The Table

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

EDITED BY
B. P. KEITH AND MRS J. SHARPE

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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	●	●	●	●	●	●	●			●	●	●
Falkland Islands			●		●	●						●

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The Table

BEING

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

I. EDITORIAL

Like previous editions, this volume of The Table deals with a va.. of topics. An unusual and, we hope, infrequent event took place in Saskatchewan when a Member of the Legislature (a former Minister of the Crown) was convicted of murder and sentenced to life imprisonment. His expulsion from the Legislature, and the legal and constitutional problems which it raised, are described in an article below. In Australia, the Senate has been conducting two enquiries into the conduct of certain judges of the High Court. An article below deals with the work of the Senate select committees on a judge and examines the ways of removing a federal judge from office. Also in Australia, a strong feeling that the law and practice on parliamentary privilege needed to be comprehensively reviewed has led to the setting up of a joint select committee on parliamentary privilege. The work of the joint committee is the subject of an article. At Westminster a notable event of the past session has been the experiment of televising the House of Lords. The background to this innovation and some of the problems which it has raised are described below. We hope that the other articles printed will also inform and entertain members of the Society.

The Editors are grateful to those who have contributed articles and other material for the journal. As always, high quality articles are essential if The Table is to go on being valued by members of the Society and those outside it. We would particularly ask those legislatures which have not contributed in recent years to make a special effort to send articles for the next edition.

George Stephen *(Clerk of the Legislative Assembly of Saskatchewan, 1949–1960)* – On 20 February 1985, George Stephen passed away at the age of 97. He was born in Dunfermline, Fife, Scotland in 1887. He came to Canada in 1912 and worked as a journalist before being appointed Clerk Assistant of the Legislative Assembly of Saskatchewan in 1927, and Clerk of the Legislative Assembly in 1949. He served in this role until his retirement in 1960.

In his capacity as Clerk Assistant, before the advent of Hansard in Saskatchewan, George Stephen recorded by hand the major speeches in the Address in Reply and Budget debates which were printed as an Appendix to the Journal. During his service as Clerk Assistant, he initiated electronic recording of the debates and the Saskatchewan Legislative Assembly became the first Parliament in the Commonwealth to have an electronic Hansard (*see* articles in The Table 'Machine Made Hansard, Saskatchewan' Vol. XV, 1946 and Vol. XVI, 1947).

George Stephen was instrumental in establishing the Crown Corporations Committee structure and initiated close ties between the Saskatchewan Table and Tables throughout the Commonwealth, through the Commonwealth Parliamentary Association and the Society of Clerks at the Table in Commonwealth Parliaments. He was friends with G. F. M. Campion, Sir Edward Fellowes and Howard d'Egville. In 1957 George Stephen was the first Canadian provincial secretary to a Commonwealth Parliamentary Association conference, which was held in India.

Since his retirement in 1960 George Stephen maintained his interest in the Clerk's Society and the affairs of Parliament in general.

On 11 April 1985, the Legislative Assembly paid its respects to George Stephen by means of a motion of condolence.

Honourable Allan E. Blakeney, Leader of the Opposition, and the only sitting member who knew George Stephen, said in the Assembly:

> 'I know that on both sides of the House, George Stephen was respected for his scrupulous fairness in dealing with all members of the House and giving them advice, whether they were of the government or of the opposition.
>
> And I think that's a proud tradition – not only in this House, but in others – and by honouring George Stephen today, we are honouring his successors who have served at the Table. I think by continuing the tradition of service to the Legislative Assembly, embodied in the career of George Stephen and people like George Stephen, we serve the cause of democratic government, and so I am pleased to add my word of commendation for the life of George Stephen, his contribution to this legislature and to parliamentary government, and to extend our condolences to the bereaved family.'

George Stephen was a writer, a proceduralist and an innovator. He will be missed by his colleagues at the Table.
(Contributed by the Clerk of the Legislative Assembly of Saskatchewan)

Anthony Francis Elly, OBE – On 22 November 1984 the National Parliament of Papua New Guinea passed the following resolution concerning the retiring clerk, Tony Elly:

> 'That this Parliament express its appreciation to the former Clerk Mr Tony Elly for his long and distinguished service to this Parliament and his assistance to all parliamentarians past and present'.

Members from both sides of the House spoke in favour of the motion.

Tony Elly joined the administration of the then Territory of Papua and New Guinea in February 1964 at the age of 18 years. His initial Public Service post was as a despatch Clerk in the Justice Department.

The election of Papua New Guinea's first House of Assembly in June 1964 saw the creation of the Department of House of Assembly and Tony Elly was seconded to it to serve as an attendant and was later promoted to Acting Sergeant-at-Arms.

Thus began a 20 year career in the service of Parliament, highlighted by appointment in March 1974 as the first Papua New Guinean Clerk of the House of Assembly, achieved at the age of 28.

Appointed as the first Clerk of the National Parliament following Independence on 16 September 1975, with successive reappointment for a further 6 year term of office in 1978.

A further reappointment was declined by Tony in August 1984 and he continued in office on an acting basis until my appointment on 1 November 1984.

During his period in office Tony was honoured with the award of the Papua New Guinea Independence Medal (1975), the Queen's Silver Jubilee Medal (1977), became an Officer of the Most Excellent Order of the British Empire (1981) and the Papua New Guinea Long Service Medal (1983).

Tony now plans to pursue a career in private business.
(Contributed by the Clerk of the National Parliament of Papua New Guinea)

Rene Blondin – has retired as the Secretary-General of the Quebec National Assembly.
Sri B.B.S. Chanham – retired as Secretary of the Uttar Pradesh Legislative Council on 30 September 1983.

II. SOME NOTES ON THE ROLE AND FUNCTIONS OF THE AUSTRALIAN DEPARTMENT OF THE HOUSE OF REPRESENTATIVES AND ON RECENT PUBLIC SERVICE REFORMS

BY D. M. BLAKE

Clerk of the Australian House of Representatives

The role and functions of the Department

The Department derives its role and functions and its organisational character from the role and functions of the Parliament in general and the House in particular. The legislative function of the Parliament is paramount and is probably its most important and time consuming function. In Australia the authority to make laws is vested in the legislature and nowhere else. The exercise of Parliament's other powers, which are of both constitutional and historical origin, are important to the understanding and essential to the working of Parliament.

Structure of the Department

Departmental support services can be divided into 3 discrete functional categories:

- procedural and administrative support for the House of Representatives. This category encompasses the Clerks-at-the-Table, Table and Bills and Papers Offices, Serjeant-at-Arms Office and Resource Management Office
- Committee Office
- Parliamentary Relations Office

For all intents and purposes, the Speaker is 'Minister' of the Department of the House of Representatives. The Clerk of the House administers the Department of the House of Representatives in the same way as the head of an executive department administers his department. However, as many fellow members of the Society will know from their own experience, the exercise of this responsibility can be seen as qualitatively different from the exercise of normal administrative functions in an executive department because the administrative decisions the Clerk of the House makes and his procedural advice to the Speaker, Ministers and Members are frequently subject to the scrutiny of all Members of the House.

Decision-making

Like other areas of public administration, the Department has a hierarchical system of decision-making. The basic work flows from the various offices to one of the Clerks Assistant and then to the Clerk of the House or one of his deputies. As appropriate, particular matters may be referred to the Speaker for consideration and final decision.

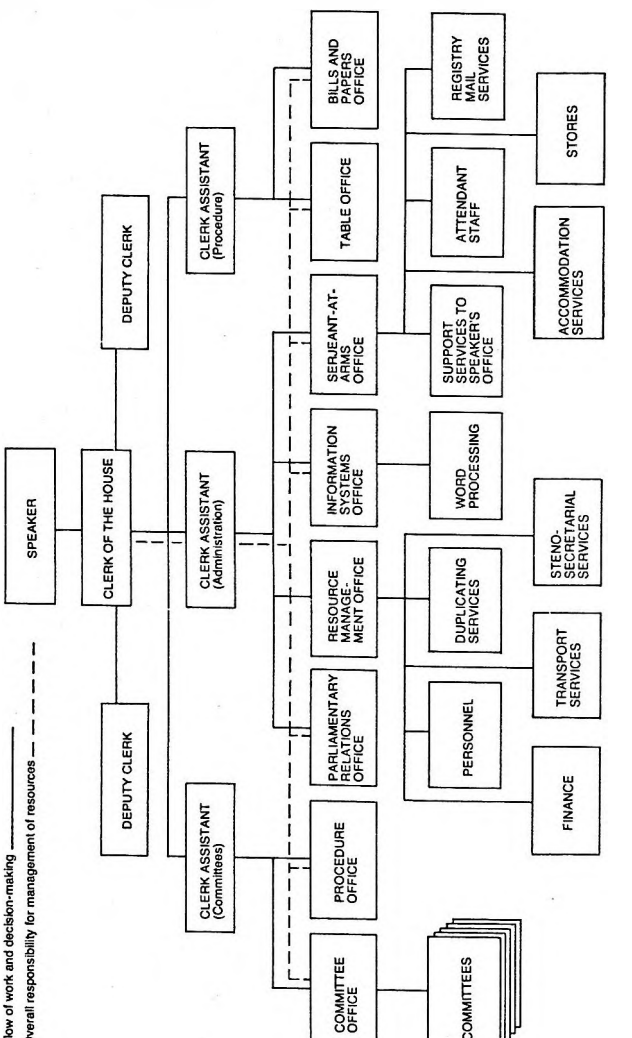
There are, however, several exceptions to this decision-making process: on-the-spot procedural advice to the Speaker, office holders and other Members is often required particularly during sitting days. Second, because of the small size of the Department and the fact that the office of the 'Minister' (i.e. the Speaker) is located in Parliament House, in many cases there is direct contact between the line manager and the Speaker. But perhaps the most significant exception to hierarchical departmental decision-making is the Committee Office. Although committee secretaries are responsible to the Department for the administration of their secretariats, these secretaries answer directly to committee chairmen and committees for the general conduct of inquiries.

Administrative Overview

A general overview of departmental activity is maintained by the Clerk of the House, and an important element in overview and communication occurs through meetings of senior officers at 9 a.m. each Monday morning. Every office is represented at these meetings, which increase general awareness of departmental work, assist in improving co-ordination of activities and help to focus attention on emerging problems that require consideration. Meetings of committee secretaries are also held weekly, and serve, in the Committee Office, a similar purpose to the senior officer meetings.

Changes in the External Environment

Over time, changes in the external environment have affected the size and operational methods of the Department. From Federation until the early 1960's, the Department was a small, closely knit organisation whose staff was located in Parliament House. Since the 1960's, the Department has developed into a larger, more complex organisation with its constituent parts dispersed between Parliament House, and buildings in close proximity. The increase in size has been caused to a large extent by the growth in the Committee Office which today accounts for close to half of the procedural, research and administrative staff. Other factors, such as the growth of technology and the greater need for procedural research, have also had an impact on the size of the Department. These increases in size, together with


Flow of work and decision-making
Overall responsibility for management of resources
SPEAKER
CLERK OF THE HOUSE
DEPUTY CLERK
DEPUTY CLERK
CLERK ASSISTANT (Committees)
CLERK ASSISTANT (Administration)
CLERK ASSISTANT (Procedure)
COMMITTEE OFFICE
PROCEDURE OFFICE
PARLIAMENTARY RELATIONS OFFICE
RESOURCE MANAGE-MENT OFFICE
INFORMATION SYSTEMS OFFICE
SERJEANT-AT-ARMS OFFICE
TABLE OFFICE
BILLS AND PAPERS OFFICE
COMMITTEES
PERSONNEL
DUPLICATING SERVICES
WORD PROCESSING
SUPPORT SERVICES TO SPEAKER'S OFFICE
ATTENDANT STAFF
REGISTRY MAIL SERVICES
FINANCE
TRANSPORT SERVICES
STENO-SECRETARIAL SERVICES
ACCOMMODATION SERVICES
STORES

more recent changes to the Public Service Act, have given the Parliament a greater degree of autonomy in determining staffing needs. This development, together with the advent of single line appropriations for each parliamentary department, has placed a far greater responsibility on the Department for the management of its resources.

The Department faces some additional responsibility as a result of the Government's decision in 1983 to enlarge the membership of the House. The effect of this decision was an increase of 18%, from 125 to 148, and the enlarged House was elected at the General Elections on 1 December 1984.

Public service reform

On 9 May 1984 the Hon. J. S. Dawkins MP, then Minister for Finance and Minister Assisting the Prime Minister for Public Service matters, presented the Public Service Reform Bill 1984 together with a number of associated measures. They were subsequently passed by both Houses.

The legislation was introduced in recognition of what the Government saw as the need to reform the Australian Government's administration, to achieve better value for all government expenditure, and to ensure that the administration was responsive to democratic direction and the changing requirements of the community it serves.

Mr Dawkins indicated that the legislation represented the most comprehensive legislative review of the Australian Public Service since the passage of the Public Service Act in 1922 and that it was intended to lead to the development of a modern, efficient, responsive and accountable Australian Public Service.

The Government's objectives in introducing the legislation can be broken down into 4 major requirements.

First: a perceived need for Ministers to supervise more closely the management of their departments; and for departments to be more responsive and accountable to their Ministers

Second: the view that new arrangements needed to be introduced to ensure a fully productive relationship between the Public Service and governments, and to enable senior managers in the Service to realise their full potential

Third: the belief that financial and staffing resource decisions require greater coordination; that resource allocation processes needed to be improved and opportunities to review programs and their administration to be increased

Fourth: a desire to develop what was seen as a more equitable administration, with explicit legislative support for personnel policies and practices such as equal employment opportunity and industrial democracy, coupled with more appropriate

arrangements for the independent handling of staff grievances and appeals.

The reform legislation is intended to have effect service-wide. However, its applicability in practice to the Parliament, whilst being statutorily imposed, will be tempered by a recognition of the extent to which these reforms encroach on the independence of the Parliament from the Executive. The exact form of implementation in the Parliamentary Departments is being examined, under the ultimate authority of the Presiding Officers.

In the Commonwealth, the Presiding Officers have very substantial powers, for example, in the creation and abolition of positions and the promotion of persons.

In summary form, the principal reforms can be broken down into the following headings, which describe the reforms as they effect the Public Service generally, and not the Parliament in particular:

Heads of Departments (referred to as Secretaries)

The traditional understanding of the relationship between Ministers and Secretaries has been clarified to make it clear that a Secretary's responsibility for the general working of a department is subject to the Minister's powers under the Constitution.

The legislation provides for the Governor-General to appoint, transfer and unattach Secretaries to departments in accordance with a recommendation by the Prime Minister (after the Prime Minister has obtained a report from the Chairman of the Public Service Board.) Secretaries can be appointed for fixed periods.

The stated policy is to consider rotating Secretaries after they have served in one position for 5 years.

In a parliamentary context the Governor-General appoints the Clerk of the House on the recommendation of the Speaker. The reform legislation is not intended to impose any statutory power which would give the Executive any measure of influence in respect of the appointment and term of Heads of Departments in the Parliament.

Senior Management of the Service

Somewhat controversial reforms under this heading have been made to create a more unified and cohesive higher-level managerial group, which has been called the Senior Executive Service (SES).

The Government has indicated that it requires a greater degree of management leadership in the development and placement of senior staff. It also wants the service at senior levels to be more open, mobile and competitive.

Consistent with these requirements –

– all SES vacancies are open to persons outside the Public Service (as

well as from within).
- promotions into and within the SES are made by the Public Service Board, and not by individual departments on the recommendations of the departmental Secretary.
- appointments can be for a fixed period.
- promotions are not subject to appeal (whereas other Public Service promotions are and always have been).
- a policy of rotation and transfer of SES officers between departments is to be introduced.
- a formal staff appraisal system, coupled with staff development and training programs, has also been introduced.

The above reforms are not applicable to the Parliament because of the authority and control vested in the Presiding Officers, which include the establishment powers, the specialised nature of parliamentary work and the responsibility.

Integration of Financial and Staffing Decisions

In the past, the system of staff ceilings and control of this resource was highly centralised in agencies such as the Public Service Board. The reforms introduced have given Ministers and departments a greater say in the management of their staff resources.

Secretaries are responsible for the creation, abolition and classification of positions in their departments. The Public Service Board, on the other hand, has responsibility for the design of occupational groups, the determination of related pay rates and the preparation of classification standards and guidelines.

The Department of Finance has been given the responsibility of administering human resource budgets, which can be thought of as a means by which departments can translate their establishment details into monetary values and which are followed as other budgets would be, and advising the Government on them.

It is acknowledged that these staffing and financial management control reforms have application for the Parliament and offer significant benefits. Their implementation does differ to some extent in view of the establishment powers of the Presiding Officers and the independence of the Parliament referred to earlier.

Personnel Policies and Practices

The previous legislative backing given to modern personnel policies and practices in the Public Service was not seen by the Government as adequate. The Government has implemented a series of reforms:

- the first of which places a positive obligation on departments to develop and implement equal employment opportunity programs for

disadvantaged groups and includes special measures to bring about the greater employment of certain groups under-represented in the Public Service.

- associated with its equal employment opportunity policies is the provision for the introduction of permanent part time work.
- departments have also been required to develop and implement an industrial democracy action plan, to be monitored by the Public Service Board. These plans are seen as a means of institutionalising and formalising the voice of employees in the administration of departments.
- a clear statement has also been made in the Act of the overriding importance of merit principles which are intended to form the basis for developing and administering personnel policies.

Merit Protection and Review Agency

The Government has established a Merit Protection and Review Agency for Australian Government employees. It allows for appeals and grievances to be considered independently of departmental management and Public Service Board. It is also responsible for review and investigation of personnel decisions and actions which are the subject of grievances.

III. TELEVISING THE HOUSE OF LORDS

BY J. M. DAVIES

Clerk of Private Bills

Wednesday, 23rd January 1985 was an historic day both for the Westminster Parliament and for the Broadcasting Authorities* of the United Kingdom. At 2.35 p.m. on that day television cameras began for the first time to film the proceedings of the House of Lords for transmission outside the House. The State Opening of Parliament by Her Majesty the Queen has been televised for many years but never before had the general public had the opportunity, in their own homes, to watch one of the two Houses of Parliament at its day-to-day work. Because of the requirements of broadcasting schedules, it has proved unusual for proceedings to be televised live very often, but on this first occasion both the BBC and the ITV channels carried live coverage of the House of Lords from 2.35 p.m. until 7.00 p.m. Although the cameras continued to film till the conclusion of the debate at one o'clock in the morning, recorded extracts only were used in news bulletins and current affairs programmes later that evening.

There was an air of excitement in the House, particularly on the day itself but also on the preceding days. The days of the Christmas recess are normally unremarkable, with darkened corridors, few peers and a general air of hibernation. Not so this time – in the week before the House resumed on 14th January, each broadcasting organisation was allowed one day for rehearsals and lighting trials. On one of these days nearly sixty technicians, reporters, photographers, producers and cameramen had access to the Chamber and to areas from where the production was to be transmitted. Cabling had already been installed during the Christmas recess, as had the white, diffusing, screen lights which at present rather obtrude into the Victorian Gothic architectural masterpiece, the Lords' Chamber.

Four cameras were installed on the floor of the House, two at each end of the Chamber. Special podiums were erected for the cameras at the Throne-end of the House but these were unnecessary at the Bar-end. The cameras are not remotely controlled but are operated by cameramen who thus have access to the floor of the House which would normally not be open to persons other than peers and officers of the House. One matter on which the House insisted, was that jackets

* The British Broadcasting Corporation (BBC) and The Independent Broadcasting Authority (IBA). The IBA are responsible for independent television (ITV).
Independent Television News (ITN) televises the House of Lords on behalf of all independent television companies.

and ties should be worn by camera crews and this was readily accepted by the Broadcasting Authorities. A further camera was located in a side gallery of the House so as to give wider angle shots. Experience has led the broadcasters to dispense in recent debates with at least one of the floor cameras at the Bar-end but to continue with one in the side gallery.

The cameras and their crews are linked by cable to the producer who directs their operation. He is based in an 'outside broadcast unit' van situated within the precincts of the House of Lords, in Black Rod's Garden. The BBC and ITN had agreed at an early stage that they would provide camera crews, production staff and equipment on alternate days. The organisations would share the results of what was filmed and use the material as they wished for their respective programmes. Thus both organisations could gain experience of televising the House, while sharing the cost. The only problem which remained to be settled was, who was to have the distinction of being responsible for the production on the first day? A coin was spun and the BBC won the right!

It had been agreed between the House and the Broadcasting Authorities that a Wednesday would be the most suitable day on which to begin television coverage and that the second week after the recess would be more convenient than the first. A Wednesday was suggested because under House of Lords procedure these are usually reserved for general debates rather than legislation. It was thought that a debate, with a list of speakers, would be technically easier to televise on the first occasion than the detailed scrutiny of legislation. Moreover the subject matter of the debate would be known rather earlier than is possible with legislation, the progress of which cannot be predicted with any certainty in advance. The motion before the House on Wednesday, 23rd January had been tabled by a former Labour Chief Whip in the Lords, Lord Beswick, and was critical of the Government's economic and social policies. It had attracted a very large number of speakers.

There was a heightened air of expectancy on the day of the debate. More peers and more guests than usual were to be seen arriving at the House from the late morning onwards. Their movements were constantly interrupted by the bustle of activity in the Chamber and the lobbies of the House as cameramen and lobby correspondents made last minute adjustments. Peers normally take their seats in the Chamber from about 2.15 p.m. but, on this occasion, peers were seated in their places an hour or more earlier, while television commentators were still in Chamber recording their introductory pieces. Other peers left cards on the benches to reserve their accustomed seats.

Cameramen and other broadcasting personnel were required to

leave the Chamber at 2.15 p.m, well before Prayers at 2.30 p.m., which were not to be televised, neither then nor since. However, on the first day of public televising, it had been agreed that part of the Lord Chancellor's procession might be filmed when it entered the Peers' Lobby and thence went into the Chamber. As a consequence, an extra camera was installed in the Peers' Lobby, among the crowds who were waiting to go to the galleries and witness an important and exciting occasion. One other feature of the first day of public televising was that two still-photographers were given access to the Chamber to take photographs for use by the newspapers, who were eager to report the occasion in full.

When the doors of the House opened after Prayers, every bench was packed, as were the Steps of the Throne. This in itself created problems for the broadcasters because the faces and names of many peers are not well known. It had been agreed therefore that a Doorkeeper would help the commentators identify speakers and those asking questions. The small commentary box was uncomfortably full with a commentator each from the BBC and ITV, together with a Doorkeeper!

The first half-hour or so of public televising did not, by general consent, show the House of Lords at its best. The brilliant lighting, the television cameras, the reporters looking down on the Chamber from the commentary box in the Press Gallery, and the knowledge that the proceedings were being televised live and not just being recorded for later, edited transmission, gave Question Time, which preceded the main debate, an air of unreality. The House appeared to be rather self-conscious; questions were long and involved and more peers than usual seemed eager to ask supplementary questions. The number of peers who had put their names down to speak in the main debate also suggested that the 'television factor' was having some influence on the behaviour of the House.

However, by the next day when the cameras were present again, the House appeared to have grown more accustomed to the novelty of so much public interest. At the time of writing, more than half way through the experimental period, it is difficult to say one way or the other with any certainty whether television has affected the behaviour of the House. The answer would probably be different if given by a supporter or opponent of televising.

The history of televising the House of Lords goes back nearly twenty years, to June 1966 when Lord Egremont, formerly Mr John Wyndham and Private Secretary to Mr Harold Macmillan, moved a motion in the following terms:

> 'That this House would welcome the televising of some of its proceedings for an experimental period, as an additional means of demonstrating its usefulness in giving a lead to public opinion.'

The Motion was agreed to by the House on a Division by 56 votes to 31. Subsequently the House appointed a Committee on Televising the Proceedings of the House. The principal recommendations of this Committee were that the Broadcasting Authorities should be invited to televise the proceedings of the House for transmission on closed circuits both in sound and on television for listening and viewing by members of the House and the press (see *The Table*, Vol. XXXVII, pp.60–72). This closed circuit experiment duly took place in February 1968 and was subsequently assessed by the Committee who reported that if the House wished to authorise an experimental period of public broadcasting it should last for one year, and the broadcasters should be able to come to the House on a 'drive-in' basis i.e. that the broadcasters should choose what business to televise and how to use it, and televise for transmission on their public channels.

Nothing further happened after the closed circuit experiment and the Committee's report, mainly because the House of Commons had in November 1966 defeated by only one vote a proposal that they should be televised. The Broadcasting Authorities were not sufficiently interested in House of Lords business to bear the substantial costs of televising only one half of the Westminster Parliament, the House of Lords half. Nor was the House then prepared to take a step which the House of Commons would not take and before even sound broadcasting had been introduced.

In 1971, however, the House of Lords Administration Committee greed to an approach from Viscount Kelburn, the son of a member of he House and a freelance television documentary producer, to make a documentary film about the Lords. Lord Kelburn's television cameras were allowed access to many parts of the House where cameras had not previously been admitted, but not to the Chamber nor to committee proceedings. The resulting documentary was generally well received.

In 1980 a BBC programme, Nationwide, a magazine-type news programme, asked permission of the House to make a series of programmes on the Lords for showing on a weekly basis. Permission was again granted, particularly after the Administration Committee had seen the programmes made by Nationwide on the Commons where the film makers had occasionally shown a picture of the House with a notice saying 'No admittance'. The Committee felt it would be better to be co-operative than to run the risk of the Lords being made to appear stuffy. Although the Chamber was again barred to the broadcasters, they were allowed to film a Select Committee at work in public session.

In 1982 the BBC again asked permission, this time of both Houses together, to make a series of television documentary programmes on the Palace of Westminster. These were partly historical, partly

architectural and partly concerned with the work and procedures of the two Houses. On this occasion the broadcasters were again allowed by the Lords to film the proceedings of an investigatory Select Committee and also the proceedings of a quasi-judicial Private Bill Committee. The House might have gone all the way towards being televised but there was still respect for the view that the Lords should not pre-empt a decision on public television by the Commons. The Commons, while agreeing to many of the requests of the BBC, still did not give permission for committees to be filmed.

Lastly in 1983, an independent television company, Central Television, obtained agreement to make yet another documentary on the Lords, including another committee at work.

Two other matters ought to be mentioned here in the gradual conversion of the House to allowing the experimental public televising of its proceedings. The first was the decision of both the Commons and the Lords in 1977 to allow their proceedings to be sound broadcast. This was a step first seriously envisaged and reported on in 1968. The second was the decision of the Lords to commission a commercial photographer to take still pictures of the House in session. This decision gave rise to some of the problems which television now raises, namely lighting levels and persons, not members or staff of the House, being free to move about on the floor of the Chamber.

Nevertheless, probably the biggest single factor which convinced those who supported the Lords being televised that a decision in favour should soon be taken was that the makers of the highly acclaimed documentary series on the Palace of Westminster in 1983 were allowed to film all aspects of the work of the House except the most important, namely the work in the Chamber. It was this and the realisation that the House of Commons was very unlikely in the foreseeable future to take any decision in favour of televising its proceedings, that persuaded those in favour that the Lords should wait no longer for the Commons to take the lead. Thus in the first session of the new Parliament, Lord Soames, a former Leader of the House, tabled his motion 'That this House endorses its decision of 15th June 1966 in favour of the public televising of some of its proceedings for an experimental period and instructs the Sound Broadcasting Committee to consider and report how this decision should be implemented.' The motion was debated on 8th December 1983. Twenty-six peers spoke in the debate, of whom eighteen were in favour, with only eight against. The motion was agreed to on a division by 74 votes to 24.

As a result of this motion, the Sound Broadcasting Committee were required to undertake an enquiry which was strictly outside their terms of reference. It was agreed however that they had the necessary expertise to examine the problems relating to television coverage. The Committee met on ten occasions between January and July 1984 and

heard evidence from the Broadcasting Authorities and from officers of the Department of the Environment who are responsible for the fabric of the Palace of Westminster and who would be concerned over matters such as lighting and cabling. The Committee also viewed selected videotapes of the televised proceedings of various other Parliaments. They issued only one report [HL (1983–84) 299], the main recommendations of which were as follows:

(i) The period of public televising of some of the proceedings of the House should be approximately six months in duration starting, if possible, in January 1985; the BBC and IBA should be permitted to come to the House on occasions chosen by themselves on a 'drive-in' basis for the purpose of obtaining material for broadcasting in television.

(ii) Matters of selection and editorial control should be left to the Broadcasting Authorities themselves, subject to the ultimate control of the House.

(iii) The Broadcasting Authorities should have access to certain Select Committees for the duration of the experiment.

(iv) The terms of the Resolution of the House of 27th July 1977, under which sound broadcasting of the proceedings of the House operates, should, so far as practicable, be applied to the proposed experiment in televising proceedings; subsequent decisions of the Sound Broadcasting Committee controlling the sound broadcasting of proceedings should, in the same manner, be applied to the experiment.

