the pressure from members of the ruling party and changed his decision. They argued that the Speaker being symbol of the authority and dignity and custodian of the rights and privileges of the House, any derogatory remarks against him impairing his dignity,

authority and integrity constituted breach of privilege and contempt of the House. The members therefore contended that by casting such aspersions on the Speaker a breach of privilege and contempt of the House was committed by the editor, and the printer and publisher – 'Maharashtra Times' of Bombay.

On 18th December 1981 after leave was granted by the House the Speaker referred the matter to the Committee of Privileges for investigation and report.

Committee in its report presented to the House on 10th March 1983 felt that the explanations offered by the executive editor and the editor of the said daily should be accepted in as much as they had assured that by the said editorial no disrespect was meant either to the chair or to the person occupying it but that it was aimed at maintaining and further enhancing the dignity of the House. Committee was therefore of the view that it was unfortunate that such a writing had appeared in the newspaper and it would have had been better if such article of doubtful taste had not been written at all. However, in view of the assurances of the editor that he did not mean any disrespect to the chair and dignity of the Presiding Officer, the Committee felt that the matter might not be pursued further. The Committee therefore recommended that the matter of breach of privilege against the 'Maharashtra Times' be dropped. For coming to this conclusion, the Committee was influenced by the observation in the 'Daily Mail' case to the effect that proceedings for breach of privilege should not be taken in every case and that the process of parliamentary investigation should not be used, in a way, which would fetter or discourage the free expression of opinion or criticism however prejudiced or exaggerated it might be or give importance to irresponsible statements.

The report of the Committee was unanimously adopted by the House on 31st March, 1983.

An incident of wearing a cap by a member with the inscription to the effect 'Remove corrupt Mr Antulay' & remaining in the precincts and chamber of the house – On 1st December 1981, Shri Bhaurao Patil, MLA gave a notice of his intention to raise a question of breach of privilege against another member of the House for latter having worn a cap with an inscription 'Remove Corrupt Mr Antulay' and for having remained in the precincts and chamber of the House and against the daily 'Tarun Bharat' of Nagpur for having given publicity to the said incident in its issue dated the 1st December 1981. It was contended that the inscription on the cap was defamatory and cast reflections on the Chief Minister who was the Leader of the House. The Speaker referred the matter to the Committee for investigation and report after leave was granted by the House on 18th December 1981.

The Committee in its report presented to the House on 11th March,

1983 held that wearing of the said cap by a member in the precincts of the House was not in keeping with the decorum of the House and might technically involve a breach of privilege and contempt of the House. The Committee held this view because misbehaviour within the precincts of the House, while the House is not sitting, even though not calculated to disturb the proceedings of the House is punishable as for breach of privilege as the House is deemed to be present in every part of the building in which it is sitting. The Committee, however, recommended that the House should better consult its own dignity by ignoring the action on part of the member and by not giving any undue importance to it. The Committee therefore recommended that the matter be dropped.

As regards the case against the newspaper, the Committee noticed that the said paper reported factually what had taken place in the House and its precincts without passing any adverse comments on any member. The Committee, therefore, felt that no breach of privilege or contempt of the House was committed by the newspaper. It also reported that it had come to its notice that the editor, printer and publisher of the said newspaper happened to be a member of the Upper House i.e. Maharashtra Legislative Council. However, in view of the finding and no breach of privilege or contempt of the House had been committed by the newspaper, this information was of no consequence in the circumstances.

The report of the Committee was unanimously adopted by the House on 31st March, 1983.

Uttar Pradesh Legislative Assembly

Complaint against a Superintendent of Police – A question of contempt of the House which was referred to the Privileges committee by the Hon'ble Speaker, Uttar Pradesh Legislative Assembly arose out of a complaint by Sri Shanker Singh, M.L.A. of Lok Dal on 24th August, 1981 against the then Superintendent of Police and Station Officer, Kadaura police station, distt.Jalaun. In his notice of contempt of the House, Sri Shanker Singh had stated that during September–October, 1980 and February–April, 1981 he had given several notices in the Legislative Assembly under various rules of procedure against the aforesaid officers and had also spoken against them in the House as a result of which these police officers became displeased with him and consequently they made available to the news-papers at Lucknow a forged letter indicating connection of the Hon'ble member with some decoits. This letter was alleged to have been recovered from the pocket of the dead body of a decoit killed during police encounter. Sri Shanker Singh had also enclosed copies of two news-papers and other documents in support of his complaint.

The Hon'ble Speaker sought factual information from the Home Minister in this matter. The Home Minister while giving his comments on the facts of the case sent a photostat copy of the letter allegedly written by some decoits to Sri Singh.

The Hon'ble Speaker gave his ruling in the matter on September 9, 1983. He observed that the following points required detailed examination and investigation:

(a) Whether the aforesaid Police Officers were displeased with the Member concerned because he had given notices and had spoken against them in the House?

(b) Whether any letter was recovered from the pocket of dead decoit? If so, whether the letter was a forged one to defame the Hon'ble Member?

The Speaker further observed that the said matter did not appear to be one which might be rejected prima facie for want of evidence, on the other hand he felt that it required detailed investigation and through scrutiny so as to reach at correct conclusion. Hence, the Hon'ble Speaker referred it to the Privileges Committee of the House for examination, investigation, and report, but at the same time desired that the Committee, while proceeding with the investigation, should also keep in view the case filed by the member in the Court of Law and consequential inferences arising therefrom.

Complaint against a Station Officer – Another case of breach of privilege referred to the Privileges Committee of the U.P. Legislative Assembly, arose out of a complaint of Sri Mata Prasad Pandey, M.L.A. against Station Officer, Police Station Trilokpur, District Basti and his companion, on 20th March 1982. Prior to it Sri Pandey had given a notice under another rule against the above police officer in the House. In his notice of breach of privilege the member had stated that when he was going to his residence on 19th March, 1982 from village Itwah the aforesaid police officer came in uniform alongwith a companion on motor cycle and misbehaved with him and uttered objectionable remarks and also threatened to murder him because of the reference made by the Member in the House. According to the complainant both of these persons were armed and they eventually left the place only after some passers by gathered there. The Hon'ble Member had lodged an F.I.R. at Police Station Itwah, a copy of which was enclosed with his notice of breach of privilege.

The Hon'ble Speaker sought factual information in the matter from the Home Minister. The Minister informed that from the report of Superintendent of Police it prima facie appeared that hot words were exchanged between the two parties and although the witnesses had confirmed the lodging of F.I.R. by the Hon'ble Member yet their presence on the scene was not beyond doubt.

Later on it was informed by the Government that the matter had been handed over to the Criminal Investigation Department whose report was awaited. After waiting for an appreciably long time the Hon'ble Speaker while giving his ruling in the case on 23rd February, 1982 observed that after considering the matter from all aspects he had inferred that the following points are undisputed:-

(a) On 19th March, 1982 Hon'ble Sri Mata Prasad Pandey and the Police Station Officer, Trilokpur had an exchange of hot words.

(b) The Hon'ble Member has lodged an F.I.R. the same day and gave notice of breach of privilege the very next day.

(c) The Hon'ble Member had also given an notice under another rule of the procedural Rules of the Legislative Assembly against the Police Station Officer, Trilokpur, prior to the above incident.

(d) According to the interim report of the Superintendent of Police the two witnesses mentioned in the F.I.R. had confirmed the statement of the Hon'ble Member.

(e) The Police Station Officer, Trilokpur had also lodged a report in the same matter but there was no mention of taking evidence of the aforesaid witnesses in the interim report of the Suprintendent of Police.

In the light of the above inference the Hon'ble Speaker observed that prima facie a question of breach of privilege seems to be involved in the matter under his consideration and hence he referred it to the Privileges Committee of the House for examination, investigation and report.

MALAYSIA: HOUSE OF REPRESENTATIVES

Suspension of a Member – On 29th November 1983 the Hon'ble Member for Jelutong, Mr Karpal Singh was suspended from the service of the House till 2nd December 1983 on a motion moved under Standing Order 44(3) for disregarding the authority of the Chair. Mr Karpal Singh had disregarded the order from the Chair when he refused to withdraw the words 'kurang ajar' (ill-breeding) which he used against the Hon'ble Minister of Information, Datuk Seri Adib Adam for not giving him way for elucidation under Standing Order 37(b) during the source of the Minister's statement made under Standing Order 14(1)(i) that day. (see the House of Representatives Parliamentary Debates dated 29th November, 1983).

ZAMBIA: NATIONAL ASSEMBLY

Complaint against a newspaper – On Tuesday 18th January 1983 when the House was considering the motion 'That the Thanks of this

Assembly be recorded for the exposition of public policy contained in His Excellency's Address', an Honourable Member raised a point of order on the *Zambia Daily Mail* newspaper headline: 'Dirty MPs Out – KK. Parliament not for subversion' and alleged that a breach of parliamentary privilege had been committed by the paper for referring to the Honourable Members of the House as being 'Dirty'. In his ruling on Wednesday, 26th January, 1983 the Hon Mr Speaker said that a *prima facie* case of breach of privilege had been committed by the paper because the reporting by the *Zambia Daily Mail* newspaper had been sensational and cast aspersions on the integrity of the Honourable Members of the House. Furthermore, the Hon Mr Speaker said that by using the word 'dirty' the newspaper had misrepresented what had been said in the House by the President and the Newspaper was contemptuous of the House. Mr Speaker appealed to the House to excuse the Newspaper for the affront but sternly warned the paper against irresponsible and sensational reporting which might lead to the weakening of democracy. He advised the House to take no further action on the matter. (Vol. 62. Columns 451–455) In addition, on Thursday, 17th February, 1983 the Hon Mr Speaker made another ruling to the effect that passes to Parliament given to the *Zambia Daily Mail* reporters should be withdrawn immediately until the Newspaper was able to present responsible reporters to the House. The above ruling was provoked by the Newspaper's error of quoting a name of a stranger in place of that of an Honourable Member of the House. Mr Speaker saw this error by the Newspaper as a continuation of what he had earlier on stated in his previous stern warning to the same Newspaper as irresponsible reporting and misrepresentation of facts in matters connected with Parliamentary proceedings, and, therefore, decided to take the action mentioned in the ruling above against the Newspaper. (Vol. 62. Columns 1561–1563)

XIV. MISCELLANEOUS NOTES

1. Constitutional

Hong Kong – Membership of the Legislative Council was altered as follows:

Official Members increased from 22 to 25. Unofficial Members increased from 27 to 29. *Ex officio* Members reduced from 5 to 4.

Malaysia (House of Representatives) – The Constitution (Amendment) Act 1983 was assented to by the Deputy King and gazetted on 15th December 1983. It sought to amend, *inter alia*, the following Articles of the Constitution relating to Parliament, its members, privileges and Deputy Speakers:-

Article 46

This Article has been amended to enlarge the membership of the House of Representatives from 154 at present to 176. The amendment, however, does not affect the present composition of the House until the dissolution of Parliament takes place. The increase of 22 seats is distributed as follows:-

Sabah four, Selangor three, two each for Federal Territory, Johore, Pahang, Penang and Perak, one each for Trengganu, Kelantan, Malacca, Negeri Sembilan and Kedah, none for Perlis and Sarawak.