(v) The repetition in the House of Lords of ministerial statements made in the House of Commons and the subsequent exchanges should not be televised during the experiment, except with the consent of the Minister concerned.

(vi) For the experimental period the Sound Broadcasting Committee should act as a forum in which all aspects of televising could be discussed with the Broadcasting Authorities and through which comments from Members of the House could be brought to the Broadcasters' attention; for the purposes of the experiment, appropriate front bench representatives and a representative from the Cross Benches should be co-opted to the Committee.

(vii) Arrangements should be made during the experiment to show to Members of the House televised recordings and programmes broadcast; for this purpose the video equipment already in the possession of the House should be available; no other special viewing facility for Peers should be provided at this stage.

(viii) As proposed by the Broadcasting Authorities, there should, in the normal circumstances of the experiment, be four manned

television cameras, placed outside the confines of the Chamber in fixed positions.

(ix) A system of extra lighting will be necessary for the experiment. Subject to further trials on which the Committee will, if necessary, make a further report, the system should involve internal, diffused light from special units placed in each window arch.

(x) The cost of the experiment will fall on the Broadcasting Authorities, except for certain installations which will be met from public funds and will not exceed £10,000.

It will be seen from these that the Committee recommended a six month experimental period for public televising of Lords proceedings. Significantly, they endorsed the recommendation of the earlier (1968) committee that the BBC and IBA should be permitted to come to the House on a drive-in' basis. The advantage of this recommendation is that the costs of the experiment fall largely on the broadcasters, and public funds do not have to meet the high capital and running costs which would have arisen if the House had decided to organise experimental televising on its own terms. The Committee, however, commented on their recommendation as follows:

'It follows from the Committee's recommendation for an experiment on a 'drive-in' basis that they also believe that editorial control and selection should be left to the Broadcasters themselves, subject to the ultimate control of the House. In taking this view, they are endorsing the opinion of the 1968 Committee which stated in its Report:

"The right to broadcast any part of the proceedings ought, in the opinion of the Committee, to be as clear as is that of the public to watch the proceedings from the galleries and of the Press to report and comment on those proceedings. The Committee believe, therefore, that no attempt should be made on the part of the House to exercise detailed control over the content or duration of what is broadcast. The Committee are aware that, at first sight, this approach may appear over-permissive. They would, however, point out that the Press has operated for many years with a comparable freedom and that, unlike the Press, the broadcasting organisations are under specific obligations to see that what they report is accurate and free from political partiality. Nevertheless it is clearly necessary that the House should retain ultimate control over the broadcasting of its proceedings."

This is the system under which sound broadcasting has successfully operated.'

Another important recommendation was that ministerial statements made in the House of Commons and repeated in the Lords should not be televised, except with the consent of the minister concerned. Ministers in the House of Commons were naturally concerned that a junior minister might appear on television when repeating a statement while the minister responsible for the statement would not receive such coverage. Secondly it was felt that reactions to statements in the two Houses can be so different that it would be wrong for the televised reaction to come from the second Chamber.

On 27th November 1984, the Chairman of Committees, Lord Aberdare, moved that the Report from the Sound Broadcasting Committee be agreed to. The extra lights, which the Committee had deemed necessary, were erected and turned on for the debate, in order that peers could judge under what conditions the experiment would be held. Lord Chalfont, a former Labour Minister but now a cross-bencher, moved an amendment to Lord Aberdare's motion in the following terms:

> 'To leave out ('agreed to') and insert ('not implemented until such time as the House of Commons decides to hold an experiment in televising its proceedings')'.

The effect of this amendment, if carried, would have been to overturn the earlier decision of the House on Lord Soames' motion of 8th December 1983. It would also have meant that the work of the Sound Broadcasting Committee in making detailed recommendations as to how the earlier resolution should be implemented, would have been wasted. The debate on the motion and amendment was very evenly divided between those in favour and those against televising but in the subsequent division Lord Chalfont's amendment was clearly defeated by 113 votes to 66.

As already described, the televising of Lords proceedings began on Wednesday, 23rd January with coverage of a very long debate on the economic and social policies of the Government. Much of this was shown live and attracted an audience of over 2 million people on one of the channels it was shown on. Since then, up to the Whitsun recess, television cameras have been present on twenty-seven occasions, and on five separate days proceedings of the House have been transmitted live during the early afternoon. On the majority of occasions, however, material has been recorded for later use in news and current affairs programmes.

Unlike some televised parliaments where the cameras may only focus on the head and shoulders of the speaker, the House of Lords has been happy to allow much wider shots, showing not just the speaker but also those around him. Nor in principle has objection been taken to the use of shots of peers' reactions to a speech. However, on

the first day there was an unfortunate incident when a Government peer was shown smiling, apparently at comments being made on the plight of the unemployed by an Opposition peer. The smiles were in fact caused by some earlier incident unconnected with the speech being made which the cameras had not shown. It was immediately acknowledged to be an error of camera work and editing, and the broadcasting organisation apologised.

Although the House has been content to allow the producer much greater freedom in directing the cameras than some other legislatures, the Sound Broadcasting Committee had strongly recommended (and the House had agreed) that interruptions from the Galleries should not be filmed or broadcast in any way. The importance of this recommendation was illustrated on the very first day of public televising when an organised demonstration in the Strangers' Gallery by a group of coal miners (who were then on strike) briefly interrupted the debate. If the demonstrators had expected to achieve greater publicity by appearing on television, they were disappointed, because, in accordance with the agreed rules, the television cameras remained firmly focussed on the Chamber.

It has already been mentioned that the House had three times previously given permission for television documentary programmes to include coverage of committees at work. When the Sound Broadcasting Committee were considering how the six month experiment in public televising should be organised, they asked for the views of officers of the House as to how the experiment should apply to committees in the light of previous experience. The main proposals made by the clerks were that:

i. joint committees of both Houses must be excluded from the experiment, for the obvious reason that the Commons were not party to it;
ii. judicial and quasi-judicial committees (such as those considering private legislation) should be excluded because selective televising might be prejudicial to the interests of the parties;
iii. committees sitting in private must be exempt;
iv. all other committee proceedings might be televised and a committee itself could not refuse to be televised.

Other less important proposals were made, mainly to ensure, so far as possible, that committee proceedings are not disrupted by television cameras, etc. The Committee endorsed the proposals made by the clerks.

At the time of writing, the proceedings of only one Committee, the Select Committee on Overseas Trade, have been televised, on three occasions. As in the Chamber, lighting and cameras are rather intrusive, perhaps more so in the confines of a Committee Room, but

the resulting programmes have been interesting.

Public reaction to televised debates, so far as one can judge, has been favourable. Certainly the quality of the picture and the camera work has been excellent. Since it has been left to the discretion of the broadcasters to decide when the House should be televised, only debates in which there appears to be some public interest have been covered. This has meant possibly that the public's interest has been better maintained than if the selection of debates for television had been decided by a Committee of the House. On the other hand, it can be argued that the most important work of the House is found not in what is deemed by broadcasters to be worth watching but rather in the scrupulously detailed scrutiny given to legislation, most of which would make very bad television. It may therefore be the case that television is not conveying a complete picture of the House of Lords.

The Committee on Sound Broadcasting which had been instructed by the House to consider how Lord Soames' motion of 8th December 1983 might be implemented had recommended that they should supervise the experiment and act as a 'sounding board' between the House and the broadcasters. However, the House decided that the existing membership of the Sound Broadcasting Committee was not broad enough to reflect all points of view on such a controversial subject as television. Instead a new Select Committee on Televising the Proceedings of the House was appointed. Its membership includes all the members of the Sound Broadcasting Committee but also additional members representing the 'usual channels' and two peers who are known opponents of televising the House.

This Committee have to date met on four occasions but their main task will begin when the experiment is over and they have to assess the experiment and make recommendations for the future.

The Television Committee have from time to time arranged video showings of material used in news and current affairs programmes. The video cassettes are supplied by the Broadcasting Authorities, as required in the Sound Broadcasting Committee's Report. These showings have been open to all members of the House but have in fact attracted only a relatively small number of viewers on each occasion. The purpose of the showings is to allow peers to assess how the broadcasters have used material in programmes and to compare the treatment of certain debates as between one television authority and the other. At the same time, the Committee have received from the broadcasters, on a regular basis, schedules showing what recorded material has been used, which peers' speeches have been included, on which programmes and for how long.

After the initial burst of activity and the interest aroused by debates being televised on two successive days, little was done for several weeks. Some concern was expressed that precious weeks of a

six-month experiment were passing without sufficient use being made by the broadcasters of the opportunities available. At the time of writing however, there has been a great deal of coverage. Indeed, during May the television cameras were present on every sitting day, except Fridays. The coverage is likely to remain high for the remainder of the experimental period. It should allow the Committee, when they come to review the experiment, to have a reasonable impression of the advantages and disadvantages of televising the House and of how permanent television (if it were to be recommended) might be arranged and what it should aim to achieve.

There have of course been a number of minor problems arising during the experimental period. These have been gradually eliminated in the light of experience. The four main problems which may continue to require consideration are lighting, balance, the ban on televising statements, and the question of still-photography.

The problem of lighting arises in three ways. The normal level of lighting in the Chamber is by many peoples' standards rather low. It has been necessary therefore to increase lighting levels very considerably in order for television cameras to operate properly. The lighting has been provided by white, diffusing, screen lights fixed on scaffolding attached to the window arches of the Chamber. Not only are the lights aesthetically unattractive in a highly decorative gothic Chamber such as the House of Lords but the extra brightness can also be tiring to those taking part in proceedings. Nevertheless the House appears to have accepted the levels of lighting required without significant complaint. Whether the heat generated by the lights will prove a problem in the summer months remains to be seen. What is already clear, however, is that the present temporary lighting is unacceptable in the longer term because of its intrusion into the architecture and decoration of the Chamber. If television were to become permanent, alternative means of lighting would have to be found, or more sensitive cameras developed.

One specific problem so far with lighting has been the fading down of the lights at the conclusion of an item of business which has been televised. The Committee decided early on that it would be both discourteous and disconcerting to a speaker in a debate to find the lights fading down as he or she was speaking. They therefore recommended that the lights should remain on throughout the debate on a particular subject or throughout the whole of a Committee or Report Stage of a Bill. If however a statement or other interruption provides a convenient break in the proceedings being televised and the broadcasters are no longer interested in filming, then the lights may be faded down during the interruption. Despite these attempts to find a middle way between the desirability of not offending speakers and the desirability of not keeping the lights on when patently they are no

longer being used, there have been some difficulties when the lights have been faded down during the first speech on a subsequent item of business. Moreover there remains the question, on which there is more than one point of view, of whether to fade out the lights rapidly or slowly.

Another problem with which both the House and the Broadcasting Authorities have had to come to terms is balance. The broadcasters know that if they get the balance wrong, it may jeopardise their hopes of permanent televising of both Houses of Parliament. The House in turn is learning that not everything it does is necessarily newsworthy and that a consequence of a 'drive-in' basis for television is that the use of the material remains in the hands of the broadcasters. Nevertheless, sensibilities remain not only over strict political balance but also over what type of debate is televised, whether certain well known peers are receiving too much coverage at the expense of the less well known and particularly whether the debates selected for television are those where the Government appears to be on the defensive.

The third problem arises from the decision of the House that ministerial statements made in the Commons and repeated in the Lords should not be televised. As already mentioned, the decision was taken because it was thought undesirable for a junior minister to be seen on television repeating in the House of Lords a statement made to the Commons by the responsible departmental minister who would not be seen on television. The prohibition on the televising of ministerial statements is seen by the Broadcasting Authorities as a rather tiresome impediment; in practice the prohibition is really only a problem when the House is being televised live and when a statement interrupts the debate or legislation being filmed. On the few occasions when this has happened, the broadcasters have shown a blank screen with a message saying that live coverage of the debate will resume when discussion on the statement has been concluded.

The fourth matter which may require consideration, if television were to become permanent, is whether still-photographers also should be granted access to the Chamber. The newspapers consider that it would be discriminatory if they were unable regularly to publish pictures of the House in session while their rivals, the Broadcasting Authorities, were able to report the proceedings of the Lords with the advantage of television pictures.

One can only guess what the outcome of the Television Committee's review of the experiment will be. Much will depend on what decision, if any, the House of Commons may take as to the desirability of an experiment in that House. What is certain is that the story will have to be concluded in a future volume of The Table.

IV. REGISTRATION AND DECLARATION OF MEMBERS' INTERESTS: THE COMMONWEALTH OF AUSTRALIA

BY L. M. BARLIN

Deputy Clerk, Australian House of Representatives

Previous reports in *The Table* (Volume XLIII, pages 145–6, Volume XLIV, pages 196–7 and Volume LII, pages 101–3), have described events in the Australian Federal Parliament in relation to the proposed registration and declaration of Members' Interests. A chronology of those events is as follows:

1974 – A joint committee was established to inquire into whether arrangements should be made relative to the declaration of the interests of Members. The committee recommended a system of registration of interests somewhat along the lines of the system introduced in the United Kingdom House of Commons in 1975.

1975 – Notices of motion to give effect to the committee's recommendations lapsed with the dissolution of both Houses in that year.

1976 – Fresh notices of motion to give effect to the recommenda tions of the joint committee were given and again lapsed il 1977.

1978 – A Committee of Inquiry into Public Duty and Private Interest chaired by the Chief Justice of the Federal Court of Australia, Sir Nigel Bowen (who was also a former Attorney-General and a former Minister for External Affairs), was established.

1979 – The committee of inquiry concluded that there was insufficient justification at that time to introduce a compulsory system of registration of interests. It recommended the adoption of a Code of Conduct which included a requirement for *ad hoc* declarations of interest for all Members. It went on to recommend that a system of registration of Ministers' interests should continue. No immediate action was taken to give effect to these recommendations.

1983 – The newly elected Prime Minister tabled statements by Ministers of the private interests of themselves and of their families. A second series of statements by Ministers declaring the values of individual interests were provided to the Prime Minister on a confidential basis (as had been the practice since 1976).

In October 1983 both Houses agreed to resolutions in substantially

similar form. The resolution adopted by the House of Representatives was as follows:

'That this House –

(1) notes that Ministers have provided statements of their private interests, and those of their families of which they are aware, and that copies of those returns have been presented to the Parliament as a matter of public record;

(2) is of the opinion that all Members should provide similar statements of their private interests, including those of their families of which they are aware, covering the following matters:
(Then followed a list of matters to be included)

(3) agrees that a public register of Members' statements of their private interests referred to in paragraph (2) should be established;

(4) agrees that Members should provide such statements on an annual basis and that amended statements should be provided if alterations in circumstances occur;

(5) agrees that notwithstanding the lodgement of statements by Members and their incorporation in a public register individual Members should declare any relevant interest if they participate in a debate in the House or vote in a division in the House, and

(6) requests the Standing Orders Committee to consider and report upon –

(a) what changes to the standing orders may be required to give effect to the matters contained in paragraphs (2) to (5) of this resolution, and

(b) the desirability of adopting other provisions relating to Senators and Members contained in the report of the Committee of Inquiry into Public Duty and Private Interest (except constitutional matters, but including, in particular, a Code of Conduct).'

The resolution adopted by the Senate proposed also that its 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. (House of Representatives standing orders already provide that no Member shall be entitled to vote in any division not being a matter of public policy, in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown).

The House of Representatives Standing Orders Committee reported to the House on 6 June 1984 in respect of some of these matters. Its recommendations were as follows:

(a) That it is inappropriate and undesirable to incorporate in the

standing orders requirements for declaration and registration of Members' Interests; instead, the Committee recommended the adoption of resolutions having continuing force.

(b) That a Committee of Members' Interests should be established by standing order to supervise the requirements for declaration and registration of Members' interests;

(c) That the proposed Committee of Members' Interests should be given limited powers of investigation similar to the United States House of Representatives Committee on Standards of Official Conduct;

(d) That the Registrar of Members' Interests should also be clerk to the Committee of Members' Interests;

(6) That a copy of the Register of Members' Interests should be tabled in the House by the chairman of the Committee of Members' Interests as soon as possible after the commencement of each Parliament and in each subsequent calendar year during the life of that Parliament and that any notification by a Member of alteration of interests should also be tabled;

(f) That Members should be required to declare any relevant interest as soon as practicable in proceedings not only if they participate in the proceedings of, or vote in a division in, the House but also in committee of the whole House or in a committee of the House (or of the House and the Senate);

(g) That the requirement to declare an interest should not apply to the directing of a question to a Minister seeking information; and

(h) That the House give further consideration to the requirement for the disclosure by Members of the interests of their families.

Attached to the Standing Orders Committee's report was a dissenting report signed by all Opposition Members of the committee in the following terms:

'While we recognise that on 5 October 1983 the House of Representatives expressed the opinion that "all Members should provide similar statements (to those provided by Ministers) of their private interests, including those of their families of which they are aware" and at the same time agreed that a public register of Members' statements of their private interests should be established, we disagree with that opinion and accept the conclusions of the Report of the Committee of Inquiry into Public Duty and Private Interest dated July 1979 that the advantages of compulsory registration of the private interests of Members are insufficient to outweigh the disadvantages.

There is an obvious need and justification for Ministers to declare their interests to the Prime Minister, but we see no similar need nor

justification for such a requirement in respect of Members who are not Ministers. In addition, we consider the requirement that Members should be obliged to declare the private interests of their families of which they are aware to be an indefensible invasion of the privacy of Members' families to which the strongest objection must be taken.

For these reasons, we dissent from the majority report of the Committee, the recommendations of which, if implemented, would introduce requirements to which we are opposed.'

The Standing Orders Committee's recommendations were considered by the Government and on 9 October 1984, after defeating amendments moved by the Opposition that the motions be withdrawn and re-submitted for consideration in the next Parliament, and a number of divisions, the House of Representatives adopted the following resolutions:

'That the following resolutions relating to the registration and declaration of Members' interests be adopted, such resolutions to have effect from the commencement of the 34th Parliament and to continue in force unless and until amended or repealed by the House of Representatives in this or a subsequent Parliament:

(1) *Declaration of Members' interests*

That within 28 days of making and subscribing an oath or affirmation as a Member of the House of Representatives and within 28 days after the commencement of the first period of sittings in each subsequent calendar year while remaining a Member of the House of Representatives, each Member shall provide to the Registrar of Members' Interests, a statement of –

(1) the Member's registrable interests, and

(2) the registrable interests of which the Member is aware (a) of the Member's spouse and (b) of any children who are wholly or mainly dependent on the Member for support,

in accordance with resolutions adopted by the House and in a form determined by the Committee of Members' Interests from time to time, and shall also notify any alteration of those interests to the Registrar within 28 days of that alteration occurring.

(2) *Registrable interests*

That the statement of Member's registrable interests to be provided by a Member shall include the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and shall cover the following matters:

(a) shareholdings in public and private companies (including

holding companies) indicating the name of the company or companies;

(b) family and business trusts and nominee companies –
  (i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
  (ii) in which the Member, the Member's spouse, or a child who is wholly or mainly dependent on the Member for support, is a trusteee, indicating the name of the trust, the nature of its operation and the beneficiary of the trust;

(c) real estate, including the location (suburb or area only) and the purpose for which it is owned;

(d) interests in companies to be determined by the Committee of Members' Interests;

(e) partnerships, indicating the nature of the interests, the activities of the partnership and the total amounts of its assets and liabilities;

(f) liabilities (excluding short-term credit arrangements) indicating the nature of the liability and the creditor concerned;

(g) the nature of any bonds, debentures and like investments;

(h) saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned;

(i) the nature of any other assets (including collections, but excluding household and personal effects) each valued at over $5000;

(j) the nature of any other substantial sources of income;

(k) gifts valued at more than $250 received from official sources, or at more than $100 where received from other than official sources;

(l) any sponsored travel or hospitality received, and

(m) any other interests, such as membership of organisations, where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

(3) *Register and Registrar of Members' Interests*
That –

(a) at the commencement of each Parliament, and at other times as necessary, Mr Speaker shall appoint an officer of the Department of the House of Representatives as the Registrar of Members' Interests and that officer shall also be clerk to the Committee of Members' Interests;

(b) the Registrar of Members' Interests shall, in accordance with procedures determined by the Committee of Members' Interests, maintain a Register of Members' Interests

in a form to be determined by that committee from time to time;

(c) as soon as possible after the commencement of each Parliament and in each subsequent calendar year during the life of that Parliament, the chairman of the Committee of Members' Interests shall table in the House a copy of the completed Register of Members' Interests and shall also table from time to time as required any notification by a Member of alteration of those interests, and

(d) the Register of Members' Interests shall be available for inspection by any person under conditions to be laid down by the Committee of Members' Interests from time to time.

(4) *Declaration of interest in debate and other proceedings*

That, notwithstanding the lodgement by a Member of a statement of the Member's registrable interests and the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and the incorporation of that statement in a Register of Members' Interests, a Member shall declare any relevant interest –

(a) at the beginning of his or her speech if the Member should participate in debate in the House, committee of the whole House, or a committee of the House (or of the House and the Senate), and

(b) as soon as practicable after a division is called for in the House, committee of the whole House, or a committee of the House (or of the House and the Senate) if the Member proposes to vote in that division, and

the declaration shall be recorded and indexed in the Votes and Proceedings or minutes of proceedings (as applicable) and in any Hansard report of those proceedings or that division:

Provided that it shall not be necessary for a Member to declare an interest when directing a question seeking information in accordance with standing order 142 or 143.'

The House also agreed to the adoption of a new standing order establishing a Committee of Members' Interests with the following terms of reference:

(i) to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests;

(ii) to consider any proposals made by Members and others as to the form and content of the register;

(iii) to consider any specific complaints made in relation to the registering or declaring of interests;

(iv) to consider what changes to any code of conduct adopted by the House are necessary or desirable;
(v) to consider what classes of person (if any) other than Members ought to be required to register and declare their interests, and
(vi) to make recommendations upon these and any other matters which are relevant.

The committee shall consist of 7 members (4 Government and 3 Opposition) and the standing order establishing the committee provides that –

> The committee shall have power to send for persons, papers and records but shall not exercise that power, nor undertake an investigation of the private interests of any person, unless approved by not less than 4 members of the committee other than the chairman.

The House of Representatives was dissolved on 26 October 1984 and the committee did not meet prior to the dissolution. However, the resolutions adopted by the House provided that the registration and declaration requirements are to have effect from the commencement of the next Parliament and that Members are to provide their statements within 28 days of making the oath or affirmation. With the new Parliament set to meet in February 1985, arrangements were undertaken to establish the necessary machinery so that registration of interests might occur.

The Senate Standing Orders Committee has not made any substantive report in response to the resolution of October 1983 and no requirement for the registration of Senators' interests has been adopted.

V. MEETINGS OF THE AUSTRALIAN SENATE AFTER THE DISSOLUTION OF THE LOWER HOUSE

BY HARRY EVANS

Clerk-Assistant (Procedure), Australian Senate

A question which, at regular intervals, has led to a great deal of disputation in Australia is whether the Senate may continue to meet after a dissolution of the lower House, or even after a prorogation of the Parliament.

This question arises because the Senate is a continuing House. Although the House of Representatives, like all lower houses in systems based on the British model, ceases to exist at the end of its term, either by dissolution or expiration, the Senate, like the United States Senate and some other chambers in non-British systems, is a continuing body which remains in existence during periods when the House of Representatives does not exist. In fact, the Senate remains permanently in existence except when it is dissolved in a simultaneous dissolution of both Houses of the Parliament to resolve deadlocks between the Houses under section 57 of the Constitution. Leaving aside double dissolutions, the seats of half of the Senators for the States become vacant every three years, and when the seats become vacant, on 1 July, Senators have been elected, in a 'half Senate election' which is usually held at the same time as a House of Representatives election, and those Senators immediately take the vacant seats.

The question of the Senate continuing to function in the absence of the House has been discussed in the context of three related sub-questions. They are:

(a) whether the Senate or its committees may meet in the period between a dissolution of the House of Representatives and the next meeting of both Houses;
(b) whether the Senate or its committees may meet in the period between a prorogation of the Parliament and the next meeting of both Houses; and
(c) whether the Senate may authorize the publication of documents when it is not sitting.

A dissolution of the House of Representatives is not preceded by a prorogation. Indeed, prorogation is extremely rare in Australia, and each three-year term of the House of Representatives usually contains only one session.

These matters were again the subject of considerable discussion and

debate at the end of 1984. There have been a number of opinions and papers dealing with the questions which have been presented to the Senate, and this article summarizes the arguments in them, refers to the events of 1984, and suggests some conclusions.

When it is said that the Senate and its committees may not meet during a period of time, what is really meant is that if they do meet during that period they may not validly exercise their powers, particularly the powers to summon witnesses and enforce orders by punishing contempts, and do not enjoy their privileges and immunities, particularly the immunity of their debates and proceedings from any civil or criminal action. It is unlikely that a court would issue an injunction restraining the Senate or a committee from meeting, but it might strike down a punishment for contempt, or entertain an action or prosecution in respect of debates or proceedings, where an order is held to have been made or a meeting is held to have taken place during the relevant period of time.

(a) *Meetings after a Dissolution*

It may seem to be unarguable that if the House of Representatives is dissolved, although this prevents the Parliament from legislating because one of its constituent parts is no longer in existence, this of itself does not affect the Senate or its committees, which may meet and transact their own business.

It has been seriously contended, however, by eminent authorities, that the mere dissolution of the House of Representatives prevents the Senate or its committees from meeting. This argument is to be found in the opinions of two Solicitors-General presented in 1972 and 1984. The basis of the argument is that a dissolution of the House is the equivalent of a prorogation, has the effect of terminating a session, and prevents both Houses from meeting.

It would seem to be axiomatic that, if the Senate may not meet during a period of time, then its committees may not meet during that period either, in that the Senate surely could not authorize its committees to do that which it may not do itself. The 1984 Solicitor-General's opinion, on the contrary, concludes that the Senate has the power to authorize its committees to meet after the dissolution of the House of Representatives or a prorogation. This is further discussed below.

An opinion of Professor Colin Howard, then Professor of Law at the University of Melbourne, was provided to the President of the Senate in 1973. This opinion is to the effect that the Senate and its committees may meet notwithstanding a dissolution of the House or a prorogation, on the basis that, under the Constitution, the Senate is a continuing House, and this constitutional provision necessarily involves a modification of the effect of the power of the Crown to dissolve the House

and to prorogue the Parliament.

The Government opinions refer to the fact that the proclamation which dissolves the House of Representatives contains a phrase discharging Senators from attendance, claiming that this is the equivalent of prorogation, or at least prevents the Senate from meeting. It is clear, however, that this wording has come about through a series of erroneous adaptations and modifications of the wording of the proclamation of dissolution which is used in Britain. The British practice is for the Parliament to be prorogued to a particular date, the House of Commons then to be dissolved, and the Lords discharged from attendance upon the date to which the Parliament was prorogued. Australian governments abandoned the practice of proroguing before dissolution, but retained the phrase discharging Senators from attendance. It is then sought to invest that otherwise meaningless phrase with a new meaning.

The Senate has now asserted that a dissolution of the House of Representatives alone does not prevent the Senate or its committees from meeting. On 22 October 1984 the Senate passed the following resolution:

> That the Senate declares that where the Senate, or a committee of the Senate which is empowered to do so, meets following a dissolution of the House of Representatives and prior to the next meeting of that House, the powers, privileges and immunities of the Senate, of its members and of its committees, as provided by section 49 of the Constitution, are in force in respect of such meeting and all proceedings thereof.

The question arose in the Senate because it was clear that the House would be dissolved before the Senate Select Committee on Allegations Concerning a Judge, which was inquiring into the conduct of Mr Justice Murphy of the High Court, had concluded its deliberations and presented its report, and it was the intention of the resolution to make clear the Senate's belief that the Committee could properly meet after the dissolution.

Of course, a resolution of the Senate cannot change the law, as the then Attorney-General pointed out in debate on the motion; the resolution simply declared the Senate's belief as to the correct interpretation of the law.

Following the dissolution of the House, the Select Committee met, concluded its deliberations and presented its report. A number of other committees held public meetings and took evidence after the dissolution. At one of those meetings, evidence was given by officers of the Attorney-General's Department. This may be interpreted as an indication that the claim that the Senate or its committees may not meet after the dissolution has been abandoned! In any event, no-one

took any action to challenge the right of any of the committees to meet.

(b) *Meetings after a Prorogation*

It is clear that, in Britain, the prorogation of the Parliament has the effect of preventing both Houses of the Parliament from meeting by bringing a session of the Parliament to an end. There is a strong case for saying that, in the context of the Australian Constitution, which provides for one of the Houses of the Parliament to be a continuing body, the effect of prorogation, which is not defined in the Constitution, is modified. This is the argument which is made with some force in the opinion of Professor Howard, who concludes that the Senate and its committees may meet notwithstanding any prorogation of the Parliament. He contends that prorogation must, in the Australian constitutional context, be regarded as having the effect of preventing the Parliament as a whole from transacting business, but not preventing the Senate from continuing with its own business.