Articles 48 and 53

These Articles of the Constitution have been amended to deal with a member of Parliament who has been disqualified by reason of a conviction and sentence, and has exhausted all avenues of appeal through the courts and after the Pardons Board has dealt with an appeal if it goes up to the Board. If the appeal to the Pardons Board is turned down, his seat shall become vacant.

Article 57

This Article is amended to provide for the appointment of two Deputy Speakers of the House of Representatives, The Deputy Speaker and the Deputy President of the Senate are now allowed to participate in business.

Article 59

Clause (2) of this Article is amended so as to increase the period within which a member must take his seat in a House of Parliament from three months to six months.

Article 66

Clause (5) of this Article is amended to provide that if for any reason whatsoever a Bill is not assented to by the Yang di-Pertuan Agong (the King) within fifteen days of its being presented to him, he shall be deemed to have assented to the Bill and the Bill shall accordingly become law.

New Zealand (issue of new letters patent constituting the office of Governor-General of New Zealand) – On 23 October 1983 Her Majesty Queen Elizabeth The Second, the Queen of New Zealand, issued new

Letters Patent constituting the office of Governor-General of New Zealand. These new Letters Patent update and replace Letters Patent and other Instruments of 1917 and 1918.

At the same time as the Letters Patent were issued a number of complementary amendments to the law took effect. The Bill to give effect to these changes was introduced into the House of Representatives in November 1982 and at the same time a draft of the new Letters Patent was published so that members, in considering the Bill, could see exactly how it related to the Letters Patent which necessitated it.

The new Letters Patent and statutory amendments leave the Governor-General's powers essentially unchanged but discard all the colonial elements present in the earlier Letters. The Letters Patent make a general delegation of HM The Queen's executive powers to the Governor-General. They also include a territorial description of New Zealand which extends to the self-governing States of the Cook Islands and Niue, to Tokelau, and to the Ross Dependency on the Antarctic continent. Where there is no Governor-General or the Governor-General is unable to act, an Administrator of the Government (who will normally be the Chief Justice) will act in his stead. The Governor-General's power to summon, prorogue and dissolve Parliament which were included in the 1917 Letters have been omitted from the new Letters as they are fully covered by Statute.

The new Letters being the first to be issued since the 1926 Imperial Conference recognise that the Governor-General occupies the same position in all respects as the Sovereign in Britain and reflect the fact that the Governor-General no longer acts as the representative of the British Government or as a channel of communication between the British and New Zealand Governments. For the first time the Letters spell out that the Queen's Ministers in New Zealand have a duty to keep the Governor-General fully informed concerning the general conduct of the Government.

The Governor-General's discretions or reserve powers are not affected by the new Letters Patent. The legal consultant to the New Zealand Government whose review of the subject led to the new Letters Patent being drafted had recommended that a definition of the Governor-General's reserve powers (that is those relating to his power to appoint and dismiss a Prime Minister and to refuse to accept advice to dissolve Parliament) should be made in the form of a resolution of the House of Representatives. This recommendation has not been implemented, the Government considering that further study would be needed before a change of this nature could be made.

2. Electoral

Australia (House and Senate) – The following changes were made in 1983 to the law concerning Parliament, its members and officials, and the electoral system.

1. *Commonwealth Electoral Legislation Amendment Act 1983*
The present Labor Government came to power in 1983 with part of its electoral platform being an undertaking to introduce extensive reforms of electoral laws. The Joint Select Committee on Electoral Reform was appointed in May, tabling its First Report, which contained 132 recommendations, on 13 September. Some of the recommendations were incorporated into the *Commonwealth Electoral Legislation Amendment Bill 1983*, which underwent a number of amendments: in all, 19 amendments were passed and 23 negatived in the House of Representatives, whilst in the Senate 52 were passed and 14 negatived.

Most of the amendments passed were either of a technical nature or designed to allow for closer scrutiny of the operation of the legislation. There were no significant changes to the major reforms, which include:

- the establishment of the Australian Electoral Commission and its staff;
- provisions for public funding to assist electoral campaigns, and requirement for disclosure of donations and electoral expenses;
- revised provisions for electoral redistributions;
- changes in Senate electoral procedures, e.g. 'list' voting, informal votes, order of election of Senators following a double dissolution;
- the establishment of mobile polling booths for people in remote areas and hospitals; and
- closure of polling booths at 6.00 p.m.

2. *Parliamentary Contributory Superannuation Amendment Act 1983*
On 28 March 1983, the Prime Minister (Mr Hawke) announced that new legislation would be introduced after a review of the superannuation scheme. The *Parliamentary Contributory Superannuation Amendment Act 1983* amends the *Parliamentary Contributory Superannuation Act 1948*, which provided retiring allowance for retired members and benefits for spouses and orphans.

The amending Act introduces three major changes to this legislation:

- it sets a fifty per cent limit on commutation of retiring allowances to a lump sum benefit;
- it provides that a widow or widower is entitled to five sixths of the retiring allowance to which the deceased person would have been entitled, thus relating the spouse's annuity to the member's residual retiring allowance;

– it reduces the allowance payable to a former member to the extent of any salary or pension derived from an office of profit under the Crown.

The Act also introduces some drafting changes and amendments relating, for example, to retirement for reasons of ill-health by members who have completed eight years' service.

3. *Remuneration and Allowances Amendment Act 1983*

The Remuneration Tribunal was established in 1973 to make recommendations regarding the incomes of ministers, members of Parliament, senior public servants and members of the judiciary. The tribunal reviews salaries and allowances, and proposes recommendations which may be implemented by amending pertinent legislation.

Following the termination of the salaries and wages pause in October 1983 and the granting of a 4.3% increase by the Conciliation and Arbitration Commission, the Tribunal recommended a like increase for categories of the above offices through the *Remuneration and Allowances Amendment Act 1983*.

Part III of the Act amends the *Ministers of State Act 1952*, increasing the provision for ministerial salaries. Part IV, in amending the *Remuneration Tribunals Act 1973*, allows the tribunal to determine the remuneration to be paid in respect of an office which came into existence before the commencement of operation of that Act.

4. *Representation Act 1983*

Section 24 of the Constitution empowers Parliament to increase the size of the Parliament if it sees fit, but imposes conditions which must be observed. Most important is the rule in s. 24 that the number of members of the House of Representatives shall be as nearly as practicable twice the number of Senators. This two to one ratio, known as the 'nexus', ensures that any major proposed increase in the size of the House of Representatives must be accompanied by an increase in the size of the membership of the Senate.

The purpose of the *Representation Act 1983* is to increase the number of Senators for each State from 10 to 12, thereby enabling the number of members of the House of Representatives to be increased to 148 (an extra 23 seats). The number of Senators for the Australian Capital Territory and the Northern Territory remains unchanged, at two per Territory. The Act also outlines transitional provisions relating to the first Senate election after the increase in the size of the Senate.

5. *Broadcasting and Television Amendment (Election Blackout) Act 1983*

This Act removes the prohibition on the broadcasting or televising of political news or comment during the 2 days before and on polling day.

(Contributed by the Clerk of the Australian Senate)

Australia (Northern Territory) – Amendments to the *Electoral Act* increased the number of seats from 19 to 25; enabled candidates' photographs to appear on ballot papers; extended definition of 'authorized witness'; remedied procedural defects to improve voting procedures; and clarified the fact that the Supreme Court hears appeals as an election tribunal whose decision cannot be appealed to a higher court. (See below).

A Distribution Committee redivided the Northern Territory into 25 electoral divisions mid-1983 with electorates containing 2002 to 2819 electors as at 9 June 1983.

The Third Assembly (19 members) was prorogued on 15 November 1983 and elections were held on 3 December 1983 to elect the Fourth Assembly (25 members). Subsequently a Ministry of Chief Minister and 7 Ministers was appointed. (The Ministry in the Third Assembly comprised Chief Minister and 5 Ministers).

Electoral Amendment Act 1983
(Act No. 36 of 1983)

The *Electoral Act* (S. 128) provided that no appeal or proceeding should lie from or in relation to a decision of the Supreme Court when the court was dealing with disputed elections, but legal opinion suggested that an appeal might lie from such a decision.

The amending Act establishes an election tribunal constituted by a judge of the Supreme Court and sets out the method of disputing the validity of an election. An aggrieved party is required to address a petition to the tribunal within a specified time setting out the facts relied upon to invalidate an election and stating the relief sought. The petition is also served on the candidate whose election is being challenged and that person then has a right to reply. It also details the powers of the tribunal and empowers the judges of the Supreme Court to make additional rules for the practice and procedure of the tribunal.

Electoral Amendment Act 1982
(Act No. 73 of 1982)

The main effect of the amending Act was to increase the number of seats in the Legislative Assembly from 19 to 25. It also remedied a number of procedural defects revealed in earlier elections.

The Act enables candidates' photographs to appear on ballot papers – an innovation in Australian electoral legislation.

Australia (Tasmania) – Tasmanian Act 36/1983 restated and revised qualifications for election to Member of either House, and the qualifications of persons for enrolment to vote.

Australia (Victoria) – 1. The Constitution (Electoral Provinces and Districts) Bill was passed to increase the number of Members of the Legislative Assembly from 81 to 88, each representing one electoral district. This change is to take effect at the next Legislative Assembly General Election which is due, in the normal course of events, early in 1985. The number of Members of the Legislative Council will remain at 44.

The Act also establishes a direct relationship between Legislative Assembly electoral districts and Legislative Council electoral provinces by requiring that each province shall contain four complete and contiguous electoral districts.

Previously there were 22 provinces – each with two Members – and 81 electoral districts and there were instances where one electoral district contained parts of up to five provinces. This situation present difficulties for some Assembly Members in co-ordinating local Parliamentary activities and liaising with up to ten Members of the Legislative Council. It also led to confusion on the part of electors.

References: Constitution (Electoral Provinces and Districts) Act 1983 (No. 9892)
Legislative Council Hansard, *3 May 1983, p.2074* et seq.
Legislative Council Minutes of the Proceedings, *3 May 1983.*

2. The Electoral Commission (Amendment) Bill was complementary to the Constitution (Electoral Provinces and Districts) Bill. Its major purpose was to provide that the 1983 redivision would take account of the increase in the number of Legislative Assembly electoral districts and the nexus between electoral districts and Legislative Council provinces.

The opportunity was also taken to make a series of small machinery amendments to the *Electoral Commission Act* 1982. The most significant change in this respect was the introduction of a provision for the general public to view the electoral commissioners' redivision proposals and to make suggestions or lodge objections to such proposals.

References: Electoral Commission (Amendment) Act 1983 (No. 9894)
Legislative Council Hansard, *3 May 1983, p.2074* et seq.
Legislative Council Minutes of the Proceedings, *3 May 1983.*

Australia (Western Australia) – A number of measures affecting the Constitution, Parliament, Members and the Electoral system, were introduced into the Parliament by the new Labor Government with varied results.