The government opinions which have been referred to put the view that a prorogation quashes all parliamentary business and prevents either House from meeting to transact any business.

It is curious that the 1984 Solicitor-General's opinion is to the effect that the Senate may authorize its committees to meet after a prorogation. This conclusion is drawn because section 49 of the Constitution confers on the Australian Houses the power of the House of Commons at 1901, and there are some old precedents suggesting that the House of Commons assumed the power to authorize its committees to meet after a prorogation. The conclusion would appear seriously to undermine the contention that the Senate may not meet after prorogation. It has been pointed out that, if the opinion were correct, the Senate could avoid the consequences of a prorogation simply by sitting as a committee of the whole or by referring all of its outstanding business to a series of select committees.

(c) *Publication of Documents*

For a number of years the Senate has authorized its committees, if they finalize their reports at a time when the Senate is not sitting, to present those reports to the President, and in that event the publication of the reports is authorized so as to attract absolute privilege. The resolution which is regularly passed is now in the following form:

> That, if the Senate be not sitting when the Committee has completed its report, the Committee may present the report to the President, or, if the President is unable to act, to the Deputy President, and, in that event
> (a) the report shall be deemed to have been presented to the Senate,

(b) the publication of the report is authorized by this Resolution,
(c) the President or the Deputy President, as the case may be, may give directions for the printing and circulation of the report, and
(d) the President or the Deputy President, as the case may be, shall lay the report upon the Table at the next sitting of the Senate.

Towards the end of the sittings of 1984, concern was expressed that the report of the Royal Commission on the Federated Ship Painters and Dockers Union (the Costigan Commission), which was expected to be of great public interest, could not be published before the expected general election, because neither House of the Parliament would be sitting to authorize its publication with absolute privilege.

The Government sought partly to overcome this problem by means of a resolution, which was passed by the Senate, in the following terms:

> That the Senate authorises the President to provide a copy to all Senators of the Final Report of the Royal Commission of Inquiry into the Federated Ship Painters and Doctors Union in the form in which that Report is received by him from the Prime Minister.

It is clear that this resolution allowed the publication of the report by the President to members of the Senate but did nothing about the wider publication. It was suggested that publication with absolute immunity could be achieved in some jurisdictions by having publication authorized by the Victorian Parliament and the law of defamation in the Australian Capital Territory was changed to facilitate this process. This still left a situation whereby the publication of the report in some States, at least, would not be absolutely privileged.

The suggestion was made that the absolutely privileged publication of the report throughout Australia could be achieved by the Senate authorizing the publication of the report in the same terms with which it authorized the publication of the reports of its committees when the Senate was not sitting. The Senate therefore passed a resolution in the following terms, on the motion of the Deputy Leader of the Opposition in the Senate:

(1) That, in the event that the President receives the Final Report of the Royal Commission of Inquiry into the Federated Ship Painters and Dockers Union in accordance with the Resolution agreed to by the Senate on 11 October 1984:
  (a) the Report shall be deemed to have been presented to the Senate;
  (b) the publication of the Report is authorised by this Resolution;
  (c) the President may give directions for the printing and

circulation of the Report; and

(d) the President shall lay the Report on the Table at the next sitting of the Senate.

(2) That the foregoing provisions of this Resolution have effect notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives.

(3) That the foregoing provisions of this Resolution, insofar as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

While not opposing the motion, the Attorney-General, in a letter to the President and in debate in the Senate, argued that this resolution was not effective in giving absolute privilege to the document in question. This argument was based upon a literal reading of the Parliamentary Papers Act, which provides for absolute immunity for publication of a document 'laid before' either House, the Attorney-General's contention being that this means that the Senate cannot authorize the publication of a document until that document has been laid before it.

There are very strong arguments to the contrary. These arguments were set out in a paper prepared for the Select Committee o Allegations Concerning a Judge, which was presented to the Senate b that committee. The arguments may be summarized as follows:

(a) it is an unduly literal reading of the Parliamentary Papers Act to confine it to documents laid before either House in the past;

(b) the Act explicitly allows either House to make rules or orders such that a document is deemed to have been laid before it; and

(c) the absolute privilege of documents published by authority of either House does not depend upon the Parliamentary Papers Act, but is one of the undoubted privileges which adheres to the Australian Houses by virtue of section 49 of the Constitution, being a privilege which was possessed by the House of Commons at 1901.

The last argument may appear to be somewhat curious: if the Australian Houses already possessed the ability to publish documents with absolute privilege, why did they bother to pass the Parliamentary Papers Act at all? The answer to this question is to be found in the debates of 1908 when the Bill for the Act was introduced. It is made clear in the debates that the main reason for the introduction of the Bill was to provide for matters of procedure involved in the publication of documents by order of the Australian Houses, particularly the designation of the Government Printer as the printing authority. The British Parliamentary Papers Act of 1840 provides for absolute privilege for publication of documents on the order of either House of

the Parliament. This provision is not limited to documents which have first been laid before either House, though, naturally, most documents the publication of which is authorized are first laid before the Houses. There can be little doubt that the provision adhers to publication by the authority of the Australian Houses by virtue of section 49. The Australian Parliamentary Papers Act simply provided the procedures for publication and, at the same time, removed any doubt which there may have been about the matter.

It was noted that the British House of Commons has provided, in its Standing Order No. 95, for the publication of the reports of its committees prior to their presentation to the House.

The reports of the Select Committee on Allegations Concerning a Judge and of the Costigan Commission were duly published pursuant to the resolution of the Senate, and no-one has taken any action to call into question the absolute privilege of those publications.

Conclusion

Two lessons may be drawn from events in relation to these matters. The first is that a House like the Senate needs access to independent legal advice. The opinions of government lawyers, by coincidence, always favour the government view, which is not usually favourable to the exercise of wide powers by an independent House. If government opinions were accepted, the Senate would be restrained in pursuing a course of action upon which it had determined. The Senate has taken some steps towards securing independent advice, by appointing its own consultant draftsmen and seeking written opinions on particular matters.

The second lesson is that if a House asserts a power, nine times out of ten that power will successfully be exercised. That, after all, is how Parliament came to gain most of its powers in the past.

VI. THE POWER TO EXPEL

BY GWENN RONYK

Deputy Clerk, Legislative Assembly of Saskatchewan

On 28 November 1984, the final day of the session, a Member of the Saskatchewan Legislative Assembly and former Minister of the Crown was expelled from membership in the Assembly. The expulsion was carried out by the passage of an amendment to *The Legislative Assembly Act* followed by a resolution based on the amended Act. The reason for the expulsion was that the Member in question, Mr W. Colin Thatcher, the Member for the constituency of Thunder Creek, had been convicted of first degree murder and sentenced to life imprisonment.

The weeks preceding the expulsion saw the Clerks-at-the-Table involved in many hours of research regarding the power of the Saskatchewan Legislative Assembly to expel a Member and the procedures to be followed. This research culminated in the somewhat disconcerting conclusion that the existing power of the Saskatchewan Legislative Assembly to expel a Member was not as broad as the power held by the United Kingdom Parliament and other parliaments which had adopted by statute the same privileges as the Westminster Parliament.

The Saskatchewan Legislative Assembly has legislated many specific powers and privileges including the right to expel for specific violations of *The Legislative Assembly Act* such as bribery and contempt of the House. However, the Act did not contain any provisions respecting the status of a Member who had been convicted and imprisoned for a criminal offence. With no statutory authority to expel a Member under this particular circumstance, the Legislative Assembly was left in the position of relying on the Assembly's general privilege powers to expel the Member. Our research indicated that there were grounds to doubt whether our Legislature had sufficient powers under 'privilege' to expel the Member by resolution for matters that did not relate to his role as a member. The following section details the steps leading to this conclusion.

The Traditional Right to Expel

The right of the House of Commons of the United Kingdom and of Canada to expel a Member for any reason is absolutely clear and undoubted. The right to expel is regarded as part of the right of the House to provide for its proper constitution and its right to regulate its own internal affairs.[1] British and Canadian parliamentary authorities

not only declare the existence of the power to expel but also explain why it is so important. May states that:

> Such powers are essential to the authority of every legislature. The functions, privileges, and disciplinary powers of a legislative body are thus closely connected. The privileges are the necessary complement of the functions, and the disciplinary powers of the privileges.[2]

Bourinot similarly states that:

> The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgement is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body. Yet expulsion, though it vacates the seat of a Member, does not create any disability to serve again in parliament.[3]

Beauchesne also declares as follows:

> There is no question that the House has the right to expel a Member for such reasons as it deems fit. Such expulsion does not affect the right of a Member to run again and be re-elected.[4]

While it is clear that parliamentary privilege in the United Kingdom covers the expulsion of a Member, the Saskatchewan Legislative Assembly does not automatically share those same powers. The law of parliamentary privilege in the United Kingdom (partly based on the law and custom of parliament and partly defined by statute) has never been transferrable to the colonies or to independent members of the Commonwealth except by statute.[5]

The right of the Canadian Parliament to establish its privileges (at a level no greater than the United Kingdom House of Commons in 1867) was guaranteed by the *Constitution Act 1867* (formerly the *British North America Act, 1867*).[6] In 1868, the Parliament of Canada did legislate its privileges, laying claim to all of the privileges of the United Kingdom House of Commons without specifying their exact extent.[7]

The Saskatchewan Assembly also has the right to legislate its privileges. This was provided for in section 92 (1) of the *British North America Act* (now s.45 of the Constitution Act, 1982) which provides that provincial legislatures may exclusively make laws to amend their constitutions. The powers, privileges and procedures of the Legislative Assembly are classed as part of the constitution of a province.[8] Accordingly, the Saskatchewan Legislative Assembly has the authority to legislate the same privileges as the House of Commons of Canada or the United Kingdom. The Assembly has indeed legislated many specific privileges. Sections of the Legislative Assembly Act grant specific powers and privileges necessary for a legislature to function

and to protect its authority and dignity. The Saskatchewan Assembly may expel a Member for contempt of the House, for bribery and for certain instances of conflict of interest under the Conflict of Interests Act.[9] But nowhere did *The Legislative Assembly Act* lay claim to all the unspecified privileges exercisable by the Canadian or British parliaments. Thus the traditional right to expel under the powers of privilege was not transferred to the Saskatchewan Legislative Assembly.

The Common Law

Lacking specific statutory authority to expel in these circumstances and lacking the transfer by statute of broader privilege powers, the Legislative Assembly was left in the position of relying on the common law privileges of a legislative body. *The Saskatchewan Legislative Assembly Act* contains a 'saving clause' the effect of which is to permit reliance on the common law respecting privilege as follows:[10]

> Except as may be otherwise expressly provided in the Act, this Act shall not be construed so as to deprive the Assembly or a committee, or a Member of the Assembly of any rights, immunities, privileges or powers that the Assembly, committee or Member might, but for this Act, have been entitled to exercise or enjoy. 1979, c. L-11.1, s.30.

Under the common law only such powers are inherent in a legislative assembly as are necessary to its existence and the proper exercise of its functions.[11] Wider power must depend upon express grant by statute.

The extent of privilege in the common law is of course defined by legal precedent. It has been consistently held that the grounds of necessity justify the same privileges as held by the United Kingdom House of Commons with one major exception – the right to impose punitive sanctions, i.e., the right to commit for contempt, punish for breach of privilege and including the right to expel.[12] Thus, a legislative assembly which must rely on the common law for certain of its powers may not have the right to punish by expulsion.

However, in a recent case, Armstrong vs. Budd,[13] the Supreme Court of New South Wales, Australia, decided that the principle of self-protection supports the exercise of a limited power of expulsion. The New South Wales Legislature holds privileges based on the self-protective principle much the same as Saskatchewan does for any powers beyond the specific privileges that have been legislated. The Legislative Council of New South Wales had expelled Armstrong by resolution for conduct unworthy of a Member, even though the misconduct occurred outside the House and outside the course of the Member's performance of his parliamentary duties. The Supreme Court held that the resolution was valid based on the requirements of

institutional self-defence. The court accepted as legitimate grounds for expulsion conduct by members rendering them unfit to perform their high responsibilities and functions, and conduct as would tend to bring the Council into disrepute and would lower its dignity and authority.[14]

Following the common law principle of necessity, the Saskatchewan Legislative Assembly could probably have expelled the Member by resolution since imprisonment had made it impossible for the Member to sit and vote and carry out legislative functions. The action would not have been punitive but rather, as May says, 'remedial' with the purpose of ridding the House of persons who are unfit for membership.[15] Nevertheless there was concern that to expel by resolution was subject to two weaknesses: (1) the validity of the resolution rested on the action being interpreted as non-punitive, and (2) uncertainty stemming from the lack of statutory authority for expulsion when many other privilege powers were authorized in our Act.

Expulsion under the Criminal Code of Canada

Before a conclusion could be reached regarding the appropriate way to expel, another factor had to be considered. Some observers argued that the Saskatchewan Assembly did not have to do anything because the expulsion of the Member in question was automatic based on the provisions of the Criminal Code of Canada, a federal statute. The relevant sections of that Act read as follows:

> 682. (1) Where a person is convicted of an indictable offence for which he is sentenced to imprisonment for a term exceeding five years and holds, at the time he is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant. 1974–75–76, c.105, s.22.
>
> (2) A person to whom subsection (1) applies is, until he undergoes the punishment imposed upon him or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of the Parliament of Canada or of a legislature or of exercising any right of suffrage.
>
> . . .
>
> (4) Where a conviction is set aside by competent authority any disability imposed by this section is removed. 1953–54, c.51, s.654.

There were several problems with the application of this Act to the Saskatchewan Legislature. One was a constitutional issue. While it has not been tested, it may be *ultra vires* of the authority of the federal Parliament to legislate with respect to such matters pertaining to provincial legislatures.[16] This constitutional argument may be elimin-

ated by a broad interpretation of subsection 12(1) of the Legislative Assembly Act which states that 'No person who is declared by this Act or by any other law to be ineligible as a Member shall sit or vote in the Assembly while he is so ineligible.' The reference to 'any other law' could be interpreted to include the Criminal Code thus making it applicable to the Saskatchewan Legislature.

The other problems with the applicability of the Criminal Code are less easy to dismiss. Because of the particular wording of s.682 of the Criminal Code, it probably does not apply to a person who is convicted while he is a Member. In order for the penalty under subsection 682(2) to apply, the provisions of subsection (1) would have to be met, i.e., the status of a Member of parliament or of a legislature would have to be considered to be 'an office under the Crown or other public employment.' There is considerable support in case law for the contention that neither of the above definitions apply to a Member of a Legislature or Parliament.[17] Even if the wording problem with s.682 is ignored, there are still several difficulties to be encountered in making it operative. The section alone may not automatically vacate the Member's seat. It refers in subsection 2 to the Member's right to 'sit and vote' and thus is more in the nature of a suspension than an expulsion. This view is supported by subsection (4) which provides that the disability is removed should the Member's conviction be set aside. Also the precedents of the Canadian House of Commons show that even where the Criminal Code applies, a formal resolution of the House is still required to unseat the Member.[18] Therefore, even if it was determined that the Criminal Code provisions did apply to the Saskatchewan House, a resolution would have to be passed to effect the expulsion.

The Charter of Rights

Another factor considered to determine whether expulsion should be by resolution or by legislation was the potential application of the Canadian Charter of Rights and Freedoms. The following two sections of the new Canadian constitution were considered:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

A very broad interpretation of these sections could form the basis for a court challenge of the validity of an expulsion by resolution. To have statutory authority for a disqualification would likely weaken the

grounds for a case based on the Charter of Rights.

Expulsion by Legislation

Considering the strengths and weaknesses of expulsion by resolution as compared to expulsion by legislation, it became clear that the preferable method was to provide statutory authority for expulsion. The concerns about validity which arose with respect to expulsion by resolution clearly do not apply to legislated provisions. As detailed above, the Saskatchewan Legislative Assembly has the authority granted by the Constitution Act to legislate on such matters.

Precedents from other jurisdictions indicate that where imprisonment renders a Member incapable of carrying out his legislative functions, expulsion is justifiable.[19] The usual form of legislation respecting the status of imprisoned Members is to make such conviction and imprisonment a standing disqualification from being a Member.[20] It is interesting to note that even the United Kingdom House of Commons which holds all the powers possible for a legislature to exercise under the head of privilege, has chosen since 1870 to impose a statutory disqualification on Members convicted of an offence and imprisoned.[21]

One advantage of legislation was that it could be framed so as to suspend the Member after the initial conviction but to withhold the final penalty of vacating the seat until the conviction was upheld and all avenues of appeal exhausted.[22] An amendment to the Act could also make the Member ineligible to receive statutory indemnities and allowances while he is incapable of sitting or voting, i.e., while suspended.

A disadvantage to dealing with this matter by legislation was the possibility that it might inhibit the flexibility of the Assembly in dealing with future situations. To ensure that the traditional powers of a Legislature to expel were maintained, it was recommended that a disqualification amendment should contain a saving clause similar to that contained in the Ontario and Alberta Legislative Assembly Acts.[23] This could take the form of a 'notwithstanding' clause at the beginning of the section or a separate subsection providing that 'this section is not to be construed as affecting the right of the Assembly to expel a Member according to the practice of Parliament or otherwise.' Such a clause would give the Legislative Assembly the same powers and privileges as the Canadian and United Kingdom House of Commons with respect to expulsion and would thus clarify the authority of the Saskatchewan Legislative Assembly in the broad area of expulsion.

Another matter to be considered with respect to passing legislation to disqualify a convicted Member is whether, by passing legislation, the Assembly would be submitting one of its privileges to potential judicial

review. The argument has been made that the inherent expulsion powers of a parliament involve the internal proceedings of the House and therefore are not subject to review by the Courts.[24] This is probably not well-founded. The expulsion of a Member affects not only rights exercisable in the House but also certain rights exercisable outside the House such as the right to a parliamentary salary.[25] When proceedings of the House affect the rights of persons which are exercisable outside the House, the Courts have jurisdiction.[26] Whether expulsion was accomplished by resolution or by legislation, the Courts would probably consider themselves competent to decide the limits of the expulsion power, or at least to determine whether there is a recognizable cause of action in a case relating to parliamentary privilege.[27]

The Saskatchewan Case

The particular circumstances of the expulsion case in Saskatchewan were such that there was a distinct possibility that the actions of the Legislature in effecting the expulsion would be challenged in a court of law. Thus it was important for the action of the House to be based on the firmest grounds possible. The action finally taken by the House to expel the Member was a unique combination of legislation followed by a resolution.

The legislation took the form of an amendment to *The Legislative Assembly Act* which provided that where a Member was convicted of an indictable offence and sentenced to a term of imprisonment of two years or more, the Legislature may, by resolution, suspend or expel the Member.[28] The amendment also made a suspended Member ineligible to receive any indemnity or allowances while suspended. A further amendment was included to confirm the broad powers of the Legislature to expel 'according to the practice of Parliament or otherwise.'[29]

It is important to note that the amendment does not make suspension or expulsion automatic in certain circumstances but instead the Legislative Assembly must take the final decision in each case by resolution. This preserves the right of the Legislative Assembly to use its discretion to make decisions to suit particular circumstances. The element of discretion also allows the Assembly to suspend or expel a Member prior to the completion of appeal proceedings, if the Assembly sees fit.

In the case before the Saskatchewan Assembly, the Member's seat was declared vacant by resolution immediately following the passage of the bill. Of more significance than the outcome of this particular case was the insight it gave into the current status of the powers of the Saskatchewan Legislative Assembly. Where a legislature has not adopted, by statute, the powers and privileges of the United Kingdom

Parliament, it can only rely on specific powers legislated as part of its constitution and on the common law. As it is difficult to legislate for all possible circumstances, it is likely that Houses which do not possess the broad undefined privilege powers of Westminster will occasionally find themselves in a position of doubtful authority to deal with certain matters. It is expected that a general revision of The Legislative Assembly Act currently underway will transfer full privilege powers to the Legislative Assembly of Saskatchewan.

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1. May, *Parliamentary Practice* (London, 1983), 20th edition, p.139; Maingot, Joseph, *Parliamentary Privilege in Canada* (Toronto, 1982), pp.157–162.
2. May, p.71
3. *Bourinot's Parliamentary Procedure* (Toronto, 1916), 4th edition, p.64.
4. Beauchesne, *Parliamentary Rules and Forms* (Toronto, 1978), 5th edition, para. 37.
5. May, p.71; Beauchesne, p.12; Maingot, p.3.
6. *Constitution Act*, 1867, s.18.
7. *Senate and House of Commons Act*, R.S. C. 1970, c. S–8, s.4.
8. Fielding vs. Thomas (1896), A.C. 600 (N.S.); Maingot, p.4.
9. The Legislative Assembly of Saskatchewan has exercised its right to expel a Member for violations of the Legislative Assembly Act. In 1917, C. H. Cawthorpe, the Member for Biggar, was found by a Royal Commission to have accepted a bribe to influence him in his conduct concerning a matter under consideration by the House. Without waiting for a court judgement on the matter, the Assembly by resolution declared that the Member be expelled and his seat vacated. (Journals of Saskatchewan, 1917, p.47.)
10. Reference re: Legislative Privilege (1978), 83 D.L.R. (3d) 161 (Ont. C.A.); Maingot, p.31.
11. May, p.71; Maingot, pp.174–175, see Kielly vs Carson (1842), 4 Moo. P.C.C. 63, 13 E.R. 225 (P.C.) p.88, a leading case followed repeatedly in subsequent cases for the following dissertation of the common law respecting Legislatures:

    Their lordships see no reason to think, that in the principle of the Common Law, any powers are given them (a provincial legislature), than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute.
12. May, p.71; Maingot, p.175, Campbell, Enid. 'Expulsion of Members of Parliament' (1971: *University of Toronto Law Journal*) p.24.
13. Armstrong vs. Budd (1969), 1 N.S.W.R. 649, cited in Campbell, p.15.
14. Campbell, p.25.
15. May, p.139.
16. Mackintosh, Gordon, 'The Right of Legislatures to Expel Members: A Manitoba Case Study', *Canadian Parliamentary Review*, Vol. 4, No. 4, 1981–82, p.22; and Maingot, p.161 which cites in Note 46 Tremeear's Annotated Criminal Code, 6th edition, 1964, p.1218 as follows: 'It is doubtful whether or not this section would be considered ancillary to the power to legislate upon criminal law. It undoubtedly trenches upon property and civil rights, and its validity is at least open to question, as far as it concerns the Crown in right of a province.'.
17. Maingot, p.160, Mackintosh, p.22.
18. Maingot, p.160.
19. May, p.140; Beauchesne, p.16; Campbell, pp.15–43; and the 1980-81 Wilson case in Manitoba.
20. Statutes of Manitoba, 1980–81, c.2, S.2; Statutes of Quebec, 1982, c.62, s.17; Statutes of the United Kingdom, 'Representation of the People Act 1981', c.34, s.1–2.
21. May, p.43.
22. Statutes of Manitoba, 1980–81, c.2, s.2.
23. Revised Statutes of Ontario, 1980, c.235, s.12; Revised Statutes of Alberta, 1980, C. L–10, s.13.
24. Mackintosh, p.23; Mitchell, David, 'The Convict as MLA: An Inquiry into the Law of Legislative Expulsion' (December 1981), p.12.
25. Only two allowances (the per diem allowance and the sessional allowance) payable to Saskatchewan MLA's depend on attendance at the session or a committee. Also see Campbell, p.35.
26. Maingot, p.255.
27. Campbell, pp.33–43, Maingot, pp.255–257.
28. Statutes of Saskatchewan, 1983–84, c.65.
29. Ibid., s.3.

VII. THE JOINT SELECT COMMITTEE ON PARLIAMENTARY PRIVILEGE (COMMONWEALTH OF AUSTRALIA)

BY B. C. WRIGHT

Clerk Assistant (Administration), Australian House of Representatives' Secretariat to the Joint Select Committee on Parliamentary Privilege

Appointment of committee

The committee was first appointed in April 1982 when the Senate concurred in a House of Representatives resolution –

> 'That a joint select committee be appointed to review, and report whether any changes are desirable in respect of:
> (a) the law and practice of parliamentary privilege as they affect the Senate and the House of Representatives, and the Members and the committees of each House,
> (b) the procedures by which cases of alleged breaches of parliamentary privilege may be raised, investigated and determined, and
> (c) the penalties that may be imposed for breach of parliamentary privilege . . .'.

The committee consisted of 5 Senators and 5 Members, and, at its first meeting, Mr J. M. Spender, QC, MP, then a Government backbencher was elected chairman, with Senator G. J. Evans, then an Opposition frontbencher, elected deputy chairman.

Background to the inquiry

The appointment of such a committee had been recommended, with minor variations, three times by the House's Committee of Privileges in reports dealing with particular references – each reference, it is interesting to note, concerning in some way the media and Parliament.

The Houses of the Commonwealth Parliament, their committees and members, by virtue of section 49 of the Constitution, possess such powers, privileges and immunities as are declared by the Parliament, but until declared, they possess those powers, privileges and immunities of the United Kingdom House of Commons, its Members and committees as at the establishment of the Commonwealth (1901). Except in comparatively minor matters, no declarations have been made. There had been, prior to the establishment of the inquiry, some feelings that the present arrangements were inadequate. These criticisms, as may be expected, tended to be made in the context of

reference, or prospective reference, of matters to Committees of Privilege.

Attention was usually focused on the law of contempt, and on features of the conduct of inquiries, such as the lack of any recognised right to legal representation for persons appearing before Privileges Committees and not on the actual 'content' of the various rights and immunities as such. In short, it may be said that there was a strong feeling that there was a real need for a comprehensive review of both law and practice.

Conduct of the inquiry

The committee accepted the challenge implicit in its terms of reference and determined on an inquiry encompassing –

—a review of practice in the Commonwealth Parliament;
—a review of the law and practice in a very wide range of other legislatures, both Westminster style and other, and
—invitations to Members, the media, academics and the public generally to make submissions to the committee.

A great deal of very useful information was obtained from Clerks of other Parliaments, both in Australia and overseas, for which the committee expressed its gratitude.

Major questions before the committee included –

—what special rights and immunities did each House, its committees and Members require in order to perform their functions.
—what was the proper balance between the special requirements of Parliament and the rights of the community itself;
—should the responsibility for dealing with those in possible contempt be transferred, in whole or in part, to the courts or some other external authority;
—was there a need to adopt a detailed definition of proceedings in Parliament, and, if so, what should be encompassed and thus become absolutely privileged (e.g. letters from Members to Ministers);
—should there be a definition or specification of actions that may be held to constitute contempt; if so, should the Parliament enact a statute to make contempts statutory offences;
—should the traditional offence of speeches or writings reflecting on a House or its Members be retained, and, if so, should defences be specified;
—should the practice of complaints of breach of privilege or contempt needing to be raised in the House publicly continue:
—what practices should be followed by Privileges Committees (should they continue) e.g.
  – should hearings be in camera (as had been the practice);

– should witnesses be given a right to legal representation or assistance;

—what, if anything, could or should be done about the perceived problem of misuse of the privilege of freedom of speech, e.g. Members reflecting on outside persons, sometimes with apparently minimal evidence;

—what penalties are appropriate (there is no doubt that each House has the power to imprison and to reprimand, but considerable doubt as to whether they enjoy the power to fine, bearing in mind that the powers of the Houses in these matters are those of the United Kingdom House of Commons as at 1901); and

—should there be any right of review of decisions of a House in these matters.

The committee received 31 submissions, addressing all the above questions, and several days of public hearings were held. Typical of witnesses opposing major changes was the Clerk of the Senate:

'. . . we are saying . . . that from the experience of being within the Parliament and with some concept of the Parliament looking afte its own affairs, we think that the present situation, with som significant variations of procedures and so on, can adequately dea with the situation'.

Professor G. S. Reid (a former officer of the House of Representatives and now Governor of Western Australia) stated:

'By and large the records of our elected Parliament in the exercise of its powers, privileges and immunities over eighty-two years deserve more than public denigration. Its record is worthy of acclaim, as well as criticism; that acclaim, however, should not give rise to self satisfaction or complacency. Considerable room remains for improvement; there is much to be done.'

On the other hand, Mr J. A. Pettifer, a former Clerk of the House of Representatives quoted with approval the views of Professor Enid Campbell:

'The law is unnecessarily uncertain and gives neither Members of Parliament nor the public adequate guidance on what their rights and duties are. Uncertainty exists not only because the law is inaccessible, but because parliamentary precedents are ambiguous and because the contempt power in some jurisdictions enables new offences to be created'.

Mr Ranald MacDonald, then Managing Director of David Syme & Co., a major media firm, stated:

'(My) submission argues that the mechanisms for protecting the

integrity of Parliament are no longer appropriate. Indeed, it may be argued that the confusion surrounding application of parliamentary privilege, both in the public mind and among some media professionals, and the anachronistic methods of dealing with breaches may do more to damage the reputation of the Parliament than uphold it.'