1. *Acts Amendment (Electoral) Bill* was read for a first time in the Assembly on March 22 1983. It is still on the Notice Paper, in the Assembly, for a second reading when Parliament resumes in March after the summer recess.
2. *Acts Amendment (Constitution and Electoral) Bill* completed its passage through the Assembly and was defeated in the Council at the second reading stage. The aim of this Bill was to reduce the number of members in the Legislative Council from 34 to 22 and to provide that, at elections for the Legislative Council, each elector will have a vote which is equal in value to every other vote.
3. *Acts Amendment (Parliament) Bill* completed its passage through the Assembly and was defeated in the Council at the second reading stage.

   The purpose of this Bill was to provide for the resolution of deadlocks between the two Houses of the Parliament.

   At present the Western Australian Constitution has no machinery for this purpose. Before becoming law, this particular reform must receive the approval of the electors of Western Australia at referendum.

   Both defeated Bills were debated at great length with the Opposition strenuously opposing their passage through the House.
4. *Electoral Amendment Bill* completed its passage through both Houses of the Parliament.

This Bill contained a number of proposals which formed part of the range of electoral reform undertaken by the Labor Party at the 1983 elections.

It provided for the establishment of one claim card to achieve enrolment on State and Commonwealth electoral rolls; it provided for a number of amendments dealing with such matters as qualifications of electors, witnessing initial enrolment claims; as well as the distribution of electoral matter to remote areas of the State.

5. *Constitution Amendment Bill* completed its passage through both Houses of the Parliament.

   This Bill is consequential to the Electoral Amendment Bill with regard to the proposed changes in the qualifications of electors.

   Amendments to sections 7 and 20 became necessary for similar changes to the qualifications for Members of Parliament to be effected.
6. *Constitution Acts Amendment Bill* was introduced and read a second time in the Legislative Council by a private Member. Debate was adjourned, to be continued in March after the summer recess.

   The object of the Bill is to correct a situation which has arisen due to either bad drafting and/or a clerical mistake arising from

amendments to section 47 of the Acts Amendment (Electoral Provinces and Districts) Act introduced into the Council in 1981. What has happened, in effect, is that eight members of the Legislative Council do not represent the same area as their counterparts who represent a province by the same name.

7. *Electoral Amendment Bill (No. 2)* completed its passage through both Houses of Parliament.
   The purpose of this Bill is to insert a reference to referendums in the sections of the Electoral Act which require that reference. It is complementary to the Referendums Bill. Areas dealt with include the functions and powers of Officers, the issue of writs, the closure of rolls, and the custody and distribution of records.
8. Electoral Amendment Bill (No. 3) completed its passage through both Houses of Parliament.
   Provision is made in this Bill to remove all specific references to Aboriginal people. Having been accomplished the electoral laws, relating to enrolment and voting, will apply equally to all citizens, regardless of race.
9. *Referendums Bill* completed its passage through both Houses of Parliament.
   This Bill has the purpose of creating standing legislation to provide the machinery for the conduct of referendums, and it would apply to any referendum authorised or required to be held by the Parliament.
   In the past *ad hoc* referendums legislation has prescribed that the machinery embodied in the Electoral Act be used and that references to elections in that Act be adapted, as far as they appear to be applicable to the management of a referendum.

Canada (Yukon) – Changes were made to the Legislative Assembly Act (primarily regarding indemnities and expense allowances) and to the Elections Act, the major amendments being: 1) to transfer responsibility from an Elections Board to the Chief Electoral Officer – to which position the Clerk of Assembly has been appointed; 2) to shorten the election period from 45 days to 31 days; 3) an advance poll will be used and proxy voting will be limited to electors who will be outside Yukon on polling day; and 4) polls will be established in nursing and retirement homes. Government proposed changing the ballot paper so that the name of the candidate of the political party represented by the Government Leader would be placed first, followed by the candidate of the political party represented by the official opposition, and then all other candidates would be listed in alphabetical order. Following quite an outcry, government and opposition voted to defeat that particular clause.

3. Procedural

Australia (Commencement of Acts) – On 6 December 1983, for the first time, Commonwealth of Australia Special *Gazette* extracts notifying dates of commencement of Acts and sections of Acts following their proclamation by His Excellency the Governor-General were tabled in the Senate. This action was the outcome of efforts by the President of the Senate, his predecessor and officers of the Senate to ensure that the Parliament is informed on the dates of commencement of Acts or sections of Acts which have been agreed to by both Houses and received Royal Assent, but the dates of commencement of which are fixed by Proclamation. (*Note*. In Australia, if the date of commencement of an Act or any of its sections is some future date, to be determined by Proclamation, the Proclamation is required by the Acts Intepretation Act to be published in the *Gazette)*.

For some time, a number of Senators had been concerned over this matter as a matter of principle and for other reasons referred to below. The Parliament, having passed a bill containing provisions for future commencement dates and been advised by the Governor-General that he had assented to the law, would, under normal circumstances, anticipate that the provisions would be put into effect within a reasonable period c time. However, not only is it the case that many Acts or sections of Ac are not proclaimed until a considerable time after assent, but, until th implementation of the procedures described above, no formal procedure existed to inform the Parliament of the relevant dates of commencement. While delays can usually be justified on administrative grounds, the point at issue has been that the Parliament was not formally advised when the Acts or sections were eventually proclaimed to be operative. In theory, the Parliament was not in a position to know whether or not its legislation was in force.

It was also significant that any member of the public who wished to determine whether particular Acts or sections of Acts were in force, could only obtain this information by contacting the relevant administering department or manually searching Commonwealth *Gazettes* for the relevant Proclamations – a laborious, time consuming task and subject to inaccuracy, through oversight. In essence, no central authority had or wished to assume responsibility for maintaining an accurate and up-to-date record of dates of commencement of Acts or sections of Acts.

Following extensive negotiations with the relevant authorities, the procedure now is:

- Proclamations dealing with commencement dates are notified by Special *Gazette* – a numbered series which can be readily obtained by subscription. Interested persons can now easily peruse this series to obtain the necessary information.

- the Clerk tables each Special *Gazette* in the Senate thereby formally alerting the Senate of Executive action taken in regard to Proclamations. (Similar action is taken in the House of Representatives.)
- the act of tabling ensures that relevant details of Proclamations are recorded in the *Journals of the Senate*, the *Votes and Proceedings* of the House of Representatives and *Hansard*, and can be easily traced by reference to the Index of Papers presented to Parliament, and other Parliamentary indexes.

(*Contributed by the Clerk of the Australian Senate*)

Australia (House of Representatives, Sessional Orders) – On 3 occasions in 1983 – May, August and December – the House agreed to sessional orders principally aimed at further experimentation on days and hours of sitting and the arrangements of the business of the House.

For many years now the pattern of sittings and the daily program of business have been changed in order to find an arrangement suitable to a large majority of Members. A number of these changes have been reported in past issues of *The Table*.

In view of the frequency of change, the following summary is provided to highlight the more novel features of the arrangements, the first under the new government elected on 5 March 1983.

May arrangements

Under these arrangements, which operated for only 4 weeks, the House met on Tuesday at 2.15 p.m. and on Wednesday and Thursday at 10 a.m. One feature of the arrangement associated with these sitting hours was the intention of the House to rise at 6.30 p.m. on Tuesday in order to provide Members when in Canberra with one night when the House did not sit to attend to other duties and commitments (including committee meetings). The adjournment of the House was set at 11 p.m. on Wednesday and Thursday. Perhaps the main feature was the altered time for questions without notice, traditionally held at the commencement of proceedings, to 12 noon on Wednesday and Thursday. This procedure necessitated a number of orders to provide for the interruption of business at 12 noon.

August arrangements

The arrangements agreed to on 24 August incorporated some minor changes to the meeting and adjournment times. The customary pattern of 3 weeks sitting followed by 1 non-sitting week was followed. A major change was the alteration of the night when the House did not sit from Tuesday to Wednesday, with House rise intended for 8 p.m. The most novel change, however, was the transfer of grievance debate and

general business on alternate sitting Thursdays from the traditional morning time-slot to the evening commencing at 8 p.m. and concluding at 10 p.m. This enabled more time for these debates than was previously available. The other significant change was the alteration of the period for Question Time to 2 p.m. on Wednesday and Thursday, with the House meeting at 2 p.m. on Tuesday, so that Question Time would be held at the same time each sitting day.

December arrangements

The last set of arrangements, agreed to on 8 December, operate from 28 February, the first sitting in 1984.

Following substantial lobbying by Government back-benchers the Government agreed to implement a pattern of sittings of 2 weeks from Tuesday to Friday and Monday to Thursday followed by a 2 week non-sitting period. A similar pattern was followed for a time in 1970 and again in 1978. The features to be noted from the sessional orders are –

- The House is to meet at 2 p.m. on Monday and Tuesday and at 10 a.m. on other days.
- The Wednesday non-sitting night has been retained and the House is to rise at 11 p.m. on other nights and was to rise at 5 p.m. on Friday (this was later amended to 4.30 p.m.).
- Question Time at 2 p.m. has been retained except that on Friday there was to be no Question Time. This would have been an unprecedented arrangement in modern times but following Opposition protest a Friday Question Time was later provided for.
- Grievance debate and general business is to be held between 12.45 p.m. and 2 p.m. on alternate Thursdays, meaning that the House will sit during the traditional luncheon meal break.

Despite the arrangements agreed to by the House, during 1983 there were numerous occasions when the specified intentions were superseded, sometimes at short notice. For example, the intended early rise of the House on Tuesday and later on Wednesday night was not held to on 7 of 15 occasions it was to operate.

Variations to sitting arrangements have yet to be put forward with the unanimous support of Members and there appears every likelihood the latest proposal will create its difficulties for sections of the parliamentary community.

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

Australia (Senate, Sessional Orders) – While no Standing Orders were adopted or amended by the Senate in 1983, several changes were made to the Sessional Orders during the year. The majority of the amendments were adopted with the aim of expediting business in the Chamber; others were passed for reasons of convenience.

Amendments were adopted relating to the following matters covered by the Sessional Orders:

- days and hours of meeting;
- adjournment of the Senate;
- routine of business (in particular, the establishment of Question Time at 2.00 p.m.);
- procedure relating to Government and General Business (i.e. the time at which General Business takes precedence of Government Business); and
- consideration of Parliamentary Committee Reports and Government Papers.

(Contributed by the Clerk of the Australian Senate)

4. Emoluments

Australia: Members' allowances – Members' allowances are determined by an independent authority known as the Remuneration Tribunal, (see *The Table* Vol. XLVII, 1980, pages 76–9). The Tribunal normally reports every 12 months after public inquiry. The Tribunal calls for and receives submissions from any interested parties.

The Tribunal conducted a general inquiry and made certain determinations on 6 August 1982. Shortly after this review the Parliament passed the *Salaries and Wages Pause Act 1982* which prohibited the Tribunal from making any further general inquiries or determinations.

The present Government repealed the Wage Pause Act on 7 September 1983 and this enabled the Tribunal to conduct an inquiry. A new report with determinations was presented to the Government on 11 November 1983. This review was made within the guidelines of the Government's policy of centralised wage fixation. The Tribunal followed this lead and determined a similar increase for Members of Parliament to that given to the general community.

The rates of travelling allowance for Members of Parliament were adjusted on the basis that actual costs had altered and so were considered exempt from the principles of restraint being applied to remuneration generally.

Other allowances for Members of Parliament were not increased in the November 1983 review and have remained constant since August 1982.

Australia: Changes to the Parliamentary Superannuation Scheme – The *Parliamentary Contributory Superannuation Amendment Act 1983*, following proclamation, will make a number of changes to the superannuation entitlements of Members of the Australian Parliament.

The most significant change is to the entitlement of a Member to convert the retiring allowance periodic payments to a lump sum benefit. This conversion, currently able to be applied to the entire allowance, is to be limited to only half of the allowance. This is viewed by the Government as conforming to the basic principle of superannuation as a form of income maintenance.

An extension of this change relates to benefits available to spouses. The annuity payable to a surviving spouse will be based on the Member's residual retiring allowance, that is, the allowance available after any lump sum payment has been taken. The spouse will be entitled to five sixths of this residual allowance. Under present arrangements the annuity is based on the entire retiring allowance, regardless of any lump sum payments.

The last major change is a restriction on the retiring allowance payable to former Members who are in receipt of a salary as the holder of an office of profit under the Crown or a pension arising from having held such an office. The retiring allowance of the former Member, or annuity in the case of a spouse will be reduced by either the amount of the salary or pension, or one half the retiring allowance, whichever is the lesser amount. The entire retiring allowance, disregarding lump sum payments, will be considered for this purpose.

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

Canada (Manitoba) – The Legislative Assembly Act, which deals with the provision of services to Members of the Legislative Assembly, was amended in several respects.

One major change is an increase in the number of trips allowed to rural Members from their constituency to the Legislative Building from 26 trips per session to 40 trips per year. The increase from 26 trips to 40 reflects the need of MLAs to attend to their constituency, caucus and Government business at times other than when the House is in session. Although not all Members will necessarily require the full forty trips per year, this allows Members to attend to their business at the seat of Government throughout the year and not just during the Legislative session. In addition, provision is made for MLAs to use a portion of the amount allocated for travel to and from their constituency, on travel within the electoral division. This will be of particular importance to Members with very large constituencies where the costs of travel within the electoral division are normally very high. In addition, this bill provides that where travel cannot reasonably be made by private automobile the costs of using another carrier will be allowed.

In addition to the franking privilege provided to all Members in respect of each session which allows them to mail their 'report from the Legislature' to each of their constituents, the Act provides for the printing of this 'report' at an expense not to exceed one and one half

times the mailing cost. This level of allowance roughly approximates the historical experience of Members with respect to printing costs for these household mailings.

Recent changes by the Board of Internal Economy provided additional staffing to each caucus in the form of one additional secretarial position and one Research Officer. In view of these changes, the Act provides that the special secretarial and research allowance of $1,000 per Member per year, which has been used by each caucus to pay a portion of their secretarial and research salary expenses in the past, be reduced to $500 per Member per year. Also, this allowance is no longer earmarked as a secretarial and research allowance but is more broadly designated as an allowance for special supplies and assistance.

In addition, a minor change has been made in the provision in the Legislative Assembly Act which allows Members to use, on a non-charter and incidental basis, the Government Air Service. Before Members were only allowed to travel to and from their constituency. The Act now provides that Members be allowed to travel anywhere in the Province using the Government Air Service, but with the strict requirement that it remain on a 'non-chartered and incidental basis' in such fashion that no other passenger is displaced by the MLA making the trip and that the aircraft was making the trip for another specific purpose related to Government business.

In addition, there is removed the $1,500 constituency service allowance which was paid to all Members as a portion of their bi-weekly indemnity and expense cheque. This allowance, which was a non-accountable allowance paid to all Members regardless of whether or not the funds were actually spent on constituency service, is replaced by a new constituency service allowance of $2,500. This new allowance is in an accountable form and paid only upon the approval of bills and receipts submitted by the Member. It is not possible to determine how much individual Members will make use of this provision or whether or not they will spend up to or in excess of the $1,500 allowance. It is likely that this change could actually result in a *decrease in expenditures*. The types of expenditures which will be approved for constituency purposes will be identified by the Board of Internal Economy and closely monitored to ensure that only expenditures which relate to MLAs constituency service will be allowed.

Another provision provides, for the first time, recognition of the full-time status of the Chief Presiding Officer. Mr Speaker's indemnity was increased in 1982 from $6,000 to $12,000 per annum. The provision is removed which suggests that during the inter-sessional period Mr Speaker will come in on occasion on business associated with his office and receive a per diem for each day on which he appears. The Act now recognises the importance of Mr Speaker's inter-sessional responsibilities and replaces the per diem inter-sessional allowance with an annual

allowance for services performed when the House is not in session of $3,500.

India (Lok Sabha and Rajya Sabha) – Changes were made in 1983 in the law concerning the Salary, Allowances and Pension of Members of Parliament.

Section 2 of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act 1983, (22 of 1983) amended section 3 of the Salary, Allowances and Pension of Members of Parliament Act 1954 (30 of 1954) so as to raise the monthly salary of Members of Parliament from Rs. 500 to Rs. 750 and to raise the rate of their daily allowance from Rs. 51 to Rs. 75 for each day during any period of residence on duty.

5. Standing Orders

Australia: House of Representatives (Privilege) – On 4 May 1983, the House agreed to amendments to the standing orders relating to privilege. The amendments had been trialled as sessional orders in the previous session.

Standing order 26 was amended to provide that, in addition to 9 Members previously constituting the Committee of Privileges, the Leader of the House or his nominee and the Deputy Leader of the Opposition or his nominee are to be *ex officio* members (See *The Table*, Vol. XLIX, 1981, p.144). The standing order was also amended to empower the committee to consider matters referred to it by the Speaker under new standing order 97A and to send for persons, papers and records when considering any complaint referred to it. The standing order now reads –

A Committee of Privileges, to consist of the Leader of the House or his nominee, the Deputy Leader of the Opposition or his nominee and 9 other Members, shall be appointed at the commencement of each Parliament to inquire into and report upon complaints of breach of privilege which may be referred to it by the House under standing order 95 or by the Speaker under standing order 97A; when considering any complaint referred to it, the committee shall have power to send for persons, papers and records.

To enable a privilege matter to be dealt with when the House is not sitting, the House adopted new standing order 97A which reads –

During a period when the House is not sitting and is not expected to meet for a further period of at least 2 weeks, a Member may bring to the attention of the Speaker a matter of privilege which has arisen since the House last met and which he proposes should be referred to the Committee of Privileges. If the Speaker is satisfied that a *prima facie* case of breach of privilege has been made out and the matter is one upon which urgent action should be taken, he shall refer it forthwith to the Committee of Privileges:

Provided that any referral by the Speaker in accordance with the foregoing provisions of

this standing order shall be reported to the House by the Speaker at its next sitting whereupon the Member who raised the matter shall be required to move forthwith, without notice, that such referral be endorsed by the House; if the motion is negatived, the Committee of Privileges shall take no further action in respect of the matter.

On the basis that the matters of privilege should be dealt with expeditiously, this new standing order enables attention to be given by the Committee of Privileges to matters arising prior to the House resuming sittings following a long adjournment. Summer and winter adjournments may be up to 3 months long and previously a matter arising, however serious or urgent, could not be proceeded with until the House resumed.

The standing order makes the usual provision for the Speaker to determine that a *prima facie* case has been made out and requires him to have regard to the urgency of the matter before referring the matter to the committee.

In order to 'regularise' the procedure, the standing order contains the important provisions that the House be informed of the action taken and for a motion to be duly moved seeking the House's endorsement before committee consideration of the matter can further proceed.

The standing order does not alter the practice *when the House is sitting* of a Member raising a matter directly in the House at the earliest opportunity (standing orders 95 and 96).

To date no action has been taken under the provisions of the new standing order.

(Contributed by the Clerk of the House of Representatives)

Australia (Queensland – Standing Orders Review, 1983) – Following pressure by some Members to have a review of Queensland Standing Orders, the Speaker (Mr S. Muller) held the first meeting on 28 April 1981.

Submissions were called for by the Standing Orders Committee and suggestions were received concerning procedures for Question Time, Private Members Time, Parliamentary Committees, Sitting Times, Adjournment Motions, opportunity for debate of Ministerial Statements and certain time limits for Speeches.

It was also proposed that certain Sessional Orders, which had been in use for some years, be incorporated into the Standing Orders.

A Report was presented to the House on 25 March 1982 and debated on 16 March 1983.

Changes accepted by the House included:- Alterations to speech times; incorporation of Sessional Orders on division times; discussion on matters of public interest; debate on the motion for adjournment every Tuesday; certain changes to Question Time, including the 'Tabling' of questions and provision for supplementary questions; procedure for a reply to a Ministerial Statement; provision for a debate on a Matter

of Public Importance and changes in the method of presentation of Public Bills and of Petitions.

These changes were approved by His Excellency the Governor on 13 April 1983.

Australia (Western Australia Legislative Council) – There have been no amendments to the Standing Orders of the Legislative Council in Western Australia during 1983. However, the Clerk of the Council, in conjunction with his officers, has submitted to the Standing Orders Committee, for its approval, a program designed to bring about an orderly and thorough review of the Council's Standing Orders.

It was suggested that the Committee, should it agree to a major revision, concentrate on subjects, e.g. Questions, rather than individual Standing Orders. This would enable the Council officers to prepare detailed research papers for the Committee's consideration and allow for subject reports to the Council throughout the life of the Parliament.

The Clerk, in his submission to the Committee, proposed the following recommendations –

1. The Committee approves a major, on-going revision of Standing Orders.
2. The revision be conducted on a subject basis.
3. Consideration be given to the use of sessional orders, where practicable.
4. The Committee report to the Council at the next sitting informing it of the revision.
5. Councillors be invited to make submissions on each subject as it comes up for review.

The Committee agreed to the recommendations and as a result several successful meetings have taken place with agreement being reached on several subjects.

Canada (Yukon) – Revised Standing Orders were adopted by the House on 13 April 1983. The primary change, however, was not actually to the Standing Orders themselves but on an addendum to them, that being 'Guidelines for Oral Question Period.' The Standing Committee on Rules, Elections and Privileges extracted what it considered to be the essential principles respecting Question Period from Beauchesne and drafted them into sixteen straightforward rules.

United Kingdom (House of Lords) – One amendment was made to the Standing Orders relating to Public Business during 1983 – the insertion of a new Standing Order on Lords Attendance at Commons Select Committees (see below). The effect of this Standing Order is to grant to any Lord whose attendance has been requested by a Select Committee

or Sub-Committee of the House of Commons the leave of the House to attend, if he thinks fit. The interchange of Messages between the two Houses for this purpose is no longer required.

Lords Attendance at Commons Select Committees.