Submissions from the Australian Press Council, and the Australian Journalists Association argued for major changes, including the adoption of comprehensive statutes and transfer of the penal jurisdiction from Parliament to the courts. The major issues were well ventilated in oral evidence.

The hearings attracted some media attention, and saw repeated discussions of matters such as the transfer of the penal jurisdiction, the effectively unfettered power of the Houses to find that matters constituted contempt, the position of those criticising Parliament, and on misuse of privilege.

The committee was unable to complete its inquiry prior to the dissolution of the 32nd Parliament, and was reappointed with virtually identical terms of reference in the new Parliament. An unusual feature was that, although there had been a change of government, the previous chairman, Mr Spender, by then an Opposition frontbencher, remained chairman. Senator Evans remained deputy chairman, although he had become Attorney-General in the new Government.

Exposure report

After a series of deliberative meetings the committee resolved to present an exposure report outlining its preliminary findings. On 7 June 1984 the exposure report was presented, and comments invited from witnesses who had given evidence and from Senators and Members. A number of detailed responses were received, and these were most helpful to the committee.

Recommendations

The committee's final report was presented on 3 October 1984. Principal recommendations included:

Penal jurisdiction

—That the penal jurisdiction be retained in Parliament. After careful consideration the committee concluded that the arguments in favour or retaining the exercise of the penal jurisdiction within Parliament outweighed the considerations for transfer;

—That the penal jurisdiction should be exercised as sparingly as possible and only when necessary to prevent substantial interference with the work of the Parliament, i.e. it should never be exercised in connection with complaints of a trivial character;

—That there be no substantive change in the law concerning contempt, but that the Houses should adopt a set of guidelines which would indicate those matters which may be regarded as contempts. This action would serve to advise the community of Parliament's thinking but would not result in Parliament losing its capacity to take action concerning matters which may not fall under any particular heading;

—That the capacity for Parliament to take action against a person fo what is known as a defamatory contempt should be abolished, c failing that, defences, including that of truth, or an honest o reasonable belief in the truth of the statement, should be available.

Treatment of complaints

—That complaints should be raised by Members in writing with the Presiding Officer, instead of the present requirement that matters be raised in the House itself and at the first available opportunity. Under the proposal the Presiding Officer would announce a decision in his House if a matter was to be accorded precedence (such changes have of course been adopted in the U.K. House of Commons, in New Zealand and in the Legislative Assembly of Victoria);

—That hearings of the privileges committees, and the rights of parties involved in inquiries, should be reconstituted to meet requirements of natural justice, in particular, that there should be a right to full legal representation;

—That the Houses should, by statute, be given the powers to commit to prison for a period not exceeding 6 months and to impose fines;

—That, where it is proposed that a penalty be imposed, 7 days notice be required;

—That the power to expel Members be abolished (again a most significant recommendation);

—That, where a person is committed, the resolution and the warrant should each state the grounds of the commitment, thus permitting a very limited involvement by the High Court which would ascertain whether there was, in fact, such a ground. The High Court would not, however, have any power to make an order on the matter, it would simply make a finding, and whether or not this was accepted would be for the House to decide. This recommendation, it will be at once recognised, is most significant, raising, as it does, quite fundamental questions.

Proceedings in Parliament

—That Parliament should adopt an expanded and statutory definition of proceedings in Parliament, which would not, however, provide that letters from Members to Ministers would enjoy absolute privilege;

—That there be a limited right of reply to non-members who believe that they have been subjected to unfair or groundless attack in Parliament. The proposal is that such persons could refer complaints to the privileges committee of the relevant House. There would be certain ground rules – for example, that the complaints should be confined to a factual answer, and not contain an attack on the Member involved. The committee would be able to examine the complaint and recommend, for instance, that the rebuttal be incorporated in some form in the parliamentary record. This again is most significant. The committee's report records that it does acknowledge the difficulties with the suggestion but that it believes that Parliament should take some action, without curtailing Members' freedom of speech, which would confer some right of reply on those citizens who feel they have been subject to unfair or groundless attack in Parliament;

—That the laws of qualified privilege as they apply to reports of proceedings of the Parliament be modified to produce uniformity throughout Australia in the publication of fair and accurate reports of proceedings (in Australia, because of the terms of our Federation, the laws of defamation are State and Territory responsibilities, and, at this time, there are differing provisions);

—That the practice of requiring leave of the House to be granted for reference to be made to parliamentary records (usually Hansard) in court proceedings be abandoned and that, for the limited purpose only of enabling it to be proved as a fact that certain statements had been made, permission be given for reference to be made without leave of the House, without in any way permitting Article 9 of the Bill of Rights to be infringed.

Parliamentary committees

—That Parliament enact a Witnesses Protection Act, which would make it a statutory offence to threaten, punish or injure, or attempt to do so, a person on account of evidence given or to be given before a parliamentary committee. Witnesses would also be given a right to initiate civil proceedings for damages;

—That a detailed series of guidelines for the conduct of ordinary committee (i.e. non-privilege) inquiries be adopted.

There were a number of other recommendations relating to such matters as the delineation of the Parliament's precincts and the duration of the immunity from civil arrest, which is currently virtually continuous and which the committee proposed should be reduced to sitting days of a House or committee and 5 days before and after such days.

At the date of preparation of this article, no indication of the Government's views on the report had been given.

VIII. THE CEREMONY OF INTRODUCTION IN THE HOUSE OF LORDS

BY MISS F. P. TUDOR

A Clerk in the House of Lords

The ceremony used for the introduction of newly-created Peers into the House of Lords dates from 1621. It incorporates elements from two older ceremonies, the investiture of Peers by the Sovereign on first creation and the placing of a Peer, whether on creation or succession, in his seat in Parliament by Garter King of Arms. The office of Garter King of Arms was instituted by the King in 1415. Since at least the early sixteenth century he has had responsibilities for the precedence and the seating of Peers.

The Queen, on the advice of the Prime Minister, creates a peerage by Letters Patent under the Great Seal. The text of the Letters Patent includes the granting of the right of 'a seat, place and voice' in Parliament to the newly-created Peer. Letters Patent are prepared and sealed by the direction of the Lord Chancellor in the Office of the Clerk of the Crown in Chancery. They are prepared on vellum with an illuminated initial letter, and sealed with the Great Seal.

The ceremony is as follows. A procession in single file forms up outside the Chamber, led by two Officers of the Order of the Garter, the Gentleman Usher of the Black Rod, with his Black Rod in his right hand, and Garter King of Arms wearing his tabard with his silver gilt rod or sceptre of office in his right hand and a vellum scroll representing the new Peer's Patent of creation in his left. The ceremonial provides for two hereditary Great Officers of State, the Earl Marshal who carries his Baton and the Lord Great Chamberlain who carries his White Staff to come next but, over recent years, it has become unusual for them to take part. In any event, there then follows the new Peer with two Peers of his own rank as supporters or sponsors, the junior in front and the senior behind him. The new Peer and his supporters carry cocked hats in their left hands and wear their parliamentary robes. Women Peers wear a tricorne hat with a gold cockade on the left side. The new Peer carries his Writ of Summons in his right hand. The Writ of Summons, issued under the Great Seal, is the document summoning a Peer to Parliament, without which a Peer may not take his seat. Writs of Summons are issued by direction of the Lord Chancellor from the Office of the Clerk of the Crown in Chancery.

On reaching the Bar of the House each member of the procession

bows to the Cloth of Estate which marks the position which the Sovereign, if present, would occupy. The procession then passes up the Temporal side of the House, and the bows are repeated at the Table and again at the Judges' Woolsacks. At the Woolsack the new Peer kneels and presents his Writ to the Lord Chancellor, who is *ex officio* Speaker of the House of Lords, while Garter presents his Patent. All then return to the Table, where the Reading Clerk reads the Patent and Writ. (Reading Clerks have been appointed since 1660. Their function is to read aloud in the House all Royal Commissions and Patents and Writs of Summons of newly-created Peers.) The new Peer then takes the oath of allegiance or makes a solemn affirmation and signs the Test Roll. The Test Roll is the document which members of the House sign after they have taken the oath of allegiance or made the affirmation at the Table of the House. The present sequence of Test Rolls dates from 1675. A fresh vellum Roll is started for each Parliament, and a complete Roll may extend to 120 feet. The first membrane begins with the texts of the oath and the affirmation followed by the signatures.

The form of the oath is as follows:

> 'I' (giving name and title) 'do swear by Almighty God that I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth, Her Heirs and Successors, according to Law. So help me God'.

Lords who conscientiously object to the taking of an oath may affirm thus:

> 'I' (giving name and title) 'do solemnly, sincerely, and truly declare and affirm that I will be faithful and bear true Allegiance to Her Majesty, Queen Elizabeth, Her Heirs and Successors, according to Law'.

The procession then moves on and each member of it, as he crosses the Chamber, turns and bows to the Cloth of Estate.

Garter now conducts the new Peer and his supporters to the bench appropriate to their degree, where at Garter's direction they sit, put on their hats, rise, and bow to the Chancellor three times, which the Chancellor, seated on the Woolsack, acknowledges; (women Peers to not remove their hats). The procession then once more passes up the Temporal side of the House, each member of it bowing at the appointed places as before. The Lord Chancellor shakes hands with the new Peer from the Woolsack and the procession leaves the Chamber.

The ceremony of introduction of an Archbishop, or Bishop, is broadly the same as for temporal Peers except that Lords Spiritual are not preceded by Garter, Black Rod, or the officers of State, and have no Patent to present. The new Bishop and his supporters wear their

episcopal robes of white rochet with black bands, black chimere and scarf. The new Bishop takes his seat on the Spiritual side of the House, the Archbishops and the Bishops of London, Durham and Winchester take their seats on the front bench nearest the Woolsack; other Bishops on the backbench.

IX. AUSTRALIA: SENATE SELECT COMMITTEES ON A JUDGE

BY HARRY EVANS

Clerk-Assistant (Procedure), Australian Senate

Section 72 of the Constitution

Among the many questions to which the Australian constitution-makers applied their minds was the method of removal from office of federal judges. They provided in section 72 of the Constitution that a federal judge, including a judge of the High Court, the country's highest court, could be removed from office only by the Governor-General upon an address by both Houses of the Parliament praying for the removal of the judge on the ground of proved misbehaviour or incapacity.

This provision is similar to that contained in the British Act of Settlement of 1701, but there are significant differences. Under that Act, as it is usually interpreted, British judges may be removed by the Crown for misbehaviour and upon an address by both Houses for any eason. Under the Australian Constitution removal may take place nly upon an address of both Houses and only for misbehaviour or ncapacity. The misbehaviour or incapacity must be 'proved', and it has always been thought that this would require each House to act in a judicial manner and to have the misbehaviour or incapacity proved in a formal hearing of evidence. It has generally been thought that before proceeding to such a hearing, it would be appropriate for a House to appoint a committee to examine the evidence.

Other questions hitherto of merely academic interest include the standard of proof (whether the criminal standard, proof beyond reasonable doubt, or the civil standard, proof on the balance of probabilities, is appropriate), and whether misbehaviour means any misconduct or has a restricted meaning.

Section 72 lay unused and largely ignored for the first 83 years of the Australian Commonwealth, but early in 1984 it became the focus of attention as the Senate embarked on the first of two inquiries into the conduct of a justice of the High Court.

A political question

The first case of parliamentary questioning of the conduct of a judge became a matter of party disputation.

The judge concerned, Mr Justice Murphy of the High Court, was before his appointment to the bench a Labour Party stalwart, leader of

his party in the Senate and Attorney-General in the government of Mr Whitlam.

In the course of debate, the Labour government adhered to the view that 'misbehaviour' has a technical legal meaning, and is restricted to misperformance of the judicial duties or conviction for a serious offence, while the opposition parties, which hold a majority in the Senate, contended that misbehaviour is any misconduct which the Parliament regards as sufficiently serious to warrant removal from office. On the basis of its view the government resisted any inquiry into the conduct of the judge on the ground of the insufficiency of the evidence concerned, and both inquiries were pursued by the votes of the opposition parties against the wishes of the government.

The evidence

The nature of the evidence under examination by the two inquiries underwent a fundamental change as a result of the inquiry by the first committee. That committee was required to examine certain tape recordings and transcripts which were purportedly made as the result of the interception of telephone calls by New South Wales police, and which were published in two newspapers. Among those materials were tape recordings and transcripts purportedly of conversations between Mr Justice Murphy and another person, one Morgan Ryan, a solicitor alleged to be of dubious reputation. The first committee was required to determine whether the tapes and transcripts were authentic, and if so, whether they revealed any misbehaviour on the part of the judge such as might justify his removal from office.

The committee was unable to determine whether the materials were authentic. In the course of its inquiry, however, it took evidence from a person mentioned in the transcripts, the Chief Magistrate of New South Wales, Mr C. R. Briese, who gave evidence of conversations between himself and the judge which, on one view, prima facie revealed an attempt by the judge to interfere with committal proceedings in the Magistrates Court. Those proceedings related to the prosecution of the same Mr Morgan Ryan. The evidence under examination at the appointment of the second committee, therefore, was the evidence of Mr Briese as to his conversations with the judge, and not evidence taken from the tapes and transcripts.

The second committee, in turn, uncovered further evidence. This consisted mainly of the testimony of the District Court judge who had tried Mr Ryan after the committal, about conversations he had had with Mr Justice Murphy, which conversations, on one view, could also be seen as prima facie constituting an attempt by Mr Justice Murphy to interfere in the proceedings against Mr Ryan.

The way in which the evidence developed in the course of the inquiry was perhaps the most remarkable feature of the whole matter.

The two committees

The two committees were quite different specimens. The first, appointed in March 1984, and called the Select Committee on the Conduct of a Judge, regarded itself as an investigatory committee and its task as one of determining whether there was evidence which ought to be the subject of a formal hearing. It did not differ radically from other parliamentary committees conducting investigative inquiries. It was required by the Senate to give witnesses notice of the matters to be dealt with during their appearance and an opportunity to make submission in writing before appearing, and witnesses were to be entitled to be assisted by counsel. The committee itself appointed counsel to assist it, but that counsel acted purely as an adviser and did not participate in its hearings. The committee held all of its meetings in private, with members of the committee examining witnesses, and it did not publish the transcripts of its evidence or documents submitted to it.

The second committee, appointed in September 1984, and called the Select Committee on Allegations Concerning a Judge, was an entirely different creature, and departed markedly from normal parliamentary committees. This was because it was devised to conduct a formal hearing of evidence, the evidence of Mr Briese, which the first committee had already heard. It was to come to a formal finding on the evidence of Mr Briese and to recommend to the Senate whether it ought to proceed further against the judge on the basis of that evidence. Its powers and method of operation were set out in an extremely detailed resolution of the Senate.

The most striking feature of the resolution was the attachment to the committee of two commissioners appointed by the Senate, who were to make findings on the evidence heard by the committee and whose findings were required to be included in the committee's report. The commissioners were retired supreme court judges. They constituted, in effect, a royal commission appended to a parliamentary committee, operating under the powers of the committee and protected by the absolute privilege which adhered to the committee's proceedings. This device represented an attempt by the Senate to bring a non-partisan and judicial element to the committee's operation. The preference of the majority of the Senate was for the appointment of a commission without the 'cover' of a committee, but there was too much doubt about the power of the Senate to confer its powers of inquiry, including the power to compel evidence, upon a body other than a committee of its own members.

The committee was given questions to answer somewhat like the questions put to juries by judges. It was required to make findings whether there was misbehaviour under the two different interpreta-

tions of misbehaviour, and whether the misbehaviour was proved by the two standards of proof. Witnesses were to be examined before the committee not by the committee members but by counsel assisting the committee, by counsel for the 'defendant', Mr Justice Murphy, and by counsel for other witnesses where the evidence under examination was relevant to the interests of those witnesses.

The resolution appointing the committee put Mr Justice Murphy in a position analogous to that of the defendant in a criminal trial in other respects. He was to be allowed to decide whether he would give evidence after all the other evidence had been heard, and was not to be compelled to testify. If he did give evidence, however, he was liable to be cross-examined by counsel assisting the committee and counsel for other witnesses.

Although the evidence of the first committee was not published counsel appearing before the second committee were authorized by th Senate to refer to that evidence, with the result that most of th relevant evidence of the first committee was, in effect, published whe it was admitted into evidence before the second committee, which sat in public session.

In addition to these forms of proceeding imposed upon it by the Senate, the committee itself adopted procedures which had the effect of making its proceedings more like those of a court. In particular, it determined that it would be bound by the rules of evidence and admit only evidence admissible in court. The evidence of the trial judge which has already been referred to was admitted as being relevant to the evidence of Mr Briese because it was relevant to the intention of Mr Justice Murphy in his conversations with Mr Briese.

The resolution appointing the committee necessarily involved the possibility that the commissioners and the committee would come to different findings. The committee also adopted the procedure of attaching to its combined report, which did not deal with the evidence at all, reports submitted to it by each of its four members on the findings they would make on the evidence. Thus there was a potential for six different sets of answers to the four questions which the committee was asked.

In fact, however, there was a measure of agreement, and the findings were highly unfavourable to the judge. Both commissioners and three of the four members of the committee found that the judge had engaged in conduct which could amount to misbehaviour at least under the wider interpretation of the term, and that that conduct was proved at least on the balance of probabilities.

The committee's report was presented during a time when the Senate had adjourned for the long summer adjournment, which also coincided with a general election campaign. The report was presented to the President and its publication authorized in accordance with a

procedure employed by the Senate and discussed in another article in this journal. The result of this was that, the report having been presented at the end of October 1984, the Senate did not have the opportunity of considering the report until the next meeting of the Houses at the end of February 1985. By that time, the Director of Public Prosecutions, having considered the evidence before the second committee, decided to prosecute the judge on two charges of attempting to pervert the course of justice, one charge relating to the conversations with the trial judge. The prosecution had to be sustained, of course, but by using the evidence before the committee, which has absolute privilege and may not be examined by any body other than the Senate, not by calling the same witnesses as appeared before the committee and eliciting the same testimony.

The Senate then felt constrained not to consider the matter further for fear of prejudicing the criminal proceedings, so that any action by the Senate against the judge must await the end of those proceedings.

Should the Senate consider it necessary to take action against the judge at the conclusion of the criminal proceedings, there remains the question of how it would proceed. Presumably it would have a formal hearing of the evidence before the whole Senate, using judicial forms, as did the second committee. Such hearings have been held in the House of Lords and the United States Senate in impeachment trials, and in the House of Lords on the one occasion on which a British judge was removed by address, in 1830. In the days of those proceedings legislatures had time on their hands. The burden which such proceedings would place upon a House of the Parliament with the responsibilities of a national legislature in the late twentieth century is frightening to contemplate.

ANNEX

PARLIAMENTARY PRIVILEGE AND THE COURTS

During committal proceedings in respect of charges against Mr Justice Murphy and Judge J. Foord in the New South Wales Local Court, counsel for the President of the Senate appeared to draw the attention of the court to the limitation which the law of parliamentary privilege imposes upon the use of parliamentary committee evidence in court proceedings.

Under article 9 of the Bill of Rights of 1688, applied to the Houses of the Australian Parliament by section 49 of the Constitution, proceedings in Parliament may not be 'impeached or questioned' in any court.

It has been held that the privilege contained in the Bill of Rights not only prevents parliamentary proceedings from being the subject of civil or criminal action, but prevents those proceedings from being referred to before courts in such a way that they are questioned in a wide sense. What has been said or done in the course of parliamentary proceedings may not be commented upon, used to draw inferences or conclusions, analysed or made the basis of cross-examination or submission. This principle is a matter of law which holds good regardless of any action taken by the House concerned to prevent any violation of it. (The principal case is *Church of Scientology of California v. Johnson-Smith* (1972) 1 QB 522; *R. v. Secretary of State for Trade and others, ex parte Anderson Strathclyde plc* (1983) 2 All ER 233.)

Evidence given by a witness or documents submitted to a committee are part of proceedings in Parliament as much as debates in the Houses (there are no judgments specifically on this point, but all the authorities agree, and in *R. v. Wainscot* (1899) 1 WALR 77, the court held that the protection by Parliament of its witnesses must be upheld and that a witness's evidence was not admissible against him in court).

It is permissible for evidence of proceedings in Parliament to be admitted for a legitimate purpose which does not violate the privilege. Such evidence may be used to prove material facts, such as the fact that a statement was made in Parliament at a particular time, so long as there is no questioning or impeaching of the proceedings. For example, in an action for defamation based on a press report of debate in Parliament, the defendant may have Hansard admitted in order to establish that the press report was a fair and accurate report of the proceedings in Parliament. Similarly, Hansard may be admitted for the purpose of proving that a Government decision was announced in Parliament on a particular day.

An entirely different question is whether evidence of proceedings in Parliament may be given before a court without the permission of the House concerned. There have been a number of Australian cases on this point. The British and Australian Houses have adopted the practice of granting permission for evidence of their proceedings to be given in court, subject to the proper observance of the laws as to the use of that evidence. The courts have indicated that they believe they can allow evidence of parliamentary proceedings to be admitted without that permission. This does not mean, however, that evidence of parliamentary proceedings may be admitted for anything more than the limited purpose already referred to (*Comalco Ltd v. Australian Broadcasting Corporation* (1983) 50 ACTR 1).

Because the privilege contained in the Bill of Rights and attracted by section 49 of the Constitution is a matter of law, it cannot be waived or suspended by the House concerned any more than any other law can be waived or suspended by mere resolution. Statements have often been made about 'waiving of privilege' because of confusion between the practice of the Houses of granting permission for evidence as to parliamentary proceedings to be given, and the limitation on the use which may be made of that evidence. It is clear that the practice of granting permission for such evidence to be given does not involve any waiving or suspension of the privilege. Inded, the Privileges Committee of the House of Commons recommended that the practice of granting permission for evidence of parliamentary proceedings to be given be abolished, because the courts take care to ensure that where such evidence is admitted it is not admitted contrary to the privilege. That recommendation was adopted by the House in 1980. (On this point the following authorities are relevant: House of Commons Committee of Privileges, report on *Reference to Official Report of Debates in Court Proceedings*, H.C. 102, 1978–79; E. Campbell, *Parliamentary Privilege in Australia*, 1966, p.33; House of Representatives Committee of Privileges, *Report relating to the use of or reference to the records of proceedings of the House in the courts*, parl. paper 154/1980, particularly the opinions of the Attorney-General's Department and Mr T. E. F. Hughes, Q.C. at pp.95 and 97.)

Where evidence given before a parliamentary committee would be admissible in court proceedings, and it is desired to admit it in those proceedings, the court hears the evidence afresh and witnesses may then be cross-examined on the evidence which they have given in court.

In the proceedings relating to Mr Justice Murphy, two witnesses were required to produce documents, and produced documents including statements made to a Senate committee. In anticipation of the statements being tendered and examined, counsel for the President appeared, made submissions to the court on parliamentary privilege,

and in the course of the proceedings objected to a number of lines of questioning and a number of answers. The magistrate did not rule on the question of parliamentary privilege as such, but his rulings on individual objections indicate that he generally accepted the statement of the law put to him by counsel for the President.

When counsel for the defence in the proceedings relating to Judge Foord indicated an intention of cross-examining witnesses on statements made before a Senate committee, counsel for the President appeared and objected, and the magistrate made a ruling to the effect that a statement made to a Senate committee was protected by parliamentary privilege and could not be examined in court proceedings.

The defence then petitioned the Senate to waive the privilege attached to the statement so that the witness could be cross-examined upon it.

On 16 April 1985, after debate, the Senate, on the motion of the Minister representing the Attorney-General, Senator the Hon. Gareth Evans, Q.C., agreed to a resolution declining to accede to this petition. The grounds for refusing the petition, as stated in debate, were: first, the Senate did not have the power to waive the privilege; secondly, it was not desirable in principle to waive the privilege; and thirdly, it appeared that no prejudice to the defence case would result from the Senate's refusal of the petition.

X. DEALING WITH DISORDER – ANSWERS TO THE QUESTIONNAIRE

The Questionnaire for Volume LIII of the Table asked –
DEALING WITH DISORDER: What powers does your House/Speaker have for dealing with disorderly conduct by Members of Parliament (see May, 20th edition, pp.442–450). Please provide full details of major incidents of disorder by Members during last 5–10 years.

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

Australia: House of Representatives

Powers of the Chair to enforce order

—If a Member persists in disorderly conduct the Chair may name the Member (S.O. 303). It is, however, not uncommon for the Chair to withdraw the naming of a Member after other Members have addressed the Chair on the matter and the offending Member has apologised. If this does not occur, on motion being proposed, the Chair immediately puts the question that the Member be suspended from the service of the House (S.O. 304). The House has on 2 occasions negatived the motion for suspension of a Member. On the second occasion the Government did not support the Speaker following the naming of a Minister, and the motion for the suspension of the Member was moved by the Opposition and negatived. The Speaker resigned from the office of Speaker on the same day (VP 1974–75/502–03).

—In the case of grossly disorderly conduct by a Member the Speaker may order him to withdraw immediately from the Chamber (i.e., before the question is put) and may order the Serjeant-at-Arms to escort the Member from the Chamber (S.O. 306).

—In the case of grave disorder in the House the Speaker may adjourn the House without putting any question or suspend the sitting (S.O. 308). The House has been adjourned on 3 occasions and the sitting suspended on 6 occasions as a result of grave disorder arising.

There have been no major incidents of disorder (i.e. grave disorder) in the last 5 to 10 years. However there were 2 such incidents between 1970 and 1975, as documented below.

A Member having been suspended from the service of the House, refused to withdraw from the Chamber. The Speaker ordered the Serjeant-at-Arms to direct the Member to leave the Chamber. The Member still refused to leave and grave disorder arose in the House. The Speaker vacated the Chair at 12.41 a.m. until the ringing of the

bells. The sitting was resumed at 2.15 a.m. and the Member again refused to leave the Chamber. Grave disorder again arose and the Speaker suspended the sitting until 10.30 a.m. When the sitting was resumed the Speaker requested the Member to withdraw, whereupon the Member expressed regret that he had defied the Speaker, apologised and withdrew from the Chamber.

(VP 1970–72/86)

The Speaker having given a warning that he would adjourn the House if grave disorder continued, and the disorder having continued, the Speaker adjourned the House at 10.56 p.m. until the next sitting without the question being put (pursuant to S.O. 308).

(VP 1973–74/405)

Australia: Senate

Dealing with Disorder: Powers of the President and the Senate

The President may report to the Senate that a Senator has committed an offence if the Senator –

(a) persistently and wilfully obstructs the business of the Senate;
(b) is guilty of disorderly conduct;
(c) uses objectionable words, and refuses to withdraw such words
(d) persistently and wilfully refuses to conform to the Standing Orders, or any one or more of them; or
(e) persistently and wilfully disregards the authority of the Chair.

A Senator who has been reported as having committed an offence is called upon to make any explanation or apology he may think fit, and afterwards a motion may be moved that he be suspended from the sitting of the Senate. Such motion is put and determined without amendment, adjournment or debate. The duration of a Senator's suspension depends upon whether it is in respect of his first, second, or subsequent offence within a calendar year. An offence in Committee of the Whole is reported to the Senate, and the same procedures may then be followed.

AUSTRALIAN SENATE

Dealing with Disorder: Major Incidents 1975–84
Resulting in Suspensions Under Standing Orders 440 or 441

Date	*Journals Page*	*Senator's Name*	*Reported by*	*Offence*	*Duration of suspension*
1.4.76 a.m.	114	Senator W. W. C. Brown	President	Objectionable words, refusal to withdraw	Remainder of day's sitting

6.4.78	95	Senator J. B. Keeffe	President	Objectionable words, refusal to withdraw	Remainder of day's sitting
28.9.78	379	Senator P. A. Walsh	President	Objectionable words, refusal to withdraw	Remainder of day's sitting
29.5.79	746	Senator G. T. McLaren	President	Objectionable words, refusal to withdraw	Remainder of day's sitting
5.6.79	782	Senator J. B. Keeffe	Acting Deputy-President	Objectionable words, refusal to withdraw	Remainder of day's sitting
21.11.79	1086	Senator P. A. Walsh	Chairman of Committees	Consistently disobeying and disregarding a ruling of the Chair	One week
31.3.80	1219	Senator D. J. Grimes	President	Objectionable words, refusal to withdraw	Remainder of day's sitting
20.5.80	1360	Senator G. Georges	President	Persistently and wilfully disregarding the authority of the Chair	Remainder of day's sitting
3.3.81	114	Senator P. A. Walsh	Deputy-President	Objectionable words, refusal to withdraw	Remainder of day's sitting

New South Wales: Legislative Council

In the New South Wales Legislative Council various Standing Orders entrust the Chair with powers to enforce order. Using the headings in May, 20th ed., pages 442–450, the disciplinary powers entrusted to the Chair under the Standing Orders are described below:

1. *Irrelevance or tedious repetition:*
   S.O. 85 provides that the President or Chairman of Committees may call the attention of the House or the Committee to continued irrelevance or tedious repetition by a member and may direct the member to discontinue his speech. A member directed to discontinue his speech has the right to require the President or Chairman to put the Question, without debate, that he be further heard.
2. *Minor breaches of order:*
   S.O. 93 provides that members should not converse aloud or make any noise or disturbance whilst another member is debating, or whilst any Bill, Order, or other matter is being read, opened, or dealt with. If, after the President has called a member to order the noise or disturbance is persisted in, the President shall name the member as guilty of a wilful and vexatious breach of the Standing Orders.
   Under S.O. 94 a member named by the President shall withdraw

from the Chamber after he has been heard in explanation; the House then takes the matter into consideration.