21A. Any Lord requested by a committee appointed by the Commons to attend as a witness before it or before any sub-committee appointed by it shall have the leave of this House to attend, if his Lordship thinks fit.

6. General

Information Technology at Westminster

In the House of Lords, Information Technology is co-ordinated by the Sub-Committee on Computers of the House of Lords Offices Committee.

In the House of Commons, Information Technology is co-ordinated by the Computer Sub-Committee of the House of Commons (Services) Committee. The Commons Library has its own Head of Computer and Technical Services responsible to the Librarian.

Since December 1978, both Sub-Committees have had answerable to them a single Computer Development Officer. The Computer Development Officer has a staff consisting of an Assistant and a Secretary.

POLIS

The largest IT system at Westminster is the House of Commons Library's POLIS service (Parliamentary On-line Information System). This system has been running for almost four years and contains a wide variety of parliamentary information available through some 26 terminals not only in the House of Commons Library, but also in the House of Lords Library, the Commons Table Office, and the two Hansards. The system has now become of vital assistance to the Library in its service to Members.

The information in the system (database) is created by the House of Commons Library's Indexing Unit located in the Norman Shaw (South) Building. The computer, Cifer Systems Limited's terminals and telecommunications equipment are provided and maintained by Scicon Limited. The Scicon computer in Milton Keynes is linked to Westminster by three British Telecom dedicated telephone lines.

POLIS is also used by several external users (including Government Departments, local authorities, foreign parliaments and commercial organisations). A recent development is a version of POLIS for use on videotex (see below).

HOUSE OF LORDS

In the House of Lords the main system for information retrieval is provided by the Greater London Council, using IBM's STAIRS retrie-

val program. The GLC's computers are IBM 3033 and 3081, with Raytheon Cossor 4101 Visual Display Units and Diablo 1610–01 printers provided by Data Logic Limited.

The system is the earliest at the Palace of Westminster, having become operational in January 1977. Its principal use is for the Library of the House of Lords, where it covers a number of parliamentary databases. It also houses a database about Peers' interests (of a non-financial character) and statistical records about membership of the House. This database is maintained by the Lords Journal and Information Office, and is for parliamentary use only.

The system is at present under review.

SERJEANT AT ARMS DEPARTMENT

In April 1982, the Serjeant at Arms' Department of the House of Commons installed a Systime 5000 system to handle word processing, records and a variety of administrative files. The system has at present five terminals, a printer and disk storage.

WORD PROCESSING

Word processing is an important area of IT in both Houses. There are now a number of stand-alone systems including Information Technology Limited's Diamonds, used by the Committee Offices of both Houses, the Administration Department in the House of Commons and Offices in the House of Lords. There are 14 of these machines, the oldest having been installed in May 1979.

The use to which these systems are put varies, but in particular they are used for the drafting and redrafting of long reports. In the Commons Committee Office the machines are also used to calculate the correct party proportions for new Committees for the Committee of Selection of the House of Commons, as well as keeping the Commons **Register of Members' Interests.**

The Libraries of both Houses also use CPT 8100 and 8000 word processors – particularly for the generation of Library catalogue cards as well as several other Library applications.

Both the Information Technology Ltd.'s Diamonds and the CPT 8100s are used to produce publications – the CPT 8100s generate copy for the House of Commons Library's **Weekly Information Bulletin** using a special printer to handle two type styles simultaneously – roman and italic. The Diamonds are used for the **Progress of Scrutiny Reports ('Sift List')**, produced fortnightly for the Select Committee on the European Communities in the House of Lords.

SPEAKER'S OFFICE

In August 1982, the Speaker's Office installed a Philips P5003 word processor to handle reports and other administrative tasks.

THE LORDS LIBRARY

The Lords Library uses British Library's BLAISE bibliographic database and bases its catalogue on this system using a Zygal Zentec ZMS 70 terminal using the British Library's CORTEX software.

Other retrieval systems in use in the Lords Library include BBC World Reporter, Data-Star, Dialtech, ECHO, EUROLEX, LEXIS, Lockheed Dialog, Télésystèmes, CELEX, Infoline and Textline databases on-line to terminals in the Queen's Room.

THE COMMONS LIBRARY

In addition to POLIS (see above) the Commons Library uses a variety of external IT systems. In particular the British Library's BLAISE bibliographic database is available, and also the BBC's World Reporter service from Datasolve. The Library also uses the databanks of the Central Statistical Office and the Manpower Services Commission and has regular access to the Treasury Economic Model.

The Library has a microcomputer. This machine, a Casu Mini C, is available to Members for their own use and is also used by the Library's Statistical Section as a valuable research tool.

PRESTEL

Prestel is the name given to British Telecom's videotex system – ie. involving the transmission of data through telephone lines to a television screen. The Libraries offer this service and have for some time been information providers (Prestel page 5000), using Deccafax equipment. In particular, the Business of each House is available on Prestel weekly. Both Houses also use the Lawtel closed user group videotex system for noting up law.

COMMONS PUBLIC BILL OFFICE

The LEXIS law database is available in the Commons Public Bill Office.

COMMONS FEES OFFICE

A further development includes a 14-terminal Systime 6700 system for the House of Commons Fees Office, to handle all salaries and other accounting functions within the House. The system will start to run in Summer 1984.

JUDICIAL OFFICE OF THE HOUSE OF LORDS

In May 1983, further word processors were installed for the Law Lords' secretaries in the Judicial Office of the House of Lords. These word processors are used to produce the Judgments of the Court and the texts of the Law Lords' Opinions.

COURSES

The National Computing Centre has organised a special course on Microsystems and related aspects of IT for Members of both Houses.

The response to the two courses held so far, though not large, was enthusiastic and sufficiently encouraging that other courses are planned.

SERVICES TO MEMBERS OF PARLIAMENT

In July 1983, a Report commissioned by the Commons Computer Sub-Committee from the Economist Intelligence Unit, identified broad needs for Commons Members to have word processing, file handling and retrieval facilities for their constituency work. The Sub-Committee has taken further evidence from Members and others, and is considering next steps.

FUTURE DEVELOPMENTS

IT at the Palace of Westminster is still in its early stages. It is to be expected that most of the systems described here will expand as they prove their usefulness. Further developments include the generation of the Hansard Index on POLIS (see above), and there are other developments to mature later. The Computer Development Officer is gradually producing detailed surveys of all the Departments and Offices of both Houses and making recommendations where appropriate for the introduction of IT. Some 20 such reports have been completed. With the changing pace of technology and the changing needs of the two Houses, this is inevitably a 'Forth Bridge' task, requiring continuous reappraisal. At the same time the Computer Development Officer monitors the existing use of IT to ensure that the systems work efficiently and cost-effectively.

(Contributed by the Computer Development Officer)

XV. CLERKS BECOME MEMBERS, AND VICE VERSA: A REVISED LIST

In Volumes XLV, XLVI, XLVIII, L and LI we published the names of clerks who either have been, or have become, Members. The present volume includes an article on the theme of a clerk becoming a Member. We take this opportunity to publish a revised and consolidated list.

Badeley, Sir Henry, Clerk of the Parliaments, 1934–1949; Member of the House of Lords, 1949–1951.

Banerjee, B.N., Secretary-General of Rajya-Sabha, 1963–1976; Member of Rajya Sabha, 1976–present.

Bowyer, Robert, Clerk of the Parliaments, 1609–1621; Member of the House of Commons, 1601–1609.

Brand, A.G., Assistant Clerk in the House of Commons, 1876–1887; Member of the House of Commons, 1891–1895 and 1900–1906.

Brougham, H.C., Clerk in the House of Lords, 1857–1876; Member of the House of Lords, 1886–1927.

Campion, Sir Gilbert, Clerk of the House of Commons, 1937–1948; Member of the House of Lords, 1950–1958.

Childers, Erskine, Clerk in the House of Commons, 1895–1910; Member of the self-constituted Dail Eireann, 1921.

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

Colman, Edward, Member of the House of Commons, 1768–1771; Serjeant at Arms, the House of Commons, 1775–1812.

Connell, J., Deputy Clerk in the Barbados Legislature, 1972–1975; Member of Barbados Senate, 1976–present.

Courteney, W., Clerk Assistant of the Parliaments, 1826–1835; Member of the House of Commons, 1812–1826; Member of the House of Lords, 1835–1859.

Cullen, T.R., Clerk of the Prince Edward Island Legislative Assembly, 1949–1958, 1966–1975; Member of the Prince Edward Island Legislative Assembly, 1943–1947, 1951–1955.

de Grey, W., Reading Clerk, House of Lords, 1753–1763; Member of the House of Commons, 1761–1771; Member of the House of Lords, 1780–1781.

Dyson, J., Clerk of the House of Commons, 1747–1762; Member of the House of Lords, 1762–1776.

Elliot, H.F.H., Junior Clerk in the House of Commons, 1870–1882; Member of the House of Lords, 1885–1892.

Fitz, H.B., Member of the Queensland Legislative Council, 1860–1876; Clerk of the Legislative Council, 1876–1880.

Flint, T.B., Member of the Canadian House of Commons, 1891–1902; Clerk of the House of Commons, 1902–1918.

Gosset, Sir William, Serjeant at Arms, House of Commons, 1835–1848; Member of the House of Commons, 1820–1826.

Gwandu, Alhaji Umaru, Clerk of the House of Assembly of the Northern Region of Nigeria, 1949–1959; Speaker of the House of Assembly of the Northern Region of Nigeria, 1959–1965.

Hardinge, Nicholas, Clerk of the House of Commons, 1731–1747; Member of the House of Commons, 1748–1758.

Headlam, C.M., Clerk of the House of Lords, 1897–1924; Member of the House of Commons, 1924–1929, 1931–1935 and 1940–1952.

Helsby, L.N., Temporary Senior Clerk in the House of Commons, 1940–1941; Member of the House of Lords, 1968–present.

Henderson, Sir Peter, Clerk of the Parliaments, 1974–1983; Member of the House of Lords, 1984.

Howie, Robert, Clerk in the New Brunswick Legislative Assembly, 1970–1972; Member of the Canadian House of Commons, 1972–present.

Ivory, F.J., Clerk Assistant of the Queensland Legislative Assembly, 1881–1896; Member of the Legislative Assembly, 1873–1878; Member of the Legislative Council, 1879–1881.

James, Robert Rhodes, Clerk in the House of Commons, 1955–64; Member of the House of Commons, 1976–present.

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

Kaul, M.N., Secretary of Lok Sabha, 1947–1964; Member of Rajya Sabha, 1967–present.

Kermeen, T.E., Clerk of Tynwald, 1964–1976; Member of the House of Keys, 1976–present.

Kolane, J.T., Clerk to the Lesotho National Assembly, 1969; Speaker of the Lesotho National Assembly, 1973–present.

Krishna Ayyar, R.V., Secretary, Madras Legislative Council 1924–1937, Official Member of Indian Legislative Assembly, 1935–1936; Secretary to Madras Legislature, 1937–1941; Secretary to Madras Legislative Assembly, 1952–1955.

Le Brocq, A.D., Greffier of the States of Jersey, 1963–1971; Member of the States of Jersey, 1973–present.