3. *The use of disorderly or unparliamentary expressions:*
   Under S.O. 80 a member shall not use offensive words against either House of the Legislature, any member, or against any statute, unless when moving for its repeal. Also, S.O. 81 provides that imputations of improper motives and personal reflections on members are deemed disorderly. If a member takes exception to remarks, or the President intervenes, the offending member is called upon to retract the offensive expression. Should a member fail to retract the offensive words, the President may name the member as guilty of a wilful and vexatious breach of the Standing Orders.
4. *Grossly disorderly conduct:*
   Where a member is called to order three times during any one sitting for any breach of the Standing Orders, the President may order the removal of the member until the termination of the sitting (S.O. 261).
   A member who is named by the President as guilty of wilful o vexatious breach of the Standing Orders (S.O. 94), may, on motior without notice, be adjudged guilty of contempt (S.O. 259).
5. *Grave disorder:*
   There is no provision in the Standing Orders for the President to adjourn the House or suspend a sitting in the event of grave disorder. There is no recorded instance of such a course ever having become necessary. Presidents have, however, left the Chair for an informal adjournment with the general consent of the House.
6. *Obstruction of business of the House otherwise than by disorderly conduct or persistence in irrelevance or tedious repetition:*
   Under S.O. 259 provision exists for a member named by the President for interrupting the orderly conduct of business of the House to be adjudged guilty of contempt.

Rights of Members to Direct the Attention of the Chair to Breaches of Order

Under S.O. 97 order is maintained in the House by the President, and in Committee of the Whole by the Chairman of Committees. Disorder in Committee can only be censured on report to the House.

If the President does not intervene because he does not apprehend that a breach of order has been committed, it is the right of any member to rise, interrupting the member speaking (S.O. 84), and speak to a matter of privilege suddenly arising, or to a point of order (S.O. 86). It is the duty of the President, after hearing argument, to give his decision on questions referred to him (S.O. 88).

A ruling of the President may be dissented from by motion at once

made (S.O. 89).

Procedure when President Rises
Whenever the President rises to interpose in debate, any member addressing the House shall sit down, and the House shall remain silent, so that the President may be heard without interruption (S.O. 83).

Proceedings Upon the Naming of a Member
When a member is named for wilful and vexatious breach of the Standing Orders (S.O. 93) or for interrupting the orderly conduct of business of the House (S.O. 259) a motion may be made, without notice, adjudging the offending member guilty of contempt. No debate is allowed except an explanation by the member named (S.O. 259).

Suspension, Withdrawal and Exclusion from Precincts
A member adjudged by the House as guilty of contempt may be suspended from the service of the House for such time as the House by resolution declares (S.O. 260).

Incidents of Disorder During Last 5–10 Years
There have been no major incidents of disorder during the last 5–10 years. The last occasion on which a member has been named and suspended from the House was in 1922.

At a joint sitting of both Houses in 1975 to fill a vacant seat in the Australian Senate, the President ordered the removal of a member. However, this was an occasion where Opposition members ignored the President and the rules for the joint sitting previously adopted by resolution of both Houses; disorder prevailed, the President was unable to be heard and the order for removal of the member was not put into effect.

Queensland

The Queensland Legislative Assembly Standing Orders originally provided, under S.O. 124, for the suspension of a Member causing disorder. Should a Member, after warning, continue to:

(a) disregard the authority of the Chair;
(b) abuse the Rules . . . by persistently and wilfully obstructing the business, or
(c) otherwise,

then that Member may be named by the Speaker; a Minister then moves that the Member be suspended from the service of the House for a period not exceeding fourteen days.

If the offence has occurred in Committee the matter of naming is reported to the House, when the motion for suspension is moved,

without amendment, adjournment or debate.

Members present together and jointly offending may be named at one time.

Should the Members refuse to obey the direction of the Speaker when summoned by the Sergeant-at-Arms, the Speaker shall draw the attention of the House to the matter and without a further Question being put, the Members shall be suspended from the Service of the House for one month.

In 1950, two new Standing Orders were adopted, one designed to avoid the more severe naming and suspension procedure outlined above and the other to more clearly outline the consequences of suspension. The first rule (S.O. 123A), provides that the Speaker or Chairman, after warning a Member who continues to be grossly disorderly, may order that Member to withdraw immediately from the Legislative Assembly Chamber. A Member ordered to withdraw must do so forthwith and must absent himself from the Chamber for the remainder of the day's sitting.

Should the offending Member fail to withdraw immediately or to absent himself from the remainder of the day's sitting the Chair may proceed to name the Member in accordance with the procedure in S.O. 124.

The second rule S.O. 125, provides that when a Member is suspended, he is excluded from all rooms in the Parliamentary Buildings . . . and from the grounds upon which they stand. He is therefore unable to continue to use any facilities within the Parliamentary Complex, including his Parliamentary Office, the Library and Stenographic services. A 'reasonable time' is given to a suspended Member to gather his papers and leave the premises.

South Australia: House of Assembly

Words taken down:

Under Standing Orders Nos 166 to 168 a Member may object to words used in debate and desire them to be taken down. The Speaker shall direct such words to be taken down. Every such objection must be taken at the time when such words are used.

This practice of the Speaker directing that words be taken down has not been used for many years.

Minor breaches of order:

If a Member trangresses the Standing Orders to rules of debate in only a minor manner the Speaker may intervene by calling the Member to order, asking him to withdraw certain words or to resume his seat.

Disorderly conduct:

If a Member persistently or wilfully –

(a) obstructs the business of the House;
(b) refuses to conform to any Standing Order of the House, or to regard the authority of the Chair;
or
(c) refuses either to explain the use of objectionable words to the satisfaction of the Speaker, or to withdraw those words,

the Speaker shall name such Member and report his offence to the House.

In the past ten years fourteen Members have been named by the Speaker for wilfully disregarding the authority of the Chair. On three occasions the explanation of the Member has been accepted but on all other occasions the Member so named has been suspended from the sittings of the House.

Standing Order No. 171 provides that if a Member is suspended then on the first occasion it shall be for the remainder of that day's sittings. On the second occasion in the same session he shall be suspended for three consecutive sitting days and on any subsequent occasion in that session he shall be suspended for eleven consecutive sitting days.

Grave disorder:

If the Speaker thinks it necessary he may adjourn the House without a question being put or suspend the sitting for a time where there is a case of very grave disorder.

Victoria: Legislative Assembly

Incidents of Disorder

3.4.1978 (Volume 337, p.1462)

Immediately after the Prayer Mr Speaker reported to the House that he had received a communication from the President of the Legislative Council reporting that during the debate on a Local Government Bill in the Council an Assembly Opposition Member came into the President's Gallery and commenced an aggressive argument with a member of the public who was sitting in the Gallery. The Assembly Member punched and endeavoured to elbow that gentleman in the face. Upon being requested to leave by the Council Housekeeper, the Member punched the Housekeeper who later escorted the Member from the Chamber. The gentleman who was assaulted said he did not wish to make any formal statement or any official complaint and that the incident was motivated by internal party politics. The Member subsequently apologised in writing to the President of the Legislative

Council.

The Speaker, after referring to 'May', 19th Ed., p.173, drew the attention of the House to two features of this complaint.

1 As the complaint did not come from a Member of the Assembly, there is no Member who has a clear duty in accordance with practice, to move an appropriate complaint motion; and
2 As 'May' describes this type of incident as being in the nature of a contempt, he did not think it proper to rule whether this was a prima facie case of privilege.

Mr Speaker also stated that he raised this matter at the first opportunity because of the good relationship between the two Houses.

He then asked whether the offending Member had anything to say to the House. The Member apologised to the House and expressed his deep regret at the incident and then withdrew from the House.

The following motion was agreed to:

'That having heard the complaint concerning the disorderly conduct of the Honourable Member and the Honourable Member having tendered a full and complete apology to the House in respect of his conduct, the House resolves that it deplores the unfortunate incident in question, that the said apology be conveyed to the Honourable the President of the Legislative Council and that the House do now proceed with the business of the day.'

14.10.1978 (Volume 340, p.5022)

On an adjournment motion for the purpose of debating a matter of urgent public importance concerning the sale of certain land to the Government, an independent Member stated that the Premier had 'the taint of corruption about him'. Mr Speaker having ruled that the statement was unparliamentary asked him to withdraw it. The Member refused. Although appeals through the Chair from other Members to withdraw were made, the Member still refused to withdraw. A motion to suspend the Member from the services of the House was passed on the voices. The Member withdrew from the House.

29.11.1979 (Volume 348, p.5420)

On the debate on the motion 'That the House do now adjourn' Mr Speaker suspended the sitting of the House to 11.00 a.m. the following day because the sitting was becoming 'completely disorderly'. The time for the commencement of the following day's sitting had been previously set by the motion 'That the House, at its rising adjourn until tomorrow at half-past ten o'clock' (meaning Mr Speaker would take the Chair at 11.00 a.m.).

Because the sitting had been suspended and the House had not adjourned, on the resumption at 11.00 a.m., pursuant to Mr Speaker's

direction, the following motion was agreed to:

> 'That the resolution of the House fixing 11.00 a.m. as the time of meeting this day be read and rescinded and that Mr Speaker do take the Chair at 11.30 a.m. this day.'

The adjournment debate was completed and the House adjourned at 11.10 a.m. The bells were then rung for the new sitting at 11.30 a.m. pursuant to the resolution.

27.10.1981 (Volume 360, p.2087)

The Minister of Housing was making a Ministerial Statement when, after Mr Deputy Speaker gave a ruling in relation to the availability of documents from which the Minister was supposedly quoting, a Government Member requested the Deputy Speaker to 'shut up' and accused him of being biased. The Deputy Speaker reported the conduct of the Member to the Speaker who named him. In spite of an appeal by the Leader of the House that the Member be allowed to apologise, the Member refused to apologise and then swore at the Speaker. The motion that the Member be suspended from the service of the House was agreed to, the Opposition voting against the motion.

20.10.1982 (p.1224)

During the debate on the question to adjourn debate on the motion 'That the House take note of a Ministerial Statement', a Member who had been interjecting was named for 'continually and absolutely disregarding the authority of the Chair'. In spite of an appeal by the Leader of the Opposition and the Leader of the Third Party that the motion should not proceed because the Member had been provoked, the motion was carried on the voices and the Member withdrew from the House.

18.8.1983 (p.422)

During the answer by a Minister to a Question without Notice, an Opposition Member persistently interjected and was warned by the Chair to cease interjecting. The Member interjected again and the Speaker named the Member for continually disregarding the authority of the Chair. The Minister at the Table moved the suspension and the motion was carried on the voices. The Member withdrew from the Chamber.

1.5.1984 (p.4155)

During Question Time an Opposition Member interjected during the answer to a Question without Notice – 'Rot, you are a hypocrite'. The Speaker, ruling the expression to be unparliamentary, asked the Member to withdraw. The Member stated that he had no intention of

withdrawing the remark. The Leader of the House appealed to the Member to withdraw. After a negative response the Leader of the House moved for the suspension of the Member, which was carried by division, the Opposition and Third Party voting against the motion. Mr Speaker directed the Member to withdraw and when the Member refused, directed the Serjeant-at-Arms to remove the Member. The Member was escorted from the Chamber by the Serjeant-at-Arms.

Victoria: Legislative Council

Powers

The ultimate power for dealing with disorder is that conferred by Standing Order 141. It provides for the suspension of a Member by the Council if named by the President or reported by the Chairman of Committees for –

(a) wilfully interrupting or making a disturbance during the business of the Council or a Committee of the whole; or
(b) disorderly conduct; or
(c) using objectionable words and refusing to withdraw them or behaving offensively and refusing to make a satisfactory apology; or
(d) wilfully and persistently refusing to conform to the Standing Orders; or
(e) wilfully disregarding the authority of the Chair.

An important rider to this Standing Order is that it shall not be taken as depriving the Council of the power of proceeding against any Member 'according to ancient usages'.

Other relevant Standing Orders are –

No. 130, which provides that no Member shall use offensive words against either House, nor against any Statute unless moving for its repeal.

No. 131, which provides that no Member shall use offensive or unbecoming words in reference to any other Member.

No. 132, which provides that all imputations of improper motives and all personal reflections on Members shall be considered highly disorderly.

No. 133, which provides that the President or Chairman may direct a Member to discontinue a speech if attention is drawn to continued irrelevance or tedious repetition.

No. 134, which provides that a Member using a personal or disorderly expression, or one that is capable of being applied offensively to any other Member, shall be required to withdraw the expression and to make a

satisfactory apology.

No. 137, which provides that a Member who uses objectionable words and does not explain or retract them, or who behaves offensively to the Council or any Member and does not offer an apology, shall be censured 'or otherwise dealt with'.

In all cases for which no provision has been made in the Standing Orders resort can be had to the rules, practices &c. of the House of Commons (pursuant to Standing Order 308).

Incidents of disorder

There have been only four incidents in the past ten years which have led to a naming and suspension. In each case the offending Member refused to withdraw remarks which had been found to be offensive by the President. References are as follows:

Member named and suspended	*Legislative Council*	*Hansard reference*
	Minutes of the Proceedings	
Hon. D. R. White	19 March 1977	p.6189
Hon. W. A. Landeryou	6 December 1979	p.5827
Hon. D. R. White	22 October 1980	p.1432
Hon. W. A. Landeryou	22 September 1981	p.717

Western Australia: Legislative Council

The powers of the House, through the President, for dealing with disorderly conduct by members are contained in Legislative Council Standing Orders 106–114.

There have been no incidents that could be categorized as 'major' during the last 10 years, although during 1982 there were 3 occasions when members were suspended for the remainder of the sitting:

One member for 'persistently and wilfully disregarding the authority of the Chair', and two members for 'using unparliamentary language and refusing to make a withdrawal'.

Bermuda

The Speaker of the House and the Chairman in Committee are responsible for the observance of the rules of order in the House and Committee respectively, and their decision upon any point of order is not open to appeal and cannot be reviewed by the House except upon a substantive motion made after notice.

The Speaker and the Chairman have adequate powers to deal with disorderly conduct by Members. The following Rule of the House of Assembly (Rule 30 Order in the House) states these powers in detail:

'30. ORDER IN THE HOUSE

30. (1) The Speaker or Chairman, after having called the attention of the House or of the Committee to the conduct of a Member who persists in irrelevance or tedious repetition either of his own arguments or of the arguments used by any other Member or Members in debate, may direct him to discontinue his speech.

(2) The Speaker or Chairman shall order Members whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of the day's sitting, and the Serjeant-at-Arms shall act on such orders as he may receive from the Chair in pursuance of this Rule. But if, on any occasion, the Speaker or Chairman deems that his powers under the previous provisions of this Rule are inadequate, he may name such Member or Members, in which event the procedure to be followed is as prescribed in paragraphs (3) (4) (5) and (6) of this Rule.

(3) Whenever a Member shall have been named by the Speaker or Chairman, immediately after the commission of the offence of disregarding the authority of the Chair, or of persistently and wilfully obstructing the business of the House by abusing the rules of the House, or otherwise, such naming shall be deemed to put the question that the offending Member be suspended from the service of the House.

If the offence has been committed by such Member in the House the Speaker shall forthwith put the question, no amendment, adjournment or debate being allowed, "That . . . be suspended from the service of the House".

If the offence has been committed in Committee of the whole House the Chairman shall forthwith suspend the proceedings of the Committee and report the circumstances to the House, whereupon the Speaker shall deal with the matter as if the offence had been committed in the House.

(4) Not more than one Member shall be named at the same time, unless two or more Members, present together, have jointly disregarded the authority of the Chair.

(5) If a Member is suspended under the provisions of this Rule, he shall be directed by the Speaker to withdraw. His suspension shall last for three sitting days on the first occasion, for six sitting days on the second occasion and on any subsequent occasion until the House shall resolve that the suspension of such Member terminate.

(6) If a Member, or two or more Members acting jointly, who have been suspended under this Rule from the service of the House, shall refuse to obey the direction of the Speaker to withdraw, when severally summoned under the Speaker's orders by the Serjeant-at-Arms to obey such direction, the Speaker shall call

the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his direction. When the Member or Members named by him as having refused to obey his direction have been removed from the House, they shall thereupon without any further question put be suspended from the service of the House during the remainder of the Session.

(7) Members who are ordered to withdraw under paragraph (2) of this Rule or who are suspended from the service of the House under paragraphs (3) to (6) of this Rule, shall forthwith withdraw from the precincts of the House and shall be excluded therefrom for the remainder of the sitting or for the period of their suspension as the case may be.

(8) In the case of grave disorder arising in the House, the Speaker may, if he thinks necessary to do so, adjourn the House without question put or suspend the sitting for a time to be fixed by him. In the case of grave disorder arising when the House is in Committee of the whole House the Chairman shall forthwith suspend the proceedings of the Committee and report the circumstances to the House, whereupon the Speaker shall proceed as if the disorder had arisen in the House.

(9) Nothing in this Rule shall be taken to deprive the House of the power of proceeding against any Member according to any Resolution of the House.'

There have been no major incidents of disorder by Members of the House of Assembly during the last 5 to 10 years.

Canada: House of Commons

The Canadian Speaker has limited disciplinary powers. 'Naming' is the 'most serious penalty in the hands of the Speaker' in the Canadian House (Beauchesne, 5th ed., citation 25). Naming is the final disciplinary action to be used as a result of a Member 'disregarding the authority of the Chair'. This action requires a motion, generally by the Government House Leader, proposing a penalty, usually that the Member be suspended for the remainder of the sitting.

Irrelevance or tedious repetition: The rule against repetition, as well as that against irrelevance, is difficult to enforce, particularly in the consideration of legislation, whose stages give opportunity for repetition. The Speaker has wide discretion in curtailing repetition and may, should circumstances warrant it, call a Member to order. A Member persisting in irrelevance or repetition may be cut off by the Speaker recognizing another Member. By Standing Order 38(2), the Speaker may also name any Member persisting in irrelevance or repetition.

Disorder: In the case of minor and grave breaches of order, the Speaker traditionally disciplines only by calling 'Order' or asking the

individual Member to resume his seat until the action is ceased.

Unparliamentary expressions: The Speaker must demand an immediate retraction of unparliamentary language. If the Member does not withdraw his remarks, the Speaker names him.

Disorder severe enough to halt proceedings is rare in the Canadian House. The only recent incident occurred on 24 October 1980, during debate on the patriation of the Constitution, after the Government moved closure. At 1 a.m., when the Speaker attempted to put the qustion, Opposition Members claimed that their rights to participate in debate had been breached and several Members gathered in front of the Speaker's Chair. The Speaker appealed for order which was restored after several minutes.

Members have been named 11 times between 1978 and 1984.

[Interested readers are referred to the article 'The Speaker and Discipline in the Canadian House of Commons' by W. F. Dawson, in Vol. LII of The Table.]

New Brunswick

Powers and Duties of the Speaker and Officers of The House: Standing Rules of the Legislative Assembly

The relevant Standing Rules of the Legislative Assembly are as follows –

13 The Speaker shall preserve order and decorum and shall decide questions of order. In deciding a point of order or practice, the Speaker shall state the Standing Rule or other authority applicable to the case. No debate may be permitted on any such decision, and no such decision shall be subject to an appeal to the House.

14 The Speaker shall not vote or take part in any debate before the House or any Committee of the Whole House, except, when there is an equality of votes upon a division in the House, the Speaker shall cast the deciding vote and any reasons stated by the Speaker shall be entered in the Journal.

15 Whenever the Speaker is of the opinion that a motion offered to the House is contrary to the rules or privileges of the Legislature, the Speaker shall apprise the House thereof immediately, and may reserve any decision and subsequently state the reasons therefor, before putting the question.

16 The Deputy Speaker shall be Chairman of the Committees of the Whole House.

17 Whenever the Speaker, from illness or other cause, finds it necessary to leave the Chair during any part of the sittings of the House on any day, the Speaker may call upon the Deputy Speaker or, in absence of the Deputy Speaker, upon any Member of the

House to take the Chair and to act as Speaker during the remainder of that day, unless the Speaker resumes the Chair before the close of the sittings for that day.

18 Whenever the House is informed by the Clerk of the unavoidable absence of the Speaker, the Deputy Speaker or, in the absence of the Deputy Speaker, any Member appointed by the House shall take the Chair and shall perform the duties and exercise the authority of the Speaker in relation to all the proceedings of the House until the meeting of the House on the next sitting day, and so on from day to day on the like information being given to the House until the House otherwise orders.

19 The Speaker or the Chairman, after having called the attention of the House, or of the Committee, to the conduct of a Member who persists in irrelevance, or tedious repetition of arguments may direct the Member to discontinue speaking.

20(1) The Speaker or the Chairman shall order any Member or Members whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of that day's sitting; and the Sergeant-at-Arms shall act on such orders as are received from the Chair in pursuance of this rule. But if, on any occasion, the Speaker or the Chairman deems that the powers under the previous provisions of this rule are inadequate, the Speaker or Chairman may name such Member or Members.

20(2) The provisions of Standing Rule 20(1) shall not apply to Chairmen of Standing or Select Committees.

21 Whenever a Member has been named by the Speaker, or by the Chairman, immediately after the commission of the offence of disregarding the authority of the Chair, or of persistently and wilfully obstructing the business of the House by abusing the rules of the House, or otherwise, then, if the offence has been committed by such Member in the House, the Speaker shall forthwith put the question, on a motion being made by any Member, 'That . . . be suspended from the service of the House for a period of . . .'; and, if the offence has been committed in a Committee of the Whole House, the Chairman shall forthwith suspend the proceedings of the Committee and report the circumstances to the House; and the Speaker shall on a motion being made forthwith put the same question, as if the offence had been committed in the House itself.

22 In the case of grave disorder arising, the Speaker or the Chairman may adjourn or suspend the House or a Committee without motion.

23(1) Strangers may be admitted to the galleries or to such other parts of the House as the Speaker sets apart for that purpose.

23(2) If any Member takes notice that strangers are present, the Speaker or the Chairman shall forthwith put the question, 'Shall

strangers be ordered to withdraw?', without permitting any debate or amendments.

23(3) When strangers are ordered to withdraw the business of the House shall be suspended until all strangers have withdrawn and strangers shall not be readmitted during the same day except upon motion which shall neither require notice nor be debated.

23(4) An order for strangers to withdraw does not apply to persons to whom seats in the press gallery have been assigned, except by decision of the House.

23(5) A stranger admitted to any part of the House or galleries who commits a misconduct or who does not withdraw when strangers are ordered to withdraw, shall be taken into custody or ejected from the Legislative Chamber or galleries by the Sergeant-at-Arms, as the Speaker may order. No persons so taken into custody shall be discharged without the special order of the House.

24 The officers of the House are the Speaker, the Premier, and the Leader of the Opposition. The permanent officers of the House are the Clerk of the House, the Clerk Assistant and the Sergeant-at-Arms.

25(1) Subject to the directions of the Speaker, or the House, the Clerk shall

(a) be responsible for the safekeeping of the records and documents of the House;
(b) have direction over the Clerk Assistant and such clerks, official reporters, translators, stenographers, messengers, doorkeepers and pages as may be employed in connection with the House;
(c) be present at the Table in the Legislative Chamber during the sittings of the House;
(d) prepare and cause to be distributed the daily Journal, and Order and Notice Paper.

Saskatchewan

The Saskatchewan Legislative Assembly has always had a Rule regarding the suspension of a Member. Once the Member had been cautioned by the Speaker several times, the Speaker, if unable to obtain a withdrawal or an apology, would then name the Member. It was the practice of the Assembly to consider a motion suspending the Member 'for the remainder of the sitting day' or in extreme cases, for several days.

In 1981, the Rules and Procedures of the Legislative Assembly were amended so that when a Member is named, the suspension is automatically for the remainder of the sitting day. The Legislative Assembly may extend the suspension by motion without notice.

Yukon

There have been no incidents at all of disorderly conduct in the House for many years. The worst that ever seems to happen is the throwing about of a few unparliamentary barbs.

India: Rajya Sabha

The Chairman of the Rajya Sabha, has the following powers for dealing with disorderly conduct by Members, under the Rules of Procedure and Conduct of Business (Standing Orders) of the Rajya Sabha:-

Irrelevance or Repetition:

The Chairman, after having called the attention of the Council, to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech. [Rule 240]

Withdrawal of Member:

The Chairman may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Council and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. [Rule 255]

Suspension of Member:

(1) The Chairman may, if he deems it necessary, name a member who disregards the authority of the Chair or abuses the rules of the Council by persistently and wilfully obstructing the business thereof.

(2) If a member is so named by the Chairman he shall forthwith put the question on a motion being made, no amendment, adjournment or debate being allowed, that the member (naming him) be suspended from the service of the Council for a period not exceeding the remainder of the Session:

Provided that the Council may, at any time, on a motion being made, resolve that such suspension be terminated.

(3) A member suspended under this rule shall forthwith quit the precincts of the Council. [Rule 256]

Power of Chairman to adjourn Council or Suspend Sitting:

In the case of grave disorder arising in the Council, the Chairman may, if he thinks it necessary to do so, adjourn the Council or

suspend any sitting for a time to be named by him. [Rule 257]

Chairman to Preserve Order and Enforce Decisions:
The Chairman shall preserve order and shall have all powers necessary for the purpose of enforcing his decisions. [Rule 259]

Expunction of Words from Proceedings:
If the Chairman is of opinion that a word or words has or have been used in debate which is or are defamatory or indecent or unparliamentary or undignified, he may, in his discretion, order that such word or words be expunged from the proceedings of the Council. [Rule 261]

While no detailed record of major incidents of disorders in the House has been kept, some incidents are given in the Statement attached to this Memorandum. Part I of the Statement briefly lists important and notable incidents of disorder due to which the House had to be adjourned ahead of the normal scheduled time of 5 p.m. Part II of the Statement gives full details of some of the major incidents of recent periods and mentions how the sittings of the House had to be suspended temporarily due to disorder.

It may be mentioned that generally major incidents of disorder arise by and large due to (i) some members wanting to raise one issue or another which has suddenly arisen; or (ii) a member has uttered words or expressions which are considered derogatory, undignified or unsavoury which he is not prepared to withdraw; or (iii) the conduct of a member is considered objectionable or reprehensible; or (iv) wide and wild allegations are made against another member/minister etc; or (v) a member wants to raise a matter without the previous permission of the Chair; or (vi) a point of order raised degenerates into a point of disorder.

Matters raised without the prior permission of the Chair or undignified words spoken are expunged from the proceedings of the House. If a member persists in speaking without the permission of the Chair or after he has been asked to resume his seat by the Chair, the Chair directs that nothing being said by the member will go on record. In case of grave disorder, he suspends the sitting of the House temporarily or adjourns the House for the day.

Statement Regarding Incidents of Adjournment of the House Due to Disorder

I

Sl. No. Date	Time at which House adjourned for the day*	Reason
1. March 6, 1978	2.32 p.m.	Delay on the part of Governor of Maharashtra in inviting the Leader of the Congress Party to form Government.
2. July 17, 1978	2.41 p.m.	Several points were raised. The Deputy Chairman adjourned the House observing that in the situation then prevailing it was not possible to conduct the proceedings of the House.
3. July 19, 1978	4.26 p.m.	Sudden departure of the Prime Minister in the midst of clarifications being sought by members.
4. July 20, 1978	2.47 p.m.	Several points were raised. The Deputy Chairman adjourned the House observing that a stage of crisis had been reached in so far as the conduct of proceedings of the House was concerned and no more debate could resolve it as was apparent from the various statements that had been made.
5. December 13, 1978	3.44 p.m.	
6. December 14, 1978	4.20 p.m.	
7. December 18, 1978	4.38 p.m.	
8. December 19, 1978	2.05 p.m.	
9. December 22, 1978	3.47 p.m.	
10. December 26, 1978	4.17 p.m.	The House was adjourned daily as Members persisted in demanding a discussion on charges of corruption against the family members of the Prime Minister and the former Home Minister.
11. December 20, 1978	11.07 a.m.	Expulsion of Smt. Indira Gandhi from the membership of the Lok Sabha.
12. March 22, 1978	3.43 p.m.	Uproar over the incorrect news of death of Shri J. P. Narayan.
13. July 13, 1979	12.17 p.m.	Members were agitated over the disruption of water supply in Delhi.