Le Marchant, Sir Denis, Clerk of the House of Commons, 1850–1871; Member of the House of Commons, 1846–1848.

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

Madon, K.S., Clerk of the Zanzibar Legislative Council, 1955–1960; Speaker of the Zanzibar Legislative Council, 1960–1964.

May, Sir Thomas Erskine, Clerk of the House of Commons, 1871–1886; Member of the House of Lords, 1886.

Metcalfe, Sir Frederic, Clerk of the House of Commons, 1948–1954; Speaker of the Nigerian House of Representatives, 1955–1960.

Monze, Mrs L.A.W., Editor of Parliamentary Debates, Zambia, 1971–1972; Member of the National Assembly, 1973–present.

Mwananshiku, C.M., Clerk of the Zambian National Assembly, 1966–1967; Member of the National Assembly, 1968-present.

Natarajan, C.D., Secretary of the Tamil Nadu Legislative Assembly, 1955–1971; Member of Rajya Sabha, 1974–present.

Northrup, W., Member of the Canadian House of Commons, 1892–1896 and 1900–1911; Clerk of the House of Commons, 1918–1925.

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

Peel, A.G.V., Junior Clerk in the House of Commons, 1891–1892; Member of the House of Commons, 1917–1918.

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

Raymond, L., Clerk of the Canadian House of Commons, 1949–1967; Member of the Canadian House of Commons, 1945–1949.

Rose, George, Clerk of the Parliaments, 1788–1818; Member of the House of Commons, 1784–1818.

Rose, Sir George Henry, Clerk of the Parliaments, 1818–1835; Member of the House of Commons, 1794–1832 and 1837–1844.

Rose, W.S., Reading Clerk, House of Lords, 1800–1824; Member of the House of Commons, 1796–1800.

Russel, Lord Charles, Serjeant at Arms, House of Commons, 1848–1875; Member of the House of Commons, 1832–1848.

Sargeant, D.L., Member of the House of Assembly of Barbados, 1930–1936; Clerk of the House of Assembly, 1937–1955.

Shaw Lefevre, Sir John, Clerk Assistant, House of Lords, 1848–1855; Clerk of the Parliaments, 1855–1875; Member of the House of Commons, 1832–1833.

Smith, Thomas, Clerk of the Parliaments, 1597–1609; Member of the House of Commons, 1588, 1593.

Swamikannu, Pillai, L.D., Secretary, Madras Legislature, 1920–1924; President of the Madras Legislative Council, 1924–1925.

Tyrwhitt, T., Member of the House of Commons, 1796–1812; Black Rod, 1812–1832.

Waldegrave, Hon George, A Clerk in the House of Commons 1845–1847; Member of the House of Commons, 1864–1868.

Williams, T., Clerk of the Northern Rhodesia Legislative Council, 1955–1956; Speaker of the Northern Rhodesia Legislative Council Assembly, 1956–1964.

Wise, E.F., Assistant Clerk in the House of Commons, 1908–1914; Member of the House of Commons, 1929–1931.

Allowed

'absolute lie and fabricated talk' (Uttar Pra. V.S. Procs., 15.2.83)
'absurd' (Bermuda Hans. 1983)
'as thick as a bit of four-by-four' (Tasm. Hans., p.3619)
'blatant lie' (Tasm. Hans., p.2290)
'grubby little man' (S. Aust. H.A. Hans., p.1474)
'idiot sheepish grin' (Tasm. Hans. p.2883)
'if a Member claims that statements are filthy lies or a pack of lies, or lies, that is not considered unparliamentary' (N.S.W. L.A. Debs., p.5610)
'little bodgie' (Tasm. Hans. p.3589)
'little left-wing lightweight' (Tasm. Hans. p.3054)
'little standover Gestapo man' (Tasm. Hans. p.4171)
'Minister for Death' (Tasm. Hans. p.3316)
'monkeynuts' (Zambia Debs., c.187)
'puerile' (N. Terr. Parl. Rec., p.233)
'rat' (S. Aust. H.A.Hans., p.1196)
'ridiculous' (Bermuda Hans., 1083)
'rigged the electoral laws' (W. Aust. L.A. Debs., p.354)
'sanctimonious so-and-so' (Tasm. Hans. p.3611)
'silly' (Bermuda Hans., 1983)
'troglodytes who support the Tasmanian Government . . .' (Aust. Sen. Hans., 18.5.83, p.574–5)
'worthless' (of the Government) (Uttar Pra. V.S.Procs., 15.3.83)

Disallowed

'absurd person' (Raj.S.Procs., 26.8.83)
'absurd and not fit to be a Minister' (Raj.S.Procs., 26.8.83)
'act of bastardry' (Tasm.Hans., p.704)
'ape, a grinning' (N.Z.Hans., Vol.451, p.939)
'bark like a dog' (Raj.S.Procs., 22.3.82)
'barking' (of the Treasury benches) (Uttar P. V.S. Procs., Vol. 361, 9.3.83)
'bastard' (Raj.S.Procs., 24.3.83)
'bloody' (U.K. Com. Hans., 24.5.84)
'bootlicker' (Zambia Debs., c.305)
'bray' (Raj.S.Procs., 22.3.83)
'buffoon' (Lok S.Debs., 23.2.83, c.439)
'buffoonery' (Lok S.Debs., 23.2.83, c.439)
'bugger up' (Vict. L.C.Hans., p.1793)
'bullying' (Raj.S.Procs., 11.8.83)

'C.I.A. man' (Lok S.Debs., 18.3.83, c.25)
'cobras inside our Parliament' (Lok S.Debs., 27.4.83, c.419)
'codswallop' (N.Z.Hans., Vol.452, p.1753)
'combination of Hitler and Idi Amin' (of a Head of State) (Lok S.Debs., 4.8.83, c.367)
'conspired, they have conspired to destroy the sovereignty of India' (of a political party) (Lok S.Debs., 7.4.85, c.385)
'congenital bloody liar' (W.Aust.L.A.Debs., p.486)
'corrupt' (Q'ld.Hans., Vol.291, p.646)
'corrupt' (of Government) (Raj.S.Procs., 25.7.83)
'coward' (Lok S.Debs., 22.2.83, c.332)
'coward's entitlement, that is his' (Aust.Sen.Hans., 14.12.83, p.3751)
'crook' (Bermuda Hans., 1983)
'dancing to the tune of' (N.Z.Hans., Vol.450, p.305)
'dead' (of a State Govt.) (Lok S.Debs., 6.4.83, c.369)
'deceitful' (N.Z.Hans., Vol.454, p.3815 and Vict.L.A.Hans., p.4564)
'demon' (of a political leader) (Lok S.Debs., 10.5.83, c.494)
'dictator, the Speaker should never be a' (Lok S.Debs., 27.4.83, c.422)
'dirty' (Raj.S.Procs., 26.8.83)
'dishonest' (Q'ld.Hans., Vol.290, p.3605 and Vict.L.A.Hans., p.1338 and p.2592)
'dishonourable man, his blatent dishonesty' (of Prime Minister) (Aust.Sen.Hans., 5.10.83, p.1100)
'dolt, you dolt' (Aust.Sen.Hans., 18.5.83, p.573)
'donkey, what a donkey you are' (Uttar P.V.S.Procs., Vol.360, 3.3.83)
'drunk, they're all drunk over there' (Tasm.Hans., p.3459)
'empty Kerosine tin from . . .' (Vict.L.A.Hans., 18.10.83, p.1112)
'expert in hypocrisy' (U.K. Com.Hans., 20.4.83)
'fifth columnist' (of a political party) (Lok S.Debs., 22.3.83, c.346)
'filth' (Raj.S.Procs., 26.7.83)
'fool' (Q'ld.Hans., Vol.291, p.502)
'fountain head of corruption' (Lok S.Debs., 22.4.83, c.468–9)
'fraud' (Q'ld.Hans., Vol.290, p.3961)
'gangster system, he is part of the' (W.Aust.L.A.Debs., p.1630)
'gangsters, what a bunch of' (W.Aust.L.A.Debs., p.1225)
'grazing' (Uttar P. V.S.Procs., Vol.361, 9.3.83)
'greatest political barracouta that this country has seen this century' (of a State Premier) (Aust. Sen.Hans., 18.10.83, p.1681)
'grub, you are a' (Aust.Sen.Hans., 12.10.83, p.1450)
'gutter: down in the gutter with your mates' (N.Z.Hans., Vol.450, p.418)
'guttersnipe' (Tas.Hans., p.433 and Vict.L.A.Hans., p.1768)
'halfwit' (Vict.L.A.Hans., 12.10.83, p.940)
'harpies' (Vict.L.A.Hans., 12.10.83, p.940)
'has-beens' (N.Z.Hans., Vol.450, p.75)

'has played such a big fraud with the Sikhs' (of President of India) (Raj.S.Procs., 21.2.83)
'have you gone mad' (Raj.S.Procs., 22.3.83)
'honourable Member for Luggage Point, Brothels and Massage Parlours' (Q'ld.Hans., Vol.291, p.107)
'hiding behind Mr Speaker's Chair' (N.S.W. L.A. Debs., p.1694)
'hypocrisy' (Vict.L.C. Hans., p.2623)
'hypocrisy, the honourable Senator does not represent organised hypocrisy; she represents disorganised hypocrisy' (Aust.Sen.Hans., 18.5.83, p.525)
'ill-breeding' (Malaysia Parl.Debs., 29.11.83)
'immoral' (Vict.L.C.Hans., p.688–9)
'imperious, arrogant, glib, toad' (S.Aust.H.A.Hans., p.2185)
'impotent' (of the Chief Minister of a State) (Lok S.Debs., 18.4.83, c.401)
'impotent and eunuchs' (Raj.S.Procs., 22.3.83)
'it is the best Government that money can buy' (Q'ld.Hans., Vol.291, p.65)
'larrikin' (W.Aust.L.A.Debs., p.1229)
'lunatic' (of a State Government) (Lok S.Debs.,)
'lunatic statement' (Raj.S.Procs., 21.11.83)
'lunatics' (Raj.S.Procs., 22.3.83)
'Man of guilty conscience' (Lok S.Debs., 22.12.83, c.520)
'misleading the House' (Vict.L.C.Hans., p.570–1)
'moral decadence' (N.Z.Hans., Vol.455, p.4499)
'most corrupt man on earth' (Raj.S.Procs., 25.7.83)
'most insidious, repulsive and animalistic person I have met' (W.Aust.L.A.Debs., p.1621)
'musclemen' (Lok S.Debs., 23.2.83, c.439)
'no manners' (Raj.S.Procs., 26.8.83)
'nonsense' (Lok S.Debs., c.392, 515, 519)
'notorious' (Raj.S.Procs., 3.5.83)
'pay money' (to a member of the other House) (Raj.S.Procs., 24.8.83)
'pimp' (Malaysia Parl.Debs., 29.11.83)
'playing dramas, they are all' (Mahar L.A.Procs., 1983)
'political harlots' (Vict.L.C.Hans., p.1909)
'politically motivated' (of the Chair) (Lok S.Debs., 12.4.83, c.440)
'prostituting his conscience' (Bermuda Hans., 1983)
'put India or the whole country to shame' (Raj.S.Procs., 14.3.83)
'purchased by our enemies, they can be' (of officers of Armed forces) (Lok S.Debs., 31.3.83, c.330)
'rats' (Q'ld.Hans., Vol.291, p.512)
'racist' (S.Aust.H.A.Hans., p.2164)
'rodents' (N.Z.Hans., Vol.450, p.75)
'rubbish' (Lok S.Debs., 24.8.83, c.515)