* The normal scheduled time for daily adjournment of the House is 5 p.m.

II

(a) On 15.11.1983, some members of the opposition raised the matter of setting up of an impartial enquiry on un-accounted money offered to an MLA of Karnataka Legislative Assembly for the purpose of joining the Congress. The Deputy Chairman did not allow them to raise the matter as Shri L. K. Advani had already been permitted to make a special mention of the subject during the day. The Members were not satisfied with this and came to the well of the House and shouted slogans. At this the Deputy Chairman adjourned the House at 12.28 p.m. to meet again at 1.00 p.m. On re-assembly, the point was again raised and when they were not permitted, the Opposition Members staged a walk out.

(b) On 13.3.1984 as soon as an opposition member wanted to raise a point regarding amendment of the Prevention of Corruption Act, the members of the ruling party started shouting. Thereafter there was a great uproar in the House from both sides. The Chairman requested the members to resume their seats but they did not agree. Upon this the Chairman adjourned the House for 10 minutes at 12.17 p.m. On re-assembly the Deputy Chairman informed the House that the members had met the Chairman in his Chamber about admission of the Calling Attention on the matter and the same was under consideration by the Chairman.

(c) On 23.7.1984, the opening day of the Monsoon Session 1984, some members raised a point regarding dismissal of the Jammu and Kashmir Government immediately after the obituary references and demanded discussion. This was objected to by the Ruling Party members. On this there was an uproar and din in the House. The Chairman exhorted the members to maintain decorum in the House and requested them to allow the questions to be taken up. But the members persisted in shouting. Upon this, the Chairman adjourned the House for 10 minutes from 11.35 a.m. to 11.45 a.m. On re-assembly at 11.45 a.m., the members again raised the same issue. The Deputy Chairman advised the members to take up the issue at the appropriate time. But the members were not satisfied. Thereafter the opposition members walked out from the House and boycotted the proceedings of the rest of the day in protest.

(d) On 17.8.1984, as the House assembled, the Opposition members raised the issue regarding the dismissal of the existing Andhra Pradesh Government headed by Shri N. T. Rama Rao by the State Governor. This was objected to by the ruling party members. An opposition member wanted to move a motion regarding suspension of Question Hour but the ruling party members objected to it. There was then an uproar in the House. The Chairman adjourned the House for 10 minutes from 11.10 a.m. to 11.20 a.m. On re-assembly the Chairman allowed the member to move his motion but the ruling party members

again objected which was followed by heated exchanges and unprecedented scuffle between the opposition members and ruling party members. Upon this the Chairman adjourned the House for about 45 minutes from 11.45 a.m. to 12.29 p.m. and no question was taken up for oral answer. On re-assembly again at 12.30 p.m. the member informed the House that the Opposition leaders had a meeting with the Chairman in his Chamber and demanded discussion on Andhra Pradesh situation. The Leader of the House also clarified the position. Thereafter the House adjourned for lunch at 12.33 p.m. At 2.32 p.m., as soon as the House re-assembled after lunch, the member requested that a full fledged discussion be allowed on the situation in Andhra Pradesh and requested the Leader of the House to lay some documents connected with the dismissal of the Andhra Pradesh Government. The Leader of the House promised that the discussion would be held on 21.8.1984. He also expressed his unhappiness over the unfortunate happenings which had taken place in the morning in the House and requested members to maintain decorum in the House in future. The House then resumed business.

India: Tamil Nadu Legislative Assembly

Rule 116 lays down that the Speaker may direct any member whose conduct is, in his opinion, grossly disorderly, to withdraw immediately from the House, and any member so ordered to withdraw shall do so forthwith and absent himself during the remainder of the day's meeting. If any member is ordered to withdraw for a second time in the same session, the Speaker may direct the member to absent himself from the meetings of the Assembly for any period not longer than the remainder of the session, and the member so directed shall absent himself accordingly. If such member refuses to withdraw, the Speaker may order his removal by force by the servant of the Assembly.

During the period 1980–1984, three members were suspended, the details of which are as follows:-

> (i) For the first time in the history of the Tamil Nadu Legislature, a member of the Assembly, Thiru P. Ponnurangam was bodily lifted out of the House by the Watch and Ward, on 16 March 1984 when he refused to withdraw from the House after having been named by the Deputy Speaker for his grossly improper act of lighting some papers inside the House. The Member was later suspended for the day.
>
> On the same day, Thiru Durai Murugan who was persistently creating noisy scenes in the Assembly by standing on his seat was also named by the Deputy Speaker and, when he refused to withdraw from the House, he was also suspended for the day.
>
> (p.379, Tamil Nadu Legislative Assembly Debates, 16.3.84)

(ii) On the 18 April 1984, the Speaker *suo motu* suspended Thiru R. Thamaraikani from the service of the House for that day for his indecent behaviour inside the House on 17 April 1984 when he jumped over the Central Table from one side to the other side and moved towards an opposition Member in an agitated manner.

(pp.2–3, Tamil Nadu Legislative Assembly Debates, 18.4.84)

Tamil Nadu: Legislative Council

Rules 84 to 87 of the Tamil Nadu Legislative Council Rules deal with the provisions for Preservation of Order, irrelevant repetition, power to order withdrawal of member and power to suspend sitting. Extracts are reproduced below –

'84. The Chairman shall have all powers necessary for the purpose of preserving order, and enforcing the rules and his decisions.

85. The Chairman, after having called the attention of the House to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate or is speaking for the purpose of obstructing business, may direct him to discontinue his speech.

86. The Chairman may direct any member whose conduct is, in his opinion, grossly disorderly to withdraw immediately from the House and any member so ordered to withdraw shall do so forthwith and absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same session, the Chairman may direct the member to absent himself from the meetings of the Council for any period not longer than the remainder of the session, and the member so directed shall absent himself accordingly. If such member refuses to withdraw, the Chairman may order his removal by force. . . .

87. The Chairman may, in case of grave disorder arising in the House, adjourn the House or suspend a sitting until a specific hour.'

No such incidents have occurred in the Tamil Nadu Legislative Council.

Uttar Pradesh: Legislative Council

1. The House was adjourned on 7 July 1980 for 1 hour 20 minutes. When the Panel Chairman announced that a motion under rule 105 regarding "Bagpat Accident" has been rejected by the Chairman, the opposition members, while opposing the decision of the Chair,

sat on the floor of the House and made the House discontinue its business.

2. The House was adjourned twice on 8 October 1980 for 15 minutes and one hour respectively by the Deputy Chairman, when the opposition members, while demanding recognition of the opposition, shouted slogans in the House for the House to continue its business.

3. The House was adjourned twice on 11 February 1982 for 10 minutes and half an hour respectively by Deputy Chairman, when the opposition members pressed that Govt. should make a statement regarding overcrowding in the buses by people from Mainpuri and Shikohabad to see the dreaded docoit, Chavi Ram, who was under police custody, and made it impossible for the House to continue its business.

4. The House was adjourned twice on 12 February 1982 for 10 minutes and rest of the day respectively by the Panel Chairman immediately after the Panel Chairman announced the erosion from proceedings of the discussion on the Conduct of the Secretary of the House. The opposition members, while opposing the ruling, came on the floor of the House and shouted slogan "Go Back", thus making it impossible for the House to continue its business.

5. The House was adjourned on 5 March 1982 by the Panel Chairman when some members stood before the dias and wanted to draw the attention of the House that the Govt. must ensure better education and school building for the girl students of Sarawati Balika Vidyalaya, Narhi, Lucknow.

6. The House was adjourned twice for 10 minutes on 8 February 1983 by the Panel Chairman when the Leader of the Opposition put allegations on the Statement which was given by the Govt. regarding massacre of 13 persons by the dacoits in Etawah and Moradabad on the night of 1/2 February 1983.

7. The House was adjourned twice on 12 March 1984 for 10 minutes and again till lunch time by the Chairman when some members wanted to speak which the Chairman did not allow, on the propriety of a question on the appointment of the Chief Minister, and members sat on the floor of the House and made it impossible for the House to continue its business.

Isle of Man: Tynwald

(a) When a member objects to words used in debates, the Governor (if it appears to be the pleasure of Tynwald) shall direct them to be taken down by the Clerk of Tynwald (T.S.O. 102). The Governor censures any member who has used objectionable words and failed to explain or retract the same or offer satisfactory apology, and he may suspend such member

from sitting or voting during the remainder of the day (T.S.O. 103).

(b) If any member abuses the rules of Tynwald, he is to be named by the Governor and forthwith, on motion made, the question it to be put that such member be suspended from Tynwald. A member so suspended must withdraw from the Court for the remainder of the day's sitting (T.S.O. 104);

(c) In the case of grave disorder, the Governor may adjourn Tynwald without putting any question, or suspend the sitting for a time to be named by him (T.S.O. 16[2]).

Isle of Man: Legislative Council

Under the Standing Orders of the Legislative Council, the President of the Council determines all questions of order (C.S.O. 16) and may adjourn the Council on his own motion at any time or may adjourn any particular business before the Council (C.S.O. 3)

Isle of Man: House of Keys

If any member –

(a) uses objectionable words and fails to explain, retract or apologise therefor (K.S.O. 97), and Mr Speaker has ordered the same to be taken down by the Secretary (K.S.O. 100); or

(b) abuses the Standing Orders of the House,

Mr Speaker may, after a formal warning to such member, order such member to withdraw immediately for the remainder of that day's sitting (K.S.O. 201). If he deems such power is inadequate Mr Speaker may name the member and forthwith, on motion, made, put the question that such member be suspended from the service of the House (K.S.O. 202).

There are no recent examples of incidents requiring the exercise of any of these powers.

Kenya

The Speaker is fully empowered to ensure that the proceedings of the Assembly are conducted in such a manner that reflects both the dignity and decorum of the House.

Standing Order No. 88 states –

(1) Mr Speaker or the Chairman of Committees shall order any Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the Assembly during the remainder of that day's sitting; and the Serjeant-at-Arms shall act on such orders as he may receive from the Chair in pursuance of this Standing Order; but if on any occasion Mr Speaker or the

Chairman deems that his powers under the foregoing provisions of this Standing Order are inadequate, he may name such Member or Members, in which event the procedure prescribed in Standing Order 89 (*Member may be suspended after being named*) shall be followed.

(2) Conduct is grossly disorderly not only if the Member concerned creates actual disorder, but also if he knowingly raises a false point of order, or commits any serious breach of these Standing Orders, or persists in making serious allegations without (in Mr Speaker's opinion) adequate substantiation or otherwise abuses his privileges, or deliberately gives false information to the House or refuses to answer a legitimate Question or acts in any other way to the serious detriment of the dignity or orderly procedure of the House.

(3) Any Member may at any time, as a point of order, invite Mr Speaker to name another Member for grossly disorderly conduct, but the decision whether or not to do so shall remain with Mr Speaker.

Standing Order No. 89 provides that whenever a Member shall have been named by Mr Speaker or by the Chairman then –

(a) if the offence has been committed by such Member in the House, a Motion shall be made by any other Member present 'That such Member (naming him) be suspended from the service of the House', and Mr Speaker shall forthwith put the question thereon, no amendment or debate being allowed;

(b) if the offence has been committed in a Committee of the whole House, the Chairman shall forthwith leave the Chair and report the circumstances to the House; and Mr Speaker shall, on a Motion as aforesaid being made, forthwith put the question, no amendment, adjournment or debate being allowed, as if the offence had been committed in the House itself.

Standing Order No. 90(1) provides that if any Member be suspended under Standing Order 89 (*Member may be suspended after being named*) his suspension on the first occasion shall be for three days including the day of suspension; on the second occasion during the same session for seven days, including the day of suspension; and on the third or any subsequent occasion during the same session for 28 days, including the day of the suspension.

For the purpose of this Standing Order 'day' means a day upon which the House sits.

If any Member refuses to withdraw when required by or under these Standing Orders, Mr Speaker or the Chairman of Committee as the case may be, having called attention of the House or Committee to the

fact that recourse to force is necessary in order to compel such Member to withdraw, shall order such Member to be removed and such Member shall thereupon without question put be suspended from the service of the House during the remainder of the session and shall during such suspension forfeit his right of access to the precints of the Assembly.

Standing Order 93 provides that –

(1) In the event of grave disorder arising in Committee, Mr Speaker shall resume the Chair forthwith.

(2) In the event of grave disorder arising in the House, Mr Speaker may, if he deems it necessary so to do, adjourn the House forthwith or suspend any sitting for a period to be named by him. This gives the Speaker powers to suspend a sitting in case of grave disorder in the House.

During the fourth Parliament in Second Session (1981) an Hon Member made serious allegations which he could not fully support claiming that certain Honourable Members were plotting to have him assassinated. The Member had claimed that two senior Ministers were behind the plot. When challenged to substantiate this claim the Speaker was not satisfied with the Member's explanation and the Member was suspended in accordance with the provisions of the Standing Orders for three consecutive sitting days.

Other minor disorders are dealt with on the spot by the Speaker.

Malawi

The Standing Orders empower Mr Speaker to deal with any disorderly conduct by Members of Parliament. In the worst situation, Mr Speaker can 'name' the Member of Parliament causing disorder, and immediately after that, the Serjeant-at-Arms will physically send that Member of Parliament out of the Chamber. But this has never happened in Malawi since the attainment of independence.

New Zealand

The House's/Speaker's powers to deal with disorderly conduct are modelled on those of the House of Commons at Westminster.

The Speaker may order a member whose conduct is grossly disorderly to withdraw from the Chamber for the remainder of the day's sitting. If the Speaker considers that merely ordering the member's withdrawal would not adequately reflect the member's offence in disregarding the authority of the Chair or obstructing the business of the House, the Speaker can ask the House to judge the member's conduct or the Speaker can name the member. When a

member has been named another member (usually the Leader of the House) may move that the named member be suspended from the service of the House and the question on this motion is put without any amendment, adjournment or debate. If the motion is carried, the member is suspended for twenty-four hours, or seven days if this is the second occasion on which he or she has been suspended in the same session, or twenty-eight days if it is the third.

If a number of members act jointly in defiance of the Chair, the Speaker may name them all, and if force proves to be necessary to remove any member or members in these circumstances, the member or members concerned are automatically suspended from the service of the House for the remainder of the session.

The Speaker also has authority to adjourn the House or suspend the sitting if grave disorder occurs. In cases of disorder in Committee, the Speaker may resume the Chair without any resolution of the Committee.

There have been no major incidents of disorder by members in recent years. Two members have been ordered to withdraw by the Speaker in the last decade; no members have been named.

Papua New Guinea

The Speaker in most cases uses provisions in the Standing Orders of the National Parliament when dealing with disorderly conduct by Members.

Relevant Standing Orders that can be exercised by the Speaker when there is disorderly conduct among Members in the Chamber are:–

Standing Order No. 63
Offence in Parliament.
If any Member –

(a) persistently and wilfully obstructs the business of Parliament; or
(b) is guilty of disorderly conduct; or
(c) uses objectionable words and refuses to withdraw them; or
(d) persistently and wilfully refuses to confirm to these Standing Orders, or any one of them; or
(e) persistently and wilfully disregards the authority of the chair,

the Speaker may report to Parliament that the Member has committed an Offence.

S.O. No. 64
Offence in Committee

If any Member in a Committee of the whole Parliament commits any of the offences referred to in the last preceeding order, the Chairman may suspend the proceedings in the Committee and report to Parliament that the Member has committed the offence.

S.O. No. 65
Proceedings on Report of Offence

When any Member has been reported as having committed an offence referred to in Standing Order 63, he shall be called upon to stand up in his place and make any explanation or apology he thinks fit, and afterwards the Speaker may suspend such Members from the service of Parliament.

S.O. 66
Duration of Suspension

If any member is suspended, his suspension on the first occasion shall be for the remainder of the day's sitting; on the second occasion, within the same meeting for two sitting days; and on the third or any subsequent occasion within the same meeting for three sitting days.

S.O. 67 –
Member suspended Excluded from the Chamber

When a Member has been suspended, he shall not be permitted to enter the chamber during the period of his suspension. If during that period the member enters the Chamber, the Speaker may order any person to remove him from the Chamber.

S.O. 68 –

In the case of grave disorder arising in Parliament, the Speaker may, if he thinks it is necessary to do so, adjourn the Parliament without question being put or suspend any sitting for a time to be named by him.

Here are some of the major incidents of disorder by Members during the last 5 years. These are cases where the Speaker applied provisions in the Standing Orders to settle disorderly behaviour.

1. 30 August 1979 – Member Named
   Mr Deputy Speaker named the honourable Member for Nipakutubu (Mr Ibne Kor) for
   (a) persistently and wilfully obstructing the business of Parliament by persisting to raise a point of order which in the opinion of the Chair was out of order; and
   (b) persistently and wilfully disregarding the authority of the Chair.

Sitting suspended: Mr Speaker suspended sitting at 10 minutes past eleven o'clock a.m.

Resumption of Sitting: Mr Speaker resumed the Chair at twenty-two minutes to twelve o'clock mid-day and reported the circumstances to the Parliament. Mr Speaker called on the honourable Member for nipa-kutubu to make an explanation or apology. The honourable member apologised to the Parliament.

(Debates – 30 August 1979 – Pages 7/3/4–8/3/1)

2. 27 November 1979 – Member named and ordered to withdraw from the Parliament.
   Mr Assistant Speaker named Sir Pita Lus and called upon him to make an apology before withdrawing from the Parliament. Sir Pita Lus then being grossly disorderly and continuously disregarding the authority of the Chair, Mr Assistant Speaker ordered Sir Pita Lus to withdraw from the Parliament for the remainder of the sitting.

Sir Pita Lus continuing further to defy the Chair by refusing to withdraw, Mr Assistant Speaker then ordered the Acting Serjeant-at-Arms to remove him from the Parliament. Sir Pita Lus still refused to obey the order from the Chair to withdraw.

Suspension of sitting: At twenty-two minutes past three o'clock p.m., Mr Assistant Speaker left the Chair. When the sitting resumed, Sir Pita Lus had withdrawn from the Chamber.

(Debates – 29 November 1979 – Page 22/10/1)

3. 9 May 1983 – Suspension of Member
   The Honourable Member for Chuave was defying the authority of the Chair by continuing to interject and obstruct the business of Parliament. Mr Speaker therefore suspended the Member from the service of the Parliament for the remainder of the sitting. The Member for Chuave refusing to withdraw from the Chamber and continuing to be disorderly, the Speaker suspended the sitting. At nineteen minutes past four o'clock p.m., Mr Speaker resumed the Chair, the Member of Chuave having left the Chamber.

(Debates – 9 May 1983 – Page 16/5/3–17/5/1)

4. 16 May 1983 – Reflection on the Chair
   The Acting Speaker (Mr Marfuk Gainda) made a statement concerning serious reflections cast on the integrity and impartiality of the Chair by the Member for North Fly when debating a motion he had moved on 12 May 1983 in accordance with Standing Order 106, resulting from a complaint of privilege he had raised on 6 May 1983 and on which the Chair had ruled not

to refer to the Privilege Committee, and asked the member for North Fly to stand in his place and withdraw those reflections and apologise to the Chair and to the Parliament.

Mr Warren Dutton defied the authority of the Chair by deliberately refusing to withdraw the remarks he had made and stating that he would not apologise to the Chair and to the Parliament.

Consequently Mr Michal Somare (Prime Minister) moved that the Member for North Fly be suspended from the precincts of the Parliament for the remainder of the sitting.

Debate was made on the motion.

The Parliament then voted – AYES 43, NOES 27. And so the motion was resolved in the affirmative. Mr Warren Dutton, by then had withdrawn from the Chamber.

(Debates – 16 May 1983 – Page 16/9/2)

5. 4th November 1983 – Member Suspended
   During question time (question without notice) and while the Minister for Primary Industry (Mr Dennis Young) was addressing the Parliament, the Member for Samarai-Murua made an unparliamentary remark in his interjection. Mr Speaker then called on the honourable Member to withdraw the remark.

The Member after having refused to withdraw the remark left the Chamber. Sir Pita Lus (Minister for Administrative Services) then moved that the honourable member for Samarai-Murua be suspended for the remainder of the sitting.

Mr Iambakey Okuk (Leader of Opposition) raised a point of order that the motion relating to the suspension of the Member for Samarai-Murua was out of order as the Member did not seek leave of the Parliament. In reply Mr Speaker ruled that as it was only a subsidiary motion, leave of Parliament was not required.

Mr Warren Dutton (Member for North Fly) further moved that the ruling be dissented from. Debate on the motion of dissent ensued.

The question that the motion of dissent be agreed to, was put accordingly and negatived. And the question that the Member for Samarai-Murua be suspended for the remainder of the sitting was put accordingly.

The Parliament then voted: AYES 52, NOES 29, and so it was resolved in the affirmative.

The Honourable Member for Samarai-Murua was therefore suspended for the remainder of the sitting.

(Debates – 4 November 1983 – Pages 2/4/1–2/4/3)

United Kingdom: House of Commons

The powers of the Chair to enforce order are fully described at pp.442–50 of the 20th Edition of May.

Major incidents of disorder by Members since 1975 are described below. [Standing Orders are referred to by the number which they now bear.]

(i) 4 March 1975. Mr Michael Heseltine (Opposition spokesman on industry) rose on a point of order and alleged that certain statements made the previous evening by the Leader of the House (Mr Edward Short), while announcing a late change in the business of the House, were untrue. Numerous Opposition Members pressed Mr Short to answer the allegation. Mr Speaker appealed for order and said that he would suspend the sitting if the noise continued; he then suspended the sitting pursuant to S.O. No. 27 for twenty minutes. When the sitting was resumed Mr Short made a brief statement clarifying his earlier remarks. (HC Deb Vol. 887, cc.1270–6)

(ii) 13 April 1976. During the debate on the motion for the Easter adjournment, Mr John Stonehouse was repeatedly called to order for irrelevance by Mr Deputy Speaker, who eventually directed him pursuant to S.O. No. 23 to discontinue his speech. Mr Stonehouse refused, whereupon Mr Deputy Speaker directed him pursuant to S.O. No. 24 to withdraw from the Chamber for the remainder of that day's sitting. Mr Stonehouse then withdrew. (Vol. 909, cc.1170–80)

(iii) 27 May 1976. At the end of a debate on a motion relating to Mr Speaker's ruling that the Aircraft and Shipbuilding Industries Bill was *prima facie* hybrid, a division on the Opposition's amendment resulted in a tie. Mr Speaker thereupon used his casting vote against the amendment in accordance with precedent. The Government's motion was thus carried by one vote. Grave disorder then arose, during which Mr Michael Heseltine removed the Mace from its position. Mr Speaker suspended the sitting for 20 minutes, and then adjourned the House, pursuant to S.O. No. 27. At the start of the next sitting Mr Heseltine apologised to the Speaker and to the House. (Vol. 912, cc.756–69)

(iv) 18 July 1978. During consideration of Lords amendments to the Scotland Bill, Mr Dennis Canavan included a Member of the House of Lords in the expression 'a load of thieves and rogues', which he declined to withdraw. Mr Deputy Speaker directed him to withdraw from the Chamber pursuant to S.O. No. 24. (Vol. 954, cc. 417–9)

(v) 24 June 1980. During Questions of the Secretary of State for Employment, Mr Dennis Skinner declined to resume his seat when directed to do so by Mr Speaker. Mr Speaker then directed him to withdraw from the House pursuant to S.O. No. 24, but Mr Skinner again declined. Mr Speaker again

directed him to withdraw, and he eventually did so when summoned by the Serjeant-at-Arms to comply with Mr Speaker's directions. (Vol. 987, cc.216–8)

(vi) 13 November 1980. Shortly before the arrival of Black Rod in connection with the prorogation of Parliament, Mr Roy Hattersley (Opposition spokesman on the environment) rose on a point of order to complain that the Secretary of State for the Environment (Mr Michael Heseltine) had announced an increase in council house rents in a written answer rather than in a statement to the House. After brief exchanges between Mr Hattersley and Mr Heseltine, Mr Speaker announced the arrival of Black Rod; but grave disorder having arisen, he suspended the sitting for 10 minutes pursuant to S.O. No. 27. When the House resumed the Leader of the Opposition (Mr Michael Foot) pressed the Government to withdraw the document referred to in the written answer. At the request of the Leader of the House (Mr St John Stevas), Mr Speaker suspended the sitting informally for a further 15 minutes. Mr Heseltine then made a statement to the House, after which Black Rod entered the Chamber. (Vol. 992, cc.763–70)

(vii) 12 February 1981. During Questions relating to security in Northern Ireland, Mr Gerald Fitt rose on a point of order and said that the Rev Ian Paisley had called the Secretary of State for Northern Ireland a liar. Mr Paisley said that he had made such a statement and refused to withdraw it. Mr Speaker named him pursuant to S.O. No. 24 for disregarding the authority of the Chair. The House proceeded to a division, but only one Member was willing to act as a teller for the Noes. Mr Paisley then withdrew. (Vol. 998, cc.969–70)

(viii) 8 April 1981. During Questions to the Solicitor General for Scotland Mr Ron Brown accused the Minister of lying to the House and declined to resume his seat when Mr Speaker rose. Mr Speaker at first ordered him to withdraw from the House for the remainder of that day's sitting, and when Mr Brown persisted in his disorderly conduct he named him. Mr Brown then withdrew. (Vol. 2, cc.950–1)

(ix) 7 July 1981. Mr Dennis Skinner rose on a point of order and persistently called attention to Mr Speaker's recent attendance at a function connected with the Conservative Party. Mr Speaker ordered him to withdraw from the Chamber for the remainder of that day's sitting. Mr Skinner accordingly withdrew. (Vol. 8, cc.262–4)

(x) 15 July 1981. During Questions relating to local authority

expenditure in Scotland, Mr Ron Brown placed a placard on the Table of the House. Mr Speaker named him for grossly disorderly conduct. The motion for his suspension was agreed to without a division. (Vol. 8, c.1159)

(xi) 10 November 1981. At the beginning of a statement by the Prime Minister about Anglo-Irish bilateral talks, the Rev Ian Paisley and Mr Peter Robinson interrupted Mrs Thatcher from the Side Galleries. Mr Speaker took no action at the time but gave both Members notice to come to the House the following Monday (16 November). He then said that in the light of the tragic events of the previous few days, which included the murder of a Northern Ireland Member, he would do no more than give them a warning. (Vol. 12, cc. 421, 428; vol. 13, c.22)

(xii) 16 November 1981. Mr John McQuade and other Members having persistently interrupted a ministerial statement about security in Northern Ireland, Mr Speaker ordered Mr McQuade to withdraw from the House pursuant to S.O. No. 24. When Mr McQuade continued, Mr Speaker suspended the sitting pursuant to S.O. No. 27 for 10 minutes. On resuming Mr Speaker named Mr McQuade, Mr Peter Robinson and the Rev Ian Paisley for jointly disregarding the authority of the Chair. The House proceeded to a division, but no Member was willing to act as a teller for the Noes. The three Members refused to withdraw, whereupon Mr Speaker directed the Serjeant-at-Arms to remove them and suspended the sitting for a further 10 minutes. Mr Speaker subsequently informed the House that in his view the three Members had come to the House with the intention of being named. (Vol. 13, cc.24–5)

(xiii) 26 November 1981. Mr Arthur Lewis persisted in raising points of order, and Mr Speaker directed him to withdraw from the House pursuant to S.O. No. 24. Mr Lewis withdrew accordingly. (Vol. 13, cc.999–1000)

(xiv) 29 April 1982. During one of a series of debates on the Falkland Islands, Mr Andrew Faulds criticised Mr Speaker's selection of Members to speak in those debates. Mr Speaker directed him to withdraw from the House pursuant to S.O. No. 24. Mr Faulds withdrew accordingly. (Vol. 22, 1042)

(xv) 26 May 1982. At the end of a ministerial statement on the Falkland Islands, Mr Andrew Faulds complained that he had not been called to ask a question. Mr Speaker directed him to resume his seat, and when he refused, directed him to withdraw from the House pursuant to S.O. No. 24. Mr Faulds then accused Mr Speaker of attempting to silence the

opponents of military action, and Mr Speaker named him. The motion for Mr Faulds's suspension was agreed to on a division by 277 votes to 27. Mr Faulds then withdrew. (Vol. 24, cc.928–31)

(xvi) 3 November 1982. During the debate on the Address Mr Robert Parry called the Prime Minister 'a liar and a hypocrite'. When he refused to withdraw those words Mr Deputy Speaker directed him to withdraw from the House pursuant to S.O. No. 24. Mr Parry withdrew accordingly. (Vol. 31, cc.87–8)

(xvii) 16 February 1983. After 1½ hours of points of order relating to the motion to approve the draft Parliamentary Constituencies (Wales) Order and numerous interruptions of the Minister's speech, Mr Deputy Speaker called on Mr Ray Powell to resume his seat. When Mr Powell refused to do so, Mr Deputy Speaker directed him to withdraw from the House pursuant to S.O. No. 24 and he withdrew accordingly. The House then divided on the Question, That strangers do withdraw. At the conclusion of the time allowed for the debate under S.O. No. 3, Mr Deputy Speaker, being of opinion that because of the importance of the subject matter of the motion the time for debate had not been adequate, adjourned the debate. (Vol. 37, cc. 392–423)

(xviii) 21 February 1983. During Questions to the Minister for Trade, Mr Dennis Canavan alleged that the Secretary of State for Trade, a member of the House of Lords, was 'lining his pockets out of shares in a racist company'. He refused to withdraw the remark, and Mr Speaker ordered him to withdraw from the House pursuant to S.O. No. 24. Mr Canavan accordingly withdrew. (Vol. 37, c.647)

(xix) 3 February 1984. Mr Dennis Skinner intervened in a Minister's speech and referred to him as 'this hypocrite here', and refused to withdraw the expression. Mr Deputy Speaker ordered him to withdraw from the House pursuant to S.O. No. 24. Mr Skinner accordingly withdrew. (Vol. 53, cc.566–7)

(xx) 29 February 1984. During the Second reading of the Barclays Bank Bill Mr Dave Nellist said, referring to remarks made by another Member, 'he is well paid to say that'. He refused to withdraw the expression, and Mr Deputy Speaker ordered him to withdraw from the House pursuant to S.O. No. 24. Mr Nellist accordingly withdrew. (Vol. 55, cc.338–9)

(xxi) 2 May 1984. During Questions to the Secretary of State for Trade and Industry, Mr Tam Dalyell accused the Prime Minister of lying. Immediately after Questions Mr Speaker

repeatedly called on Mr Dalyell to withdraw his remark, and finally named him for disregarding the authority of the Chair. The motion for Mr Dalyell's suspension was agreed to on a division by 196 votes to 33. He then withdrew. (Vol. 59, cc.345–9)

(xxii) 17 July 1984. During questions arising from a statement by the Prime Minister about GCHQ, Mr Dennis Skinner said that she was capable of 'bribing the judges'. He refused to withdraw the remark, and Mr Speaker named him for disregarding the authority of the Chair. The motion for his suspension was agreed to on a division by 218 votes to 84. He then withdrew. (Vol. 64, cc.181–5)

(xxiii) 31 July 1984. During Questions to the Prime Minister, Mr Martin Flannery used the expression 'tame Tory judges', which he refused to withdraw. Mr Speaker then named him for disregarding the authority of the Chair. The motion for his suspension was agreed to on a division by 260 votes to 80. He then withdrew. (Vol. 65, cc.218–21)

(xxiv) 12 November 1984. Mr Dennis Skinner rose on a point of order and referred to another Member as a 'pompous sod'. He later withdrew the word 'pompous'. Mr Speaker ordered him to withdraw immediately from the House pursuant to S.O. No. 24. Mr Skinner withdrew accordingly. (Vol. 67, c.430)

(xxv) 21 November 1984. During the second reading of the Civil Aviation Bill, several Members rose on a point of order to complain that a decision to reduce the supplementary benefit paid to strikers' families had been announced by means of a written answer. After that debate had ended the Secretary of State for Social Services (Mr Norman Fowler) rose to make a statement but, grave disorder having arisen, Mr Speaker suspended the sitting for 10 minutes pursuant to S.O. No. 27. Mr Speaker resumed the Chair and, grave disorder having arisen, he adjourned the House pursuant to S.O. No. 27.