'scab' (Q'ld.Hans., Vol.291, p.512, 645)
'shame' (Mahar L.A.Procs., 1983)
'shameless' (Raj.S.Procs., 11.8.83)
'shit' (Raj.S.Procs., 26.7.83)
'shivers looking for a spine' (N.Z.Hans., Vol.452, p.1771)
'sleeping' (of a State Govt.) (Lok S.Debs., 6.4.83, c.369)
'smugglers' (Raj.S.Procs., 9.8.83)
'smuggling, the Govt. is running through smuggling' (of a State Govt.) (Lok S.Debs., 9.12.83, c.408)
'spineless' (N.Z.Hans., Vol.452, p.1771)
'stooge' (of a friendly Head of State) (Lok S.Debs., 22.3.83, c.466)
'they have got relations with the Prime Minister's house' (Raj.S.Procs., 25.8.83)
'traitor like you' (Raj.S.Procs., 8.12.83)
'traitors' (Lok S.Debs., 12.12.83, c.479)
'trying to educate the economic primitives in the Liberal Party of Australia' (Aust.Sen.Hans., 5.5.83, p.252)
'twit' (N.Terr.L.A.Parl.Rec. p.233 and Vict.L.C.Hans., p.2392–3)
'vile approach' (Bermuda Hans., 1983)
'We will give such a shoe-beating to the Members of the Lok Dal that they will become bald' (Raj.S.Procs., 26.8.83)
'what has happened is that the Speaker has decided all on his own, I suppose' (W.Aust.L.A.Debs., p.354)
'white lie' (Raj.S.Procs., 14.12.83)
'wickedness' (Raj.S.Procs., 11.8.83)
'wilfully misled' (Vict.L.A.Hans., 15.9.83, p.644)
'will sign only on the dotted line' (of a Chairman of a Commission) (Lok S.Debs., 5.8.83, c.394)
'you are misbehaving' (Raj.S.Procs., 26.8.83)
'you are not impartial' (of the Chair) (Lok S.Debs., 12.4.83, c.440)
'you should beat him with the same shoe that he has been showing and then turn him out' (Raj.S.Procs., 26.8.83)

XVII. REVIEWS

Administrative Law by P.P Craig, (Sweet and Maxwell, 1983, £15.50 (paper back))

An eminent QC (who is now an equally eminent judge) once told this reviewer that administrative law could be said to consist of just two cases – *Anisminic Ltd. v Foreign Compensation Commission (1969) and Secretary of State for Education v Tameside MBC (1977).* Although the statement was made somewhat tongue-in-cheek, it is probably true to say that a practising lawyer, who understands something of the way in which an administrative decision may be attacked on the ground that it involves a jurisdictional error (*Anisminic*), or that it is so unreasonable that no reasonable body (or Minister etc) could have reached it (*Tameside*), can safely assume that he has all the analytical tools he needs in order to cope with any administrative law case that may come his way. This is not to deny that jurisdiction is a complicated and elusive concept, as can be seen from the fifty pages that Craig devotes to it. Moreover, the abuse of discretion, whilst easier to grasp in theory, depends to a great extent on the nature and purpose of the body which made the decision and Craig, like his distinguished predecessors Professors De Smith and Wade, is very much aware of this point.

However, unlike Wade's *Administrative Law* and particularly De Smith's *Judicial Review of Administrative Action*, Craig's book takes a wide view of what is meant by administrative law. For Craig, administrative law is 'about power and its allocation', (p.1). The allocation of power has two forms. First, there is 'horizontal' allocation. This involves a study of institutions which exercise power, in order to understand why a particular institution is entrusted with authority in any given case. Five main types of institution are identified – the executive, fringe organisations, local authorities, tribunals and inquiries. As Craig says, the last two of these have been subjected to considerable scrutiny by lawyers (partly because they are most readily understood by us!), so it is refreshing to see an analysis of the reasons why power is sometimes entrusted to 'fringe organisations', like the Arts Council. Is it, as the so-called 'Corson' theory holds (p.111) to 'put the activity where the talent is', or is the 'back-double' theory to be preferred ('back-double' being (apparently) taxi-driver jargon for back streets that can help him avoid the main congested routes)? For those of us who grew up with Wade's cool, elegant but perhaps rather colourless textbook passages like this can come as something of a shock! Secondly, there is 'vertical' allocation of power. This involves what many regard as the essence of administrative law, namely the control which the courts exercise over any one of the institutions which perform public law functions.

But whether he is dealing with horizontal or vertical allocation, Craig's interests go beyond those of Wade and De Smith, and they sometimes lead him into areas where neither our hypothetical 'practising lawyer' nor, I suspect, many academics are willing to venture. I should in fact say many *English* academics, since, as Craig is at pains to point out, it is US writers on the subject who have done most to widen the scope of administrative law studies. One example is their research into the suitability of a particular agency for carrying out the policy assigned to it, as well as the efficacy of the policy itself. 'If we are concerned with protecting individuals then concern with the organisational structure, how it operates, and its effectiveness should naturally enter into the discussion. If modifications are shown to be needed, these may do more to benefit the users of the system than our tradition of protection' (p.239). Research of this kind has a part to play in determining the nature of judicial review. To take Craig's own example, if courts adopt an active policy of reviewing the grounds on which applications for a certain sort of licence are refused, this might lead the authority concerned to grant too many licences, thereby jeopardising the aims of the licensing scheme. It is obviously true that courts ought to have a proper understanding of the purpose of (in this example) the licensing scheme, and anything which encourages their interest in the aims which lead to the imposition of administrative controls must be welcomed. What is more controversial is Craig's championship of this sort of research on the grounds that it can tell us how effectively the institution is performing its functions. Here the law as such has no rôle to perform since judicial review is based o 'mistake avoidance' and is thus too narrow to be a proper test c effectiveness. Nevertheless, such research can still be said to have a place in a work on administrative law because it helps to shed light on the reasons why a particular institution has been entrusted with the power it has. If there is no good reason, and the institution is not carrying out its tasks effectively, it may be time to entrust the power to some other body. However, I personally would draw the line there, since I do not believe that questions such as whether (for example) the distribution of social security benefits could be better handled by *existing* agencies are ones which need to be investigated by students of administrative law. Perhaps I am being too conservative, and I readily admit that the parameters chosen by Wade and De Smith probably colour my thinking. As Craig says, there is no logical answer to the question of whether broader issues such as those just discussed are proper subjects for administrative lawyers. 'The ambit of most subjects will be determined by a definitional stop rather than by reasoned analysis' (p.236). Even so, I still believe that it is right to be wary of introducing students of law to topics which call for the skills of a political or social scientist rather than those of a lawyer, particularly if

in so doing the student fails (in the limited time available to an undergraduate) to master what is the real heart of this subject, namely judicial review.

How good is Craig on this, and the other more 'lawyerly' parts of the subject? Comparison with his two distinguished predecessors is inescapable here and the standards by which the new work must be judged are high. There is no doubt that Craig's contribution is a valuable one, but I think it is unlikely that his book will become the 'standard work' for many students in preference to Wade largely because Craig's standards are so high. One example is his analysis of *locus standi*, or, the standing needed in order to invoke the court's aid (pp.418–460). This is an area which has seen considerable judicial and legislative activity in the past few years, although it is by no means clear whether, at the end of the day, very much has changed. At the core of the problem is the mysterious Rule 53 (of the Rules of the Supreme Court), now raised to the status of primary legislation as section 31 of the Supreme Court Act 1981. What, if anything, did Rule 53 do to the law on standing? Craig is good at analysing the different answers given by the House of Lords in *R v Inland Revenue Commissioners ex.p. National Federation of Self-Employed and Small Businesses Ltd. (1982)*. His blend of exposition and criticism (including his own suggestions as to the way the courts should be moving), combined with a liberal use of US materials, all makes for a strong brew – too potent perhaps for those endeavouring to grasp the basics of the subject, but just the thing for the abler student who has read his Wade but now needs to be challenged to argue with his tutor about the issues involved. This new book may well stimulate the interest of many who would otherwise consider administrative law to be rather tedious.

Another topic which has recently been subjected to close analysis is the inter-relationship between negligence and public law. *Anns v Merton LBC (1978)* is the landmark case here. In it, Lord Wilberforce made use of the 'planning/operational' dichotomy in order to explain the process by which a court should determine whether a public body may be liable in negligence. As one might expect, Craig is anxious to let the reader know that this test is not Lord Wilberforce's own invention but has been around in the US for some considerable time. Accordingly, instead of waiting until his historical treatment reaches *Anns* in 1977 before introducing us to the planning/operational test, he brings it in at the beginning of his review and analyses the earlier English cases by reference to it (pp.534–544). His treatment of this difficult area is, quite simply, the best I have read. The only place where I would take issue with him is at the end of his discussion of *Anns*, where he seems to accept Lord Wilberforce's view that even at the *operational* level a public body must be found to have acted *ultra vires* before it can be said to have acted negligently. This has always seemed to me to be an

unnecessary requirement because, as Craig says, the failure, for example, of a local authority building inspector to take reasonable care over an inspection will itself provide the ground for saying that the authority (through its inspector) acted *ultra vires*. Lord Wilberforce's requirement seems, in other words, to be irrelevant. But this is a minor matter and Craig must be congratulated here for a skilful and searching treatment.

There is no doubt that for anyone with an interest in administrative law the arrival of Craig is something to celebrate. As for its use in colleges, I think it will be the sort of book which a student will need to refer to very frequently, but which he will not feel impelled actually to buy. Nevertheless, I hope that its publishers will stand by it and enable Craig to produce subsequent editions. He deserves no less.

(Contributed by P.R. Lane, Barrister, London)

Commons Select Committees – Catalysts for Progress? Edited by Dermot Englefield (Longman, £9.95)

The establishment of the new departmentally-related select committees in June 1979 was heralded at the time as 'The most important parliamentary reforms' of the century in the words of the then Leader of the House. They undoubtedly made news throughout the Parliament which ended in May 1983, but this news tended to be instant and spasmodic rather than sustained and comprehensive. It was not always easy to tell what real impact the committees as a whole were having, and how far they were living up to Mr St John Stevas's rather bold claims.

Now in 'Commons Select Committees – Catalysts for Progress?' both general and specialist students of parliamentary affairs can make their own judgment. The book, edited by the Deputy Librarian of the House of Commons, falls into two parts. There is a comparatively brief section which consists largely of the proceedings of a seminar held in October 1982 under the auspices of the Industry and Parliament Trust, at which various Members, Clerks and witnesses before select committees gave their assessment of the new system. This is followed by a much lengthier series of appendices containing almost every conceivable detail of the work done by the 14 departmental select committees between 1979 and 1983.

Both sections provide a wealth of useful information. The sheer bulk of the appendices, particularly Appendix 6 which runs to 143 pages, almost double the total narrative section, proves beyond all doubt that select committees are big business now, and the claim made by Peter Kemp of the Treasury that they cost at least £1.5 million a year does not seem exaggerated. Particularly valuable for the future is Appendix 2 on giving evidence to select committees. Clerks and civil servants tend to take the rather complex rules for granted and forget how difficult they may be to the outsider who may be just as valuable a potential witness.

As the Speaker says in his foreword, this is all part of a policy of 'open Parliament', and one of the important features of select committees is that they should act as an 'interface between Government and business' in the words of the CBI spokesman at the seminar. Such guidance as is given in Appendix 2 will help to this end.

The particular value of the narrative section lies in the fact that all the participants in the seminar, apart from one single academic, were actively concerned with the work of select committees, and were thus uniquely qualified to make judgments based on practical experience of what had happened rather than on academic theory of what ought to have happened. Even the one academic, Professor Nevil Johnson, has had practical experience as a civil servant and has for some time made a particular study of select committee work; it is interesting that he is perhaps the most sceptical of all about the success of the new system. It will be fascinating to contrast the views expressed in this book with those in a similar work to be published next year by the Study of Parliament Group where the background of the contributors will be almost entirely academic.

I have only two complaints about the format of the seminar which perhaps diminishes its value as a balanced assessment of the new select committees, although it would be unfair to blame either shortcoming on the Industry and Parliamentary Trust, which is to be congratulated on its initiative in organising the seminar. First, one would have welcomed more question and answer sessions, perhaps at the expense of some of the individual papers provided. Mr Englefield in his Introduction seeks to liken the seminar to a select committee hearing, but any committee which relied so heavily on its written evidence and asked so few oral questions would be failing in its job. Second, there is too much emphasis on the work of the Employment Committee, and not enough on that of other committees. This is perhaps inevitable given the nature of the seminar, but when four out of the eleven contributors are talking mainly about the work of one committee, there is bound to be distortion. The Employment Committee was untypical in many ways, and for much of the Parliament was greatly influenced by the views of its first Chairman. It is for others to judge how effective his particular methods were; it is undeniable that they were not followed by the majority of his fellow chairmen or by other committees.

There are many lessons to be drawn from the collective wisdom of all the participants. Space allows mention only of three. First, there are inevitable limitations on what a select committee can do simply because of the appalling pressure of work on Members. It is often forgotten that a Member is not and cannot be expected to be a full-time committee member; Jim Craigen's description of his average Parliamentary day illustrates this very clearly. The appointment of far more staff is often urged as a panacea by which committees can achieve almost anything.

Such a view ignores the fact that it is elected Members of Parliament, not faceless bureaucrats accountable to no-one, who should direct committee inquiries and reports. The danger of too many specialist advisers, perhaps with their own particular axes to grind, is well illustrated, again by Jim Craigen; select committees should not become 'beehives for academics . . . with MPs as drones'. Second, there needs to be clarity over what a select committee's aims are; as Peter Kemp of the Treasury put it, there seems some confusion as to whether committees should be scrutinising, influencing or controlling the Executive. There are few who would disagree that they should undoubtedly have a scrutinising role, and most have carried this out effectively. Most would agree that they should seek to influence, and there seems some evidence that many of them have done so. There would be considerable argument over the right to control, and there is certainly little evidence to suggest that this has happened yet, although the new estimates procedure which had not started at the time of the seminar will be a test of how far committees can go along this road. Finally, as a Clerk I wholeheartedly welcome the proper emphasis given in the seminar to the role of Clerks. Of course Clerks are by nature discreet, and it is entirely right and proper that their part in the work of select committees should necessarily be as understated as possible. It is nevertheless galling that hitherto nearly every commentator on the work of select committees has stressed the role of specialist advisers as if they were the sole source of support for Members. Now the balance is properly redressed by the words of those who really know what happens. As John Golding puts it 'We regard our Clerks as very much more important than the advisers'. All Clerks will be grateful to him and to Ian Lloyd, another vastly experienced Chairman, who in two phrases encapsulated the proper role of Clerks in the House of Commons and I am sure in every other Commonwealth legislature. 'If they are both competent and self-effacing, there is no limit to their influence'. 'There was no limit to what a man might expect to achieve in life provided that he was prepared to concede the credit to others'. These wise and generous words should be written large on the desk of every young Clerk as he or she begins a Parliamentary career.

The book deserves to be read widely by all who are interested in how Parliament really works. I hope it will not be thought too fanciful an analogy for a cricket lover writing in a Commonwealth Journal to compare it to Wisden, which by coincidence sells at the same price (although I have to say that Wisden, with 1280 pages as compared with 288 offers better value for money). Whether there will be annual editions is perhaps doubtful, but the work of the select committees in the few months for which they have been established in the present Parliament makes another edition in due course indispensable. The initiative of the Industry and Parliament Trust will I hope be continued. Perhaps, pursuing the cricket analogy, the next edition should seek to

establish the perfect balance between narrative and statistics which is the hallmark of Wisden. It would also be fascinating to have the select committee equivalent of the 5 Cricketers of the Year. Every Clerk would have his own list of the 5 champion select committee members; however, in line with the already quoted advice of Mr Ian Lloyd, they would be far too discreet to name them in print!

(Contributed by Charles Winnifrith, a Principal Clerk in the House of Commons, Westminster)

Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament (Twentieth Edition) Editor: Sir Charles Gordon, KCB, (Butterworths, 1983, £55)

One hundred and forty years ago the first edition of *Erskine May* was published and the twentieth edition has just made its appearance. A distinguished team of assistant editors has worked to produce it under the editorship of Sir Charles Gordon, KCB, Clerk of the House, who will be known to many readers of 'The Table' from his period as Fourth Clerk at the Table.

In a brief and illuminating Preface, Sir Charles records the significant developments since 1976, the date of the 19th edition, in the procedures and organisation of Parliament. There is no need to recapitulate his summary of these changes here, as readers will be well-advised to be guided by the summary to a close study of the new developments in the text itself.

Of greater interest might be an attempt to assess the comparative importance of these changes for the future vigour and efficiency of the House of Commons.

As one might expect the House of Lords plays, for a Chamber of such radical repute, but a minor role on the procedural stage. Unencumbered either by centuries of precedents or by restrictive rules, the Lords are free to build upon ancient foundations, and to add a new wing or pavilion to the edifice. As an example of the latter, one can cite their experiment in television broadcasting, agreed by the House after the 20th edition of Erskine May had gone to press.

The editor's decision to assemble in Chapter 21 most of the material on the House of Lords is, in your reviewer's opinion, long overdue and a notable improvement.

To return to the Commons end of the Palace of Westminster however, the major developments in procedure recorded in the 20th edition are those relating to the new structure of select committees, to the process by which expenditure is voted; to the formal establishment of the Liaison Committee of select committee chairman; to the experiment in sound broadcasting; and to the passing of the House of Commons (Administration) Act 1978.

Of these, one might hazard the opinion that the most significant from the point of view of the long-term development of the House of Commons is the replacement of the Expenditure Committee by select committees 'to examine the expenditure, administration and policy of government departments and their associated bodies, and similar matters within the responsibility of the Secretary of State for Northern Ireland.' Fourteen committees were established, their membership numbering between nine and eleven (thirteen for Scottish Affairs).

Almost five years after their inception, the select committees can be said to have made an impact substantially greater, despite its uneven nature, than did their predecessor, the Expenditure Committee. The feeling is inescapable that, after some fifteen years of experiment and evolution, based on the 'post-war model' of the Estimates Committee, the select committee structure has, at least for the life of the present Parliament, been forged into the instrument which the House requires to fulfil its scrutiny function. On the other hand, the changes in Supply procedure may prove to constitute only the first steps in the process of re-establishing for the House of Commons an effective oversight over Government expenditure.

The formal appointment, under Standing Order No. 101, of the Liaison Committee, comprising the Chairman of all select committees, will give pleasure to those who recall the prodigious efforts of the late Sir Richard Barlas to launch it informally in the 1960s.

A new development, first recommended to the House by the Select Committee on Procedure of session 1970–71 has been the appointmen of special Standing Committees authorised to take evidence fro interested parties on the contents of a public Bill before the Committe itself embarks on the usual process of considering in detail the text c the Bill.

In addition, the frequent complaint of Members that they were being deprived of the opportunity to debate European Community Documents has been met by the provision (in Standing Order No. 80) for Standing Committees on such Documents.

Desiring always that each successive edition of Erskine May should surpass the high standard of its predecessor, your reviewer here takes advantage of his present post to point out two errors in the section of Chapter 34 devoted to the European Communities. The section on the European Court of Justice should record that, at least under Article 175 of the EEC Treaty, the European Parliament may also initiate proceedings before the European Court of Justice. Parliament in fact lodged an action against the Council in January 1983 for failure to act to establish a common transport policy, as enjoined upon it by certain Articles of the EEC Treaty.

In the section on the functions of the European Parliament, it is stated that 'the only formal power accorded to it to act upon its own initiative

(that is, not in connection with proposals emanating from the Council and Commission) is that of requiring the resignation of the members of the Commission in a body'. But in the previous section it is correctly recorded that Article 138 of the EEC Treaty 'provided for proposals to be drawn up by the Parliament for elections by direct universal suffrage'.

In drawing up these proposals the Parliament has therefore the power to act on its own initiative, as it did in January 1975 in adopting a draft Convention on direct elections, and in March 1982 in putting forward a draft Act on the establishment of a uniform electoral procedure.

Looking to the future, is it too revolutionary to express the hope that the Select Committee on Procedure of the House of Commons will once again address itself to the abuse of Prime Minister's Question time? Would one possible solution to this problem not be to learn from the Canadian House of Commons, where Ministers answer questions without notice (which is in effect what the British Prime Minister does).

Finally, may the twenty-first edition record a decline in the use of the motion for the adjournment as a form of question on which to hold substantive debates. This form of procedure, which prevents Opposition parties from tabling amendments and deters them from dividing the House even if the debate has caused them to wish to indicate their dissatisfaction with the government, appears to be an abuse and therefore a fit subject for consideration by the Procedure Committee, followed perhaps by an appropriate entry in Erskine May.

The 20th edition, in layout and presentation, is a match for its predecessors, even though the size of type in the Index has regrettably been reduced. Its content reflects the will of both Houses at Westminster to continue to base their procedure on evolving precedents, and to adapt it (in the case of the Lords perhaps rather more nimbly) to the changing challenges of the late 20th century.

(*Contributed by David Millar, a Head of Division in the European Parliament*)

XVIII. 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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Note. – **b.**=born; **ed.**=educated; **m.**=married; **s.**=son(s); **d.**=daughter(s).

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ABBREVIATIONS

(Art) = Article in which information relating to several territories is collated.
(Com.) = House of Commons.

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