(xxvi) 17 January 1985. After Business Questions, several Members rose on a point of order to press for a debate the following week on the miners' strike. Mr Speaker eventually declined to take further points of order on the matter, and asked those Members who were standing to resume their seats. When they refused he suspended the sitting for 20 minutes. The House then proceeded with its business. (Vol. 71, cc.518–24)

United Kingdom: House of Lords

The House of Lords keeps its own order as laid down by S.O. 17. Order is maintained by observance of these provisions, and by those of S.O. 30 (*Asperity of speech*). On rare occasions (3 precedents in the last 15 years) the motion 'that the Noble Lord be no longer heard' is moved. There have been no incidents of disorder too serious to have been dealt with by these methods.

Zambia: National Assembly

Powers of the House/Speaker to deal with disorderly conduct by Members are provided for in Standing Orders 66 to 69, namely:

'*Irrelevance or repetition*

65. Mr Speaker, or the Chairman of Committees, after having called the attention of the House, or of the Committee, to the conduct of a Member who persists in irrelevance or tedious repetition, either of his own arguments or those used by other members in debate, may direct him to discontinue his speech.

Disorderly conduct in House

66(1) Mr Speaker, or the Chairman of Committees, shall order a member whose conduct is grossly disorderly to withdraw immediately from the House for the remainder of the day's sitting, and the Serjeant-at-Arms shall act on such orders as he may receive from the Chair in pursuance of this standing order. If, however, on any occasion, Mr Speaker, or the Chairman of Committees, deems that the powers conferred under this standing order are inadequate to deal with the offence, he may name such member.

(2) Members ordered to withdraw in pursuance of this standing order, or who are suspended in pursuance of standing order *sixty-seven*, shall forthwith withdraw from the Chamber.

Naming of member: suspension of member named

67(1) Whenever any member has been named by Mr Speaker, or the Chairman of Committees, immediately after the commission of the offence of disregarding the authority of the Chair or contravening the rules of the Assembly by persistently and wilfully obstructing or otherwise, then:

(a) If the offence has been committed by such member in the Assembly, Mr Speaker shall forthwith put a question on a motion being made, no amendment, adjournment or debate being allowed, 'that (naming the member) be suspended from the service of the Assembly'.

(b) If the offence has been committed in Committee of the whole House, the Chairman of Committees shall forthwith suspend proceedings and report the circumstances to the

House, and Mr Speaker shall thereupon, on motion being made, put the same question without amendment, adjournment or debate as if the offence had been committed in the House itself.

(2) If any member is suspended under this Standing Order, his suspension on the first occasion in any session shall continue for one week, on the second occasion for a fortnight, and on the third or any subsequent occasion for one month.

Provided that such period shall not extend beyond the last day of the meeting next following that in which the resolution is passed, or the session in which the resolution is passed, whichever shall first occur.

(3) On receiving from a member so suspended a written expression of regret, Mr Speaker shall lay it before the House and it shall be entered in the votes and proceedings. On a motion being made for the discharge of the order of suspension, the question thereon shall be decided without amendment or debate. If the question is agreed to, the order shall be discharged and the member shall be re-admitted.

(4) Suspension from the service of the House shall not exempt a member so suspended from serving on any select committee for the consideration of a private bill to which he may have been appointed prior to his suspension.

Powers under standing orders 65 to 67, by whom exercisable

68. The powers conferred on the Chair by standing orders *sixty-five* to *sixty-seven* shall be exercised in the House only when Mr Speaker or the Deputy Speaker is in the Chair, and in Committee only when the Chairman or Deputy Chairman of Committees is in the Chair.

Power of Mr Speaker to adjourn House or suspend sittings

69. If grave disorder arises, Mr Speaker may adjourn the House without question put or suspend any sitting for a time to be named by him.'

There have been no major incidents of disorder by Members during the last 5–10 years.

XI. APPLICATIONS OF PRIVILEGE

AUSTRALIA: SENATE

Publication of evidence taken in camera – On 12 June 1984, Senator M. C. Tate, the then Chairman of the Senate Select Committee on the Conduct of a Judge, in foreshadowing a motion to refer a certain matter to the Committee of Privileges made the following statement to the Senate:

> 'I rise on a matter of privilege and wish to indicate to the Senate a proposed course of action. In *The National Times* of 8–14 June 1984 there is an article which purports to report evidence given before the Senate Select Committee on the Conduct of a Judge. The Committee has taken evidence in camera and has not published any of its evidence nor authorised any other person to do so. The publication of evidence taken in camera by a committee, or of documents submitted to a committee, without the authorisation of that committee is one of the well known categories of contempt. If the article accurately reports the evidence given before a committee, it would clearly be a contempt. If, on the other hand, the article is inaccurate in its report of evidence given to the committee it is also one of the established categories of contempt to publish false accounts of proceedings before either House or their committees. Therefore, whatever the accuracy of the article, there is a prima facie case of contempt in the publication of this report. I therefore wish to indicate to the Senate that tomorrow I propose to give notice of a motion to refer the matter to the Privileges Committee.'
>
> (*Hansard* pp.2871–2)

On 14 June 1984 the Senate agreed to the following motion:

> 'That the publication in *The National Times* of 8–14 June 1984 of a purported report of evidence taken by the documents submitted to the Senate Select Committee on the Conduct of a Judge be referred to the Committee of Privileges.'

A further Resolution of the Senate moved by the Chairman of the Committee of Privileges and agreed to by the Senate on 22 August 1984, referred the following further matter to the Committee:

> That the further publication in *The National Times* of 27 July–2 August, 3–9 August and 10–16 August 1984 of purported proceedings of the Senate Select Committee on the Conduct of a Judge be referred to the Committee of Privileges in connection with the matter, referred to the Committee by the Senate on 14 June 1984,

relating to the publication in *The National Times* of 8–14 June 1984 of a purported report of evidence taken by, and documents submitted to, the Select Committee on the Conduct of a Judge.

The Committee met on 9 occasions, on two of which it met in public and took sworn evidence from witnesses who the Committee considered may have been able to assist it in its investigation of the source of the information given to *The National Times*.

The Committee of Privileges reported to the Senate on 17 October 1984 in the following terms:

(1) That the publication in *The National Times* of 8–14 June 1984 of a purported report of evidence taken by and documents submitted to the Senate Select Committee on the Conduct of a Judge, and the further publication in *The National Times* of 27 July–2 August, 3–9 August and 10–16 August 1984 of purported proceedings of the Senate Select Committee on the Conduct of a Judge, constitute a serious contempt of the Senate.

(2) That the editor and publisher of *The National Times* admit responsibility, and should be held responsible and culpable, for the publication and thus the contempt referred to in paragraph (1).

(3) That the editor and the publisher of *The National Times* are, respectively, Mr Brian Toohey and John Fairfax and Sons Limited.

(4) That Ms Wendy Bacon, a journalist with *The National Times*, is also culpable for the contempt referred to in paragraph (1), in that she was the author of the articles which revealed in camera proceedings of the Select Committee on the Conduct of a Judge.

(5) That the publications were based on unauthorised disclosure, by a person or persons unknown, of in camera proceedings of the Select Committee on the Conduct of a Judge, and that such disclosure, if wilfully and knowingly made, constitutes a serious contempt of the Senate.

(6) That the Committee will make a further report to the Senate on the question of what penalty, if any, should be imposed after persons affected by the findings are given an opportunity to place before it any submissions they may wish to make.

On 24 October 1984 the Senate formally adopted the Report. With the commencement of a new Session of Parliament, after the December 1984 general election, the Chairman of the Committee of Privileges, on 27 February 1985, moved the following motion:

(1) That the following matter be referred to the Committee of Privileges: The question of what penalities, if any, might, in the Committee's opinion, be appropriate with respect to the serious contempts of the Senate constituted by certain publications in

The National Times the subject of the Committee's Report, tabled on 17 October 1984 and adopted by the Senate on 24 October 1984.

The motion was agreed to by the Senate. The Committee has met on this matter and will report to the Senate in due course.

CANADA
HOUSE OF COMMONS

Threat from a Government department to a Member – On 6 February 1984, Mr Albert Cooper (Peace River) rose on a question of privilege to claim that his rights as a Member had been breached as the result of a question he had directed during Question Period to the Minister responsible for Canada Post. The following day, he claimed, an official of Canada Post telephoned his office to say that the question should have been cleared by Canada Post beforehand and that if Mr Cooper chose to continue this practice, he could expect no co-operation from Canada Post. Mr Cooper stated that these remarks interfered with his freedom of speech and that the department was attempting to influence his actions by 'bribing' him to discontinue asking 'uncleared' questions.

The Speaker (Mr Lloyd Francis) heard arguments and deferred his decision. On 20 February 1984, he ruled that a *prima facie* question of privilege had occurred, saying that a threat from a government department to withhold information or co-operation from a Member hinders that Member in the performance of his parliamentary duties. An offer of favourable treatment on the condition that questions be first cleared with the department also violates privilege. Mr Cooper moved that the matter be referred to the Standing Committee on Privileges and Elections. The motion was lost on a recorded division (Canadian Commons Hansard, pp.1101–6, 1234–5, 1382–4, 1559–61).

NOVA SCOTIA

Government's failure to return House Orders – On 16 April the Speaker delivered the following ruling –

'on a point that was raised on the 3rd of April by the honourable member for Cape Breton South who rose on that day on what he contends is a matter of privilege or, as he stated, a matter that involves what he considers to be a contempt of the Legislature. He contends that the government is in contempt of the House for failing to return House Orders duly passed by this Legislature in the session prior to this one.

The honourable member quoted certain authorities in support of his contention and concluded by seeking to move a resolution which, if passed, would reprimand the government for its disregard of the

directions of the House, and require the government to prepare and table returns to 69 House Orders for which returns were ordered, but not made in the 1983 session.

A short debate on the point followed in which the honourable Chairman of the Management Board, the honourable Leader of the Opposition, the honourable member for Cape Breton Nova, and the honourable member for Dartmouth East participated. I wish to thank all honourable members for their contributions. As the matter is one which I view to be of considerable importance, I reserved decision on the matter as I am now prepared to rule on it.

I should say at the outset that it is in my opinion necessary to determine whether a prima facie case exists in this instance to allow the motion which the honourable member for Cape Breton South seeks to move to be put to the House. In this regard, I consider that the procedure is similar to that which I am required to follow in determining whether or not a prima facie case of privilege exists. The honourable member contends that the government, by failing to respond to the orders for returns, is in contempt of the House. However, in my view, the procedure is the same even though we are dealing in this instance with an alleged contempt.

In the book, "Parliamentary Privilege in Canada" by Joseph Maingot, the following appears at page 188, "A prima facie case of privilege in the parliamentary sense is one where the evidence on its face as outlined by the Member is sufficiently strong for the House to be asked to send it to a committee to investigate whether the privileges of the House have been breached, or a contempt has occurred and report to the House. While the Speaker may find that a prima facie case of privilege exists and give the matter precedence, it is the House alone that decides whether a breach of privilege or a contempt has occurred, for only the House has the power to commit or punish for a contempt."

Accordingly, it is in my view my function at this point to determine whether a prima facie case has been made out.

In support of his contention that the government is in contempt of the House, the honourable member for Cape Breton South filed a summary of the 184 orders for returns for which notice was given during last session. Of the 166 orders issued, the honourable member's summary indicates that up to April 3rd, 97 had been returned and the remaining 69 had not been responded to.

Our Rules are silent with respect to the tabling of returns to orders of the House, and I am therefore required by Rule 2 of our Rules and Forms of Procedure to decide the matter by reference to the usages and precedence of this House in the first instance and, secondly, to the standing and sessional orders and forms of the House of Commons of Canada.

The issue of failure of the government of the day to file returns to House Orders is not a new one. My research has led me to several instances in which this matter has come up in previous sessions. On 30 November 1973, the then senior member for Yarmouth, as reported at Page No. 124 of Hansard for that day, rose to ask Mr Speaker Connolly to rule on a question of privilege arising out of the failure of the government of the day to respond to returns ordered in the previous session which had not been tabled to that date. In his brief decision on the point, Mr Speaker Connolly referred to Beauchesne's Parliamentary Rules and Forms where the following appeared on Page 12 and he quoted as follows:

"The operation of orders or resolutions of either House of which the duration is undetermined, is not settled upon any certain principle. By the custom of Parliament, they would be concluded by a prorogation, but many of them are, as part of the settled practice of Parliament, observed in succeeding sessions, and by different Parliaments, without any formal renewal or repetition."

The Speaker went on to suggest to the honourable member that the appropriate course for him to follow would be to question the minister involved as to any reasons why the return had not been tabled as required by the order.

In response to a question then put by the honourable member to the then Minister of Finance, the Honourable Peter M. Nicholson, a reply was forthcoming from Mr Nicholson as follows:

"Mr Speaker, if I might have a word on the point raised by the Honourable gentleman. I think it is so that there is no time specified within which a return must be made to the particular House Order. I can recall very, very clearly indeed, sir, what the practice of this House was over the years in that connection. I can recall having obtained House Orders in February which were answered to me in the ordinary course of mail in August and September, in succeeding months. I think I can also recall situations where, when there were short sessions of the House, the orders spilled over into the next succeeding session and I think that Rule 12 that Your Honour just cited, provides for that. If there is a practice or custom established that it is perfectly proper for the minister concerned to respond to the Order because the Order is still in force, it doesn't have to be reapplied for, it may be embarrassing to the Minister concerned that he hasn't made the return, but I don't think that there is any breach of the rules or privileges of the House."

On 29 May 1974, the then member for Cape Breton East, Mr Jeremy Akerman raised a point almost identical in form to that which has been raised on this occasion by the honourable member for Cape Breton South and alleged that the failure of the Government to reply to House Orders made in the previous session was in contempt of the

Legislature. The then Premier rose on the point and indicated that in his view all orders from the previous session of the Legislature died when the Legislature was dissolved and indeed, he contended, any discussion relating to such House Orders was out of order and there was no continuing responsibility, he said, once the House is dissolved and an election held calling for the tabling of such Orders. Honourable members will recall that the House was dissolved on 23 February 1974, and an election was held on 2 April 1974. The session in which the then member for Cape Breton East raised the point was the first following that election. I might add that I am in agreement with the point made by the then Premier and this appears to be the consensus of the parliamentary authorities in a situation where a dissolution takes place.

Later in that session, on 5 June 1974, the Speaker ruled out of order a motion relating to House Orders since October 1970, for which returns had not been tabled. When this motion was sought to be put by the then honourable member for Cape Breton East, Mr Speaker ruled that the resolution was out of order because all House Orders of the previous Assembly died when the writ was issued for an election and the Speaker's ruling on this point was sustained. However, we are not now dealing with a dissolution situation.

On Friday, 7 February 1975, our late colleague, the former member for Lunenburg Centre raised a point with respect to a motion which had been passed at the previous session for which he had not received a return. The then Attorney General indicated that our rules are somewhat unclear on just what should be done in this situation. I might add, parenthetically, that they are still unclear.

The Speaker of the day, who is now of course the honourable member for Cape Breton South ruled that,

"the resolutions once passed by the House, in one session, if not provided by the end of that particular session, should be provided when the returns are prepared by the departments. For example, in November, if at the end of November a resolution were passed calling for a considerable amount of research to be done on a topic, the topic may not be ready until possibly next March. At this time, I would direct that the various returns that were passed during the past session of the House be submitted as soon as they are prepared by the departments and direct the Clerk to assess the ones that have not had returns and to notify the various departments so that they can ready the material."

On 15 May 1979, as reported at Pages 2843 and 2844 of Hansard for that day, the honourable member for Antigonish rose on what he alleged to be a point of privilege in relation to a return which was ordered on 18 December 1978, to which a return had not been tabled as of the day on which he raised the point. The Premier intervened to

indicate that he would ensure that the return was tabled, that he was unaware of the fact that it had not been returned and indicted that he would remedy the situation very quickly.

Mr Speaker Russell ruled that there was no point of privilege. In his decision, he indicted that he had researched the matter before on the length of time taken to return House Orders and that he had noticed that it had occurred a considerable number of times in this House and that there had never been any resolution as to what length of time is reasonable. He pointed out that returns are ordered for some future date.

In decisions of my own of 25 February 1981 and 20 April 1982, I have dealt with matters relating to returns to House Orders. These decisions, while not directly on point, indicate that the matter of returns to House Orders has been a vexacious one for some considerable time.

Information available to me indicates that failure to file returns to House Orders is not a new phenomenon. The number of House Orders carried in each session from 1976–77 to 1982 ranges from a low of 57 in 1977–78 to a high of 234 in 1982. In terms of the percentage of those returned 50.9 per cent were returned from among those passed during 1977–78; 55.1 per cent of those passed during the 1982 session were returned; and the high point was reached in 1978–79 when 88.7 per cent of those House Orders passed by the House were, in fact returned.

Thus it can be seen that under neither of the two most recen administrations had complete compliance been made to the Orders of the House for returns. To say this does not make the situation correct. I take very seriously the matter of responses to orders made by the House. In the 5th Edition of Beauchesne, at Page 138, general principles governing Notices of Motions for production of papers which apply to the House of Commons are set forth. To enable members of Parliament to secure factual information about the operations of government, to carry out their parliamentary duties, and to make public as much factual information as possible, consistent with effective administration, the protection of the security of the state, rights to privacy and such other matters, government papers, documents, and consultant reports should be produced on Notice of Motion for the production of papers unless falling within certain categories outlined in which an exemption can be claimed from production.

The purpose of these motions is similar in our House. I would point out that, once adopted, the Order becomes an Order of the House. It is an Order of the legislative branch of government directing the Executive Branch to lay on the table certain returns. One cannot close his eyes to the fact that the government, through its majority in the House, can vote down such a motion. Nevertheless, the Order when

passed, is an indication that the government should be willing to make the information public by tabling a response to the Order, otherwise it would not have, or should not have acquiesced in its passage.

In the House of Commons, Standing Order 79 provides that a prorogation of the House shall not have the effect of nullifying an order or address of the House for returns or papers, but all papers and returns ordered at one session of the House, if not complied with during the session, shall be brought down during the following session without renewal of the Order. I am advised by the Clerks at our Table that they are not aware of any customs or usages in the Nova Scotia House which have any direct relevance other than, in the past, many returns have been made following adjournment of a session and, to a lesser degree, following prorogation of a session.

The decisions I have cited earlier indicate that there appears to be no custom or usage as to the length of time allowed for compliance, however, the indications are that there is a very reasonable amount of flexibility. We are still in the course of the session following the one in which the orders about which the honourable member for Cape Breton South complains were passed. I am struck by the fact that at no time has the government, or any minister, declined to comply with the orders. The government has to date, in many cases, failed to table the returns, but the government is still in a position to comply with them. We have not had a dissolution of the House and it is still open to the government to respond during this session.

I wish to conclude by reference to a situation which occurred during the session of 1975. On Wednesday, 5 February 1975, the honourable member for Lunenburg East moved for an Order directing the Clerk of the House to table a report listing the House Orders to which no replies had been received between 23 May 1974 and the date of the return. The then Premier rose on a point of order to object to the notice on the basis that it referred to House Orders of previous sessions and stated that it is not part of the work of the current session. The then Leader of the Opposition, who is now the Premier, pointed out that it was an order for the present session and that it asked the government or the minister to whom the orders of the last session were directed that they now make returns in this current session.

Mr Speaker MacLean indicated that he would rule on the point when it appeared on the order paper. On Tuesday, 11 February 1975, the House Order was moved, indicating, in my view, that Mr Speaker MacLean found that it was in order, although no direct ruling on this point was made. Further, on Thursday, 13 February 1975, Mr Speaker MacLean said the following:

"On a previous day, the Honourable Member for Lunenburg East presented a House Order, seconded by the Honourable Member for Cumberland West, requesting the Clerk of the House to report a

listing of the House Orders for which no replies have been received between 23 May 1974 and the date of this return. The return, as directed by the House, has been tabled by the clerk and is presently on his Table. I would direct also for the Clerk to send a copy of this particular return to each of the Ministers involved, so that the returns can be submitted to the House when they are completed."

This procedure commends itself to me as the appropriate one to follow. I would have no hesitation in ruling in order a motion which seeks to elicit information concerning the orders which have not been responded to should such a motion be forthcoming in the usual manner from any member of the House.

Now, from the length of this decision, and the material I have cited and reviewed, it will be obvious to honourable members that under our present Rules, this is a very grey area. I am certainly very much attracted to the suggestion made by the Chairman of the Management Board in his contribution on April 3rd that this whole situation be reviewed by the Special Committee on Rules and Procedures and I have no hesitation in stating as Chairman of that Committee that the matter will be added to its agenda.

Meanwhile, based on the precedents and practices of our House, I am not convinced that the honourable member for Cape Breton South has made out a prima facie case, as he is required to do, and I am therefore ruling the motion out of order, without prejudice to the right of any honourable member to raise the issue again, if compliance with the Orders of the House is not made within a reasonable period of time following the introduction and passage of a motion directing that the Clerk report a listing of House Orders for which returns have not been tabled. That is my ruling on the point.'

The following exchange then took place –

MR VINCENT MACLEAN: On a point of order, Mr Speaker. You quoted a tremendous number of precedents, and some very logical ones, particulary (Laughter) when I happened to sit in your Chair, and I am surprised that you were looking for a precedent, and on two occasions you quoted rulings where I, at that time, had directed ministers and departments to fulfil, and comply with the orders. I would think then that, and the Premier, then Leader of the Opposition concurred with the philosophy of the day. I would urge then that yourself, as Speaker, sir, would see fit to follow that precedent and to direct the ministers and the department to comply as quickly as possible with those requests.

MR SPEAKER: I want to say that I concur with what the honourable member has just said. However, I want to point out to him that if he was listening carefully and would read carefully what I had to say, it seems to me that there is a preliminary step which should be taken and that is, there should be a motion requiring the Clerks to

provide the House with information as to which returns had not been responded to. Then I think it would be appropriate for me as Speaker to make sure that the ministers involved are aware that the returns have not been tabled and steps can be taken to endeavour to obtain compliance with the orders of the House.

On a point of order, the honourable Premier.

HON JOHN M. BUCHANAN, Q.C. (The Premier): Well, Mr Speaker, I, over the years in this Legislature, have sat on that side and I have sat on this side. Twice on this side, and once on that side, and you are quite right that over the years there has not been any real set rule as to the return of House Orders except for a reasonable time. I remember most of the precedents that you quoted, and my philosophy hasn't changed one bit. I think they should be returned and I am going to direct all ministers to return them.

SASKATCHEWAN

Impeding a Member in the performance of his duties – During the Third Session of the Twentieth Legislature in the spring of 1984, the Member for Regina Centre, Mr Shillington raised questions regarding the propriety of the sale of a government building. Mr Shillington, through his oral questions, implied that the company which had purchased a government building had been given an unfair advantage over other buyers. The Member made these charges in the Legislative Assembly only and not outside the House.

A lawyer for the company that purchased the building launched a court action against Mr Shillington claiming damages for libel. Mr Shillington, on 25 April 1984, raised a point of privilege claiming that the statement of claim in the court and a letter from the company's lawyer impeded his ability to perform his duties as a Member and therefore were a breach of his rights and privileges.

On 26 April 1984, Mr Speaker Swan ruled as follows:

> Yesterday the Member for Regina Centre raised a Point of Privilege for which he submitted Notice as provided under Rule 6. I thank the Honourable Member for His Notice and for the concise manner in which he raised the point before Orders of the Day.
>
> Privilege is one of the most important procedural points in Parliament. A breach of the privileges of Parliament affects all Members and Parliament itself.
>
> I refer all Honourable Members to Erskine May's *Parliamentary Practice*, Twentieth Edition, p.70, for a general definition of privilege as follows:
>
> Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individual-

ly, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.

and further,

> The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers.' They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

The rights and privileges of Members evolved and were enshrined over many centuries in the development of Parliament. The ninth article of the Bill of Rights of 1688 stated: 'That the freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.'

Bourinot, another Parliamentary authority, wrote:

> Among the most important privileges of the Members of a legislature is the enjoyment of freedom of speech in debate, a privilege long recognized as essential to proper discussion and confirmed as part of the law of the land in Great Britain and all her dependencies. *Bourinot's Parliamentary Procedure and Practice*, Fourth Edition, p.47.

And, further from May on p.82:

> The absolute privilege of statements made in debate is no longer contested, but it may be observed that the privilege which formerly protected Members against action by the Crown now serves largely as protection against prosecution by individuals or corporate bodies. Subject to the rules of order in debate, a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation.

Saskatchewan legislators have recognized this important privilege by incorporating it into *The Legislative Assembly and Executive Council Act*, SS-1979, c.L-11.1, section 27, as follows:

> 27.–(1) No Member is liable to any civil action or prosecution, arrest, imprisonment or damages by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise or by reason of anything said by him before the Assembly.
>
> (2) The immunity provided by subsection (1) applies notwithstanding that words spoken by a member before the Assembly are broadcast, whether the broadcasting takes

place while the words are being so spoken or the words are recorded at the time they are being so spoken and are broadcast at a later time.

The Member for Regina Centre, yesterday, in raising his Point of Privilege, stated that a letter he had received from the law firm of Wilson, Drummond, Finlay and Neufeld and a statement of claim issued out of the Court of Queen's Bench were threatening to him as a Member of the Legislative Assembly and served to obstruct him in the carrying out of his duties. The letter and the statement of claim arose out of certain remarks made by the Member in the Legislative Assembly.

I refer all Honourable Members to Erskin May's *Parliamentary Practice*, Twentieth Edition, p.157: 'To attempt to influence Members in their conduct by threats is also a breach of privilege.' And further, on page 158: 'Conduct not amounting to a direct attempt to influence a Member in the discharge of his duties, but having a tendency to impair his independence in the future performance of his duty, will also be treated as a breach of privilege.' . . . 'It is a breach of privilege to molest any Member of either House on account of his conduct in Parliament.'

I refer all Members again to *The Legislative Assembly and Executive Council Act*, section 24:

(1) The Assembly is a court and has all the rights, powers and privileges of a court for the purposes of summarily inquiring into and punishing:

(a) Any assault, insult or libel upon or to a member while the Assembly is in Session:

and

(j) The bringing of a civil action or prosecution against, or the causing or effecting of the arrest or imprisonment of, a member for or by reason of any matter or thing brought by him by petition, bill resolution, motion or otherwise or said by him before the Assembly; . . .'

Upon reviewing the point raised by the Honourable Member yesterday and after having referred to *Bourinot, May, Beauchesne* and *The Legislative Assembly and Executive Council Act*, I find that a *prima facie* breach of privilege has been established.

I wish to point out that it is the role of the Chair to examine whether on the surface the privileges and rights of the Members, such as freedom of speech and the freedom to fulfil their role as a Member unimpeded, have been breached. It is up to the Legislative Assembly as a whole to act as it sees fit in this matter.'

Thereupon Mr Shillington moved a motion referring the matter to the Standing Committee on Privileges and Elections. The Government

House Leader moved an amendment to the original motion which, if passed, had the effect of recognizing that a breach of the privileges of the Member had occurred and ordered the guilty parties to apologize to the Legislative Assembly. The division bells calling the Members to vote on the amendment rang for hours. During this interval, the lawyer in question, apologized to the Legislative Assembly by way of a letter to the Speaker and the court action was discontinued.

The Legislative Assembly ultimately noted that the legal action had been withdrawn and accepted the letter of apology.

The questions underlying this incident were: Should the Standing Committee examine the point of privilege and in fact all of the circumstances surrounding the sale of the building or should the Legislative Assembly accept the contention that the Member's privileges had been violated and an apology was necessary? Was an apology sufficient? Should or could the Legislative Assembly instruct the court to dismiss the court action? These questions were raised in the debate but were not fully answered. The impass was finally averted when the lawyer withdrew his court action and apologized to the Legislative Assembly.

INDIA: RAJYA SABHA

Alleged failure on the part of police authorities to send intimation about the arrest and detention of a member – On 19 August 1983 a member of the Rajya Sabha complained that the police authorities of Tamil Nadu State had failed to send intimation to the Chairman of the Rajya Sabha about the arrest and detention of another member by the Police at Madras on the previous day. The Deputy Chairman, who was then in the Chair, assured the House that he would ascertain the facts from the State Government. When the matter was referred to the State Government, that Government denied that the particular member was arrested or detained by the police. It said that in view of the prohibitory orders in force in the city, the member concerned was prevented from taking out a procession and he was taken some distance away in a police bus and allowed to go. The member arrested had earlier maintained that he was arrested and detained and the State Police did not send the required intimation to the Chairman. Subsequently when a formal notice of breach of privilege was received about the matter, the same was referred to the Committee of Privileges by the Chairman for examination, investigation and report by the Committee.

The Committee went into the matter in detail and held that it was an unintentional lapse on the part of the authorities concerned in not having sent intimation to the Chairman. However, the Committee accepted the expression of regrets of the police officials of the

Government and recommended that the matter need not be pursued further. The House, thereafter, did not take any action in the matter. *(Twenty-fourth Report of the Committee of Privileges, 9 March 1984)*

Case of Shri Swraj Paul – On 10 and 11 August 1983 some members gave notices of breach of privilege arising out of certain observations contained in an interview given by Shri Swraj Paul, a London-based industrialist of Indian origin. The said interview was published in a Bombay Weekly 'Sunday Observer'. The members complaining had taken particular objection to the following portion of the published interview:

> 'What is really disgraceful is this MP J. P. Mathur and that first class thief RR Morarka. These people make statements in Parliament that I am investing Mrs. Gandhi's black money from Swiss Banks. If they have the courage let them make this statement in London – and I will not leave them for the rest of their lives. Because these idiots do not know what statements to make. And it is disgraceful that Parliament should have allowed them to get away with it.'

The members complaining stated that the above observations of Shri Swraj Paul related to the speeches of two members in the House and thus cast reflections on them for their conduct or performance or speeches in the House. They also contended that the observations held out a threat against the two members, wilfully misrepresented the proceedings of the House and maligned the House. After considering the comments of Shri Swraj Paul on the notices and also of the Editor who had published the interview, the Chairman referred the matter to the Committee of Privileges. The Chairman also expressed doubt, while referring the matter to the Committee, whether there was a privilege jurisdiction of the House over a person who was not a national or citizen of India and the procedure to follow in such cases.

As regards the jurisdiction over a foreign national, the Committee referred the matter to the Attorney General of India for opinion. The Attorney General expressed the view that Parliament could exercise jurisdiction in person against a foreign national for contempt committed by him within the country. As regards the main question of breach of privilege against Shri Swraj Paul for casting reflections on the two members of the House, the Committee felt that Shri Paul had used strong and intemperate words to describe the speeches of two members. However, the Committee accepted the words of Shri Swraj Paul that he had no intention to cast any reflection on the Rajya Sabha for whose honour and dignity he had respect. At the same time the Committee felt that it would have been better if Shri Paul had tendered an appropriate apology. The Committee also made observa-

tions regarding the tendency to make defamatory statements or allegations against persons not in a position to defend themselves on the Floor of the House. The Committee recommended that the matter should not be pursued further. Thereafter the House did not take any action in the matter.

(Twenty-fifth Report of the Committee of Privileges, 18 January 1985)

Case regarding an Article in 'Sunday Observer' entitled 'The President's Visit' – On 10 May 1984 Shri Khushwant Singh, a member of the House gave notice of a breach of privilege for reflections allegedly cast on him in an article published in the 'Sunday Observer' a Weekly of Bombay, under the title 'The President's Visit'. In that article, the writer, describing sculptures of female form put the following words in the mouth of the President:

> 'I wish Sardar Khushwant Singh was here. He is the only person to talk about these beautiful women.'

According to Shri Khushwant Singh, references to him in the article emphasised his 'amorous proclivities' and amounted to a reflection on his fitness to discharge his duties as a member of Parliament. The matter was referred by the Chairman to the Committee of Privileges of the House.

The Committee came to the conclusion that the references to Shri Khushwant Singh did not concern his character or conduct *qua* a member and as such did not amount to a breach of privilege. However, the Committee was of the opinion that the article was scurrilous and irresponsible.

(Twenty-sixth Report of the Committee, 18 January 1985)

TAMIL NADU: LEGISLATIVE ASSEMBLY

Matter of Privilege against 'Vaniga Ottrumai' – On 21 March 1983, the Speaker announced that two Members of the House had given notice of Privilege against 'Vaniga Ottrumai' a Tamil monthly for having published in its February 1983 issue an article containing derogatory and disparaging remarks about Members of the Legislature as a whole. The Speaker under the powers vested in him under Rule 255 of the Assembly Rules suo motu referred the matter to the Committee of Privileges for its examination and report.

The Editor and publisher of 'Vaniga Ottrumai' deposed before the Committee that he was responsible for writing the article and that he had no regrets whatsoever and was willing to face any consequence.

In order to discourage such writings in future, and taking into consideration the decorum and dignity of the House, the Committee resolved to take a lenient view and recommended one week's simple

imprisonment, as a measure of caution and warning to the writer and editor.

The report was presented to the House on 28 March 1984.

No further action was pursued by the House.

Matter of Privilege for making allegations against the Secretary, Legislative Assembly and for publishing the allegations – On 27 April 1983, the Speaker referred to a news item in the Tamil Daily 'Ethiroli' published by one Mr S. who had made certain allegations against the Secretary of the Tamil Nadu Legislative Assembly stating that the notices given by certain members on a particular issue were not allowed to be taken up for discussion in the House by the Secretary. As there was ulterior motive in the allegations and the publishing of the same, the Speaker under the powers vested in him under Rule 255 of the Assembly Rules, referred the matter to the Committee of Privileges for its examination and report.

Mr S. accepted before the Committee that he was ignorant of the conventions, Rules and Procedures of the House and that he was not aware of the fact that the Secretary was part of the House. He also stated that there was no intent on his part to malign the name or cast aspersions on the Secretary and he tendered his apology.

In view of the above and the apology tendered by the editor and publisher of 'Ethiroli', the Committee recommended that the matter need not be pursued further.

The report was presented to the House on 28 April 1984.

No further action was pursued by the House.

Important Rulings on the Privilege of the House and the Judiciary

(1). Regarding a Member

On 24 March 1983 the Speaker gave the following ruling:

> 'When Thiru R. Umanath raised a point of order in regard to the admission of a Writ Petition in the High Court against certain remarks of Hon. Chief Minister in the course of his speech made on the floor of the House about the High Court Judges on 2nd February 1983. The Member has raised the issue only on the basis of newspaper reports published to-day.
>
> It is not appropriate for us to say that the Court should not entertain any such case. But if a case filed in the Court questions the privilege of the Legislature or affects the privileges of the Members, thereby preventing them from taking part in the proceedings of the House it has been the parliamentary tradition to advise and direct the members that they need not obey the summons issued by the Court and that they need not subject themselves to the jurisdiction of the Court and direct the Government to apprise the Courts about the clear constitutional provisions

in this regard, through their Law Officers.

As far as this issue is concerned, there is no information whether the Chief Minister has received any notice or summons from the Court. If such a summons is received, and if this House is informed about it, steps would be taken to protect the rights of this House.'

On the 30 March 1983, the Speaker announced that he had received a letter from the Chief Minister, stating that he has received a Notice W.P. No. 207/483 of the High Court and placing the same before the Speaker for suitable directions in the matter. The Speaker gave the following ruling:-

'The Court proceedings have initiated questioning the speech delivered by him on the floor of this House. Even if we examine it superficially it clearly infringes not only the privileges of this House but also questions certain fundamental and basic concepts of our Constitution itself.

As I require some time to examine all these questions, till I give my final decision in this matter to this House, Thiru M. G. Ramachandran, as a Member of this House and the Chief Minister need not submit himself to the summons received by him from the High Court and he also need not enter appearance in the Writ Petition in compliance with the notice received from the Court.

I would give my ruling on this question within a week.'

On the 5 April 1983, the Speaker gave the following final ruling in the above matter:-

'Article 194 of the Constitution of India reads as follows:-

"194(2) No member of the Legislature of the State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature . . ."

Hence it is the fundamental right conferred on either House of a State Legislature and no Court can take action or prosecute any member in respect of anything said or any vote given by him in the Legislative Assembly or Council. Whoever does not recognise this right of this House and questions or whoever attempts to contravene or diminish this right would be committing a contempt of this House. No court has any jurisdiction or right to question or tamper this privilege.

As far as I am concerned, the writ filed against the Chief Minister, the speech delivered by him on the floor of this House is not in any way violative of Article 211 of the Constitution. Even if it is violative, it is against the constitution to initiate any action against him in any Court. That will not only affect the rights and privilgees of this House, but would also be a gross contempt of this House.

Further, as already declared by me on 30 March 1983, so long as the Ministry retains the confidence and support of this House, it would continue in office. On the other hand, unless the Courts transform themselves as the Legislatures they cannot vote the Chief Minister out of office having contravened certain provisions of the Constitution. So I hold, following precedents and privileges followed in Parliament and other State Legislatures under similar circumstances and also in pursuance of the privileges of this House, the Chief Minister shall not appear in Court and argue his case. But law officers of the Government should bring to the notice of the Courts about the special privileges guaranteed in the Constitution of India for the State Legislatures and impress upon the Court the need to dismiss the case against the Chief Minister which is based on the proceedings of the House.'

(2) Regarding Secretary of the House

On the 17 February 1984 the Speaker gave the following ruling:-

'I have seen to-day in the newspapers that a "Writ Quo Warranto" has been filed against the Secretary, Tamil Nadu Legislative Assembly. I have already announced in this House how the Secretariat of the Tamil Nadu Legislative Assembly has functioned so far and how it will function in the future. Only this House has the sole jurisdiction to consider under what authority he is functioning as the Secretary of the House. Nobody else has any right to discuss this matter or raise it in any Court of Law or any forum. If that is done, it will amount to committing contempt of the House.

The Secretary is appointed by the Governor under Article 187 of the Constitution of India in consultation with the Speaker and functioning in accordance with the Tamil Nadu Legislative Assembly Secretariat Service Rules. Further I request the State Government to explain the constitutional position in this regard before the High Court through its Law Officers.'

The High Court ultimately dismissed the petition for issue of Writ of Quo Warranto to Thiru G. M. Alagarswamy who was appointed as Commissioner and Secretary, Legislative Assembly Secretariat by a Government order dated 11 January 1984.

UNITED KINGDOM: HOUSE OF COMMONS

Alleged attempt to influence vote

In the course of a debate on 12 June 1984, on the second reading of the Greater London Council (Money) (No 2) Bill and a motion for an instruction to make part of the Council's capital expenditure subject to

the consent of the Treasury, Mr Tony Banks, Labour Member for Newham North West and a member of the Greater London Council, made the following remarks:

> 'I speak as a member of the GLC, and I know of the feeling on this matter. I know what projects will be hit if this instruction is carried. I shall use what small influence I have at County Hall to ensure that we hit the constituencies of those Conservative Members who vote in favour of the instruction. There will be a certain degree of "selective vindictiveness" – I use a phrase that has been mentioned before. There is no way that Conservative Members should think that they can escape from the consequences of their actions. I shall do my best as an individual member of the GLC to ensure that retribution is visited on the heads of Conservative Members. I hope that the GLC will ensure that the constituents of Conservative Members know exactly who is responsible for cutting projects in their areas. . . . Conservative Members will not be allowed to get away with quietly passing this measure. . . . They must not believe that they will get away with this action, without some retribution being visited upon them. I shall certainly use whatever influence I have at County Hall to ensure that they pay the price.' (HC Deb vol. 61, c.830)
>
> 'I do not apologise for one word that I said, but I want the hon Gentleman to know that I spoke as an individual Member of this House and as an individual member of the Greater London Council. I do not apologise. I shall use my influence in just the way that I described.' (ibid, cc.840–1)

A complaint was made by Mr Toby Jessel, Conservative Member for Twickenham, and other Members, and on 19 June the House ordered, on a division after a short debate, that the matter be referred to the Committee of Privileges (HC Deb vol. 62, cc.159–69).

The Committee of Privileges found that Mr Banks' remarks were in some measure a threat to Members in respect of the way they might decide to vote at the conclusion of the debate and were also a breach of the Privileges of the House, but recommended that, since the words complained of appeared to have wholly failed to influence the actions of the Members at whom they were directed, the House should take no further action (First Report from the Committee of Privileges HC 564 (1983–84)).

Premature disclosure of draft report

A report in *The Times* newspaper concerning the draft Report of the Chairman of the Home Affairs Committee on the Special Branches of the police was referred to the Privileges Committee. The Chairman, in

making his complaint to the Speaker, stated that the substance of the report was an accurate summary of his draft Report which had been circulated to the Members of the Committee but had not at that time been considered by the Committee. He considered that the newspaper report was an explicit instance of premature disclosure of the contents of a draft Report and therefore a contempt of the House.

The Committee of Privileges concluded that the publication complained of did disclose the contents of the draft Report and that it was improperly disclosed to *The Times*. It also concluded that the premature publication was potentially damaging in its effect on the deliberations of the Home Affairs Committee. It was therefore a serious contempt of the House.

The Committee did not recommend that any action be taken in relation to the specific complaint but did condemn all those responsible for the contempt. In addition, it intends 'to examine further the laws of privileges and the rules of the House as relating to the proceedings of select committees meeting in private, the procedures for considering complaints regarding breach of these privileges and rules, and the powers and practices of select committees in respect of those who commit such breaches'.

(First Report from the Committee of Privileges, Session 1984–85, HC 308)

UNITED KINGDOM: HOUSE OF LORDS

Press embargo on a judgment – While not referred to the Procedure Committee, a contempt occurred on the breaking of a press embargo on a judgment. The Senior Lord of Appeal (L. Fraser of Tullybelton) made a short speech at the end of the Judicial sitting, as follows –

> 'As your Lordships are aware, it is the practice for copies of speeches which are to be delivered giving reasons for judicial decisions by the House to be issued to the press in advance, subject to an embargo against publication before they are delivered. I have to inform your Lordships that it appears that the effect of the speeches which have just been delivered in the case of In Re Council of Civil Service Unions and Others were published by the *Gloucestershire Echo* this morning in breach of the embargo. There accordingly appears to be prima facie evidence of some grave impropriety and I have reported the matter to the Lord Chancellor.'

(H. L. Deb, 23 Nov 1984)

ZAMBIA: NATIONAL ASSEMBLY

Remarks reflecting on Members – On Wednesday 15 February 1984,

while a Minister was delivering a Ministerial Statement, an Hon. Member raised a point of order on the remarks made by Hon. M. S. Beyani, Member of the Central Committee in charge of the North-Western Province of the Republic of Zambia. The remarks which appeared in the *Times of Zambia* issue of 15 February 1984 attacked the contributions of two Hon. Members of the House.

In his ruling on Tuesday, 6 March 1984, the Hon. Mr Speaker advised the House that:

(i) parliamentary practice and procedure allows the public to comment on matters on which the House had made decisions, provided the language used is polite and carries no threats;
(ii) in accordance with the National Assembly (Powers and Privileges) Act Cap 17, Section 3 of the Laws of Zambia, the public is not allowed to attack or misrepresent what an Hon. Member says in the House;
(iii) although the value of consultations is appreciated, it is not obligatory for Hon. Members of Parliament to consult with outsiders before debating upon issues in the House.

In reference to the remarks made by the Hon. Member of the Central Committee that one of the two Hon. Members had no right to say what he had said in the House since the area he had talked abou was outside his constituency, the Hon. Mr Speaker further advise that:

(iv) Hon. Members of Parliament are national leaders who need not confine themselves to their constituencies for issues they may raise in the House; and
(v) adequate measures and safeguards exist in the House for dealing with wrong, inaccurate, untruthful or misleading submissions, necessitating, therefore, no need for outsiders to comment on parliamentary matters about which they know very little.

After taking all factors into account, Mr Speaker ruled that in responding to the contributions of the two Hon. Members of Parliament made on the floor of the House, the Hon. Member of the Central Committee, who is a long standing former Member of the House, had over-reacted and violated the Privileges, Rights and Immunities of the National Assembly by attacking the contributions of Hon. Members through the Press.

Mr Speaker further advised the House that in view of the genuineness of the error, the matter be left alone but hoped that members of the public and leaders alike would take the warning seriously in order to avoid casting aspersions on the deliberations of the House.

(*Daily Parliamentary Debates* Vol. 65, Columns 1907–16)

XII. MISCELLANEOUS NOTES

1. Constitutional

Australia: House and Senate – The following changes were made in 1984 to the law concerning Parliament, its members and officials, and the electoral system.

1. *Acts Interpretation Amendment Act 1984*

A major feature of this Act is that it enables courts to use extrinsic aids in interpreting legislation. Such aids can include reports of the Law Reform Commission or a committee of inquiry, any explanatory memorandum tabled in either House or provided to Members, the Minister's second reading speech, parliamentary debates, reports of parliamentary committees prior to the enactment of the legislation, treaties or international agreements referred to in the legislation, and any documents declared in the legislation to be relevant. Other provisions of the Act are mainly of a machinery nature, but one worthy of note is an update of the definitions of 'document' and 'writing' to include modern methods of storing and reproducing words, figures, symbols etc.

2. *Commonwealth Electoral Legislation Amendment Act 1984*

This Act introduces a number of amendments, mostly of a minor or machinery nature, to existing electoral legislation (i.e. the *Commonwealth Electoral Act 1918*, *Representation Act 1983* and *Commonwealth Electoral Legislation Amendment Act 1983*). These amendments relate to matters such as the transfer of surplus votes of an elected candidate and the clarification of the definition of 'non-sitting Senator'. The Act also provides for a minor revision of the Senate ballot paper.

3. *Electoral and Referendum Amendment Act 1984*

This Act repeals the relevant sections of the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* relating to the prohibition of the publication of misleading or deceptive political material. These amendments follow two of the recommendations contained in the second report of the Joint Select Committee on electoral reform. In this report it was argued that, while fair advertising of political parties' election promises is a desirable objective, it is not one that can be obtained through legislation. In the final analysis, if deemed necessary, the law of defamation provides an avenue for those concerned enough or having good reason, to pursue the issues in court.

4. *Members of Parliament (Staff) Act 1984*

This Act is part of a package of three Acts passed by the Parliament in June 1984 to give effect to Government policies on staffing reforms in the Public Service.

The *Members of Parliament (Staff) Act 1984* makes legislative provision for the employment of three categories of persons: ministerial consultants, staff of Senators and Members holding an office within the Parliament, and the staff of Senators and Members generally.

5. *Referendum (Machinery Provisions) Act 1984*

This Act makes machinery provisions for the conduct of, and voting in, referendums – it is a consolidation and expansion of previous Acts dealing with referendums. The Act also provides the machinery to enable electors in the A.C.T. and Northern Territory to vote in referendums – a right won by a constitutional alteration in 1977.

Other matters dealt with include: requirements relating to the distribution to electors of arguments for and against laws, the establishment of mobile polling booths, voting procedures for Antarc tic and itinerant electors, postal votes, etc.

6. *Remuneration and Allowances Amendment Act 1984*

This Act amends certain Determinations of the Remuneration Tribunal dated 5 April 1984. The amendments provide for a reduction from 15% to about 8.6% in the allowances (other than travelling allowances) determined by the Tribunal for Ministers, parliamentary office-holders and Members of Parliament. The Act also makes a substantive change to Tribunal practice so that the Tribunal is to have regard to national wage case decisions and principles of wage determination established by the Conciliation and Arbitration Commission in reaching its determinations.

(Contributed by the Clerk of the Australian Senate)

Australia: New South Wales – Consequent upon the repeal of the Registration of Deeds Act, 1897, an amendment was made by Act No. 24 of 1984, to the Constitution Act, 1902, with respect to the enrolment of Acts. The provisions in the former Registration of Deeds Act requiring the Registrar General to enrol and record all statutes enacted by the Parliament were re-enacted and included in the more appropriate Constitution Act.

Australia: Victoria – The Constitution (Duration of Parliament) Bill was passed to extend the term of the Legislative Assembly from a maximum of three years to a maximum of four years. The Bill also provided for Members of the Legislative Council to serve for two Legislative Assembly terms whereas they previously had a fixed term

of six years (half the Members retiring each three years).

Under the new legislation the Legislative Assembly can only be dissolved, and an election held, within three years after an election in the following ciurcumstances:

(a) if the Government loses a vote of no confidence in the Legislative Assembly; or
(b) if the Legislative Council twice rejects a Bill which the Legislative Assembly has resolved to be a Bill of special importance within a minimum period of four months and a maximum period of eight months; or
(c) if there is a disagreement between the Houses over passage of supply.

The Governor may dissolve the Assembly at any time during the fourth year of a term, resulting in a general election for that House and an election for one half the Council Members.

References: Constitution (Duration of Parliament) Act 1984 (No. 10106)
Legislative Council Hansard, *3 May 1984, p.2805* et seq.
Legislative Council Minutes of the Proceedings, *3 May 1984.*
(Contributed by the Clerk of the Legislative Council)

Belize – Electoral constituencies were increased from 18 to 28 for General Elections which took place on 14 December 1984.

The United Democratic Party under the leadership of Mr Manuel Esquivel, who became the Prime Minister, formed the new Government, controlling 21 seats.

The Opposition Peoples United Party gained 7 seats.

Canada: Saskatchewan – On 28 November 1984, the Legislative Assembly of Saskatchewan amended *The Legislative Assembly and Executive Council Act* regarding the power to expel a Member. When a sitting Member of the Legislative Assembly is convicted of an indictable offence and sentenced to imprisonment for a term of two years or more, the Legislative Assembly now, as a result of the amendment, may by resolution (a) suspend the Member from sitting and voting as a Member; or (b) declare the seat of the Member to be vacant.

If a Member has been suspended under this provision in the Act, all payments and allowances are also suspended until the Member is reinstated or until the seat is declared vacant.

Immediately following the amendment to *The Legislative Assembly and Executive Council Act*, the Legislative Assembly passed a resolution which declared the constitutency of Thunder Creek vacant due to the fact that the sitting Member, Mr Colin Thatcher had been found

guilty of first-degree murder and sentenced to life imprisonment with no possibility of parole for twenty-five years.

(Contributed by the Clerk of the Legislative Assembly)

India: Tamil Nadu – On 17 February 1984, the Speaker made the following announcement regarding the independence of the Legislative Assembly Secretariat under the control of the Speaker:

> 'There are misconceptions over the functioning of the Legislative Assembly Department, even though it is under my full control and functions without any interference from the Government in accordance with the Legislative Assembly Rules framed under the Constitution. Therefore to clear the above misconception, the Governor in consultation with me has issued an order that the Legislative Assembly Secretariat will be under the independent control of the Speaker from 16th February 1984.
>
> This Department will hereafter function as the Legislative Assembly Secretariat. The Secretary will be described as Secretary for this House and Commissioner-and-Secretary for the Secretariat. This is because he is equivalent to the other Commissioner-and-Secretaries of the Government'.

Thiru G. M. Alagarswamy, Secretary to Government, Legislative Assembly Department, was designated as Commissioner-and-Secretary to Government, Legislative Assembly Department with effect from 11 January 1984. However, as far as the business relating to the House is concerned, his designation as Secretary, Legislative Assembly has continued to be in vogue.

(Contributed by the Commissioner-and-Secretary of the Tamil Nadu Legislative Assembly Secretariat)

Isle of Man – The Constitution (Executive Council) Act, 1984 amended the constitution of the Executive Council, which has the duty to consider and to advise the Governor upon all matters of principle and policy and legislation. Until the Act came into operation (15 January 1985) Executive Council was made up of a Chairman, elected by Tynwald, and two members of the Legislative Council and five Members of the House of Keys, elected by Tynwald upon the nomination of their Branches. The Chairman of the Finance Board and the Chairman of the Home Affairs Board were, however, ex officio, members and each counted towards his Branch's quota. Thus five members were elected by Tynwald and need not be Chairmen of Boards of Tynwald (the equivalent of ministers). The Act established an Executive Council, composed of a Chairman elected by Tynwald, plus the Chairmen of the principal policy-making Boards of Tynwald (i.e. Finance Board; Home Affairs; Industry; Agriculture and Fisher-

ies; Health Services; Tourist; Local Government; and Education). The Chairman may not be chairman of the named Boards.

Malawi – In 1984 the Constitution was amended to allow as many Judges to be appointed as was desirable. Before the amendment, the number of Judges to be appointed was only 3.

New Zealand – On 3 April 1985 the House of Representatives for the first time in its history fixed by resolution its programme of sittings for the session. This was done by means of a motion moved by the Leader of the House (Hon G. F. Palmer) and basically entails the House sitting for three weeks at a time followed by a one week adjournment for the remainder of this year. The session which began on 15 August 1984 will then be prorogued in December 1985. It is Government policy that a programme of sittings be devised for Parliament each session.

2. Electoral

Australia: Victoria – The Constitution Act Amendment Act (Electoral Legislation) Bill was passed in October 1984. Its main purpose was to ensure that Victoria's electoral legislation is, as far as possible, uniform with that of the Commonwealth of Australia, particularly in relation to procedures and in ensuring that electoral rolls as between Commonwealth and State are uniform. The Commonwealth legislation had already been amended extensively in 1983.

Some of the more important features of the legislation include –

(a) provision for places on ballot papers to be decided by random selection rather than having candidates listed in alphabetical order;

(b) provision for party affiliation to be shown beside a candidate's name on the ballot paper;

(c) provisions designed to make it easier to enrol for voting and to retain enrolment. (For example, seventeen year olds can now enrol provisionally at that age and automatically become fully enrolled at eighteen without further application, whilst Victorian citizens living overseas for an extended period can retain their voting rights);

(d) provisions to assist handicapped voters and those in hospitals and nursing homes (for example, provision of mobile polling facilities); and

(e) provision for creation of a register of postal voters whereby applications for postal votes are automatically sent to those on the register when an election is called.

References: The Constitution Act Amendment Act (Electoral Legislation) Act 1984 (No. 10146).
Legislative Council Hansard, *23 October 1984, p.838* et seq.
Legislative Council Minutes of the Proceedings, *23 October 1984.*
(Contributed by the Clerk of the Legislative Council)

3. Standing Orders

Australia: House of Representatives – A new standing order 28A (Committee of Members' Interests) was adopted on 9 October 1984. (VP 1983–84/943–4).

This standing order provides for the establishment of a Committee of Members' Interests, consisting of 7 Members, at the commencement of each Parliament. It requires the committee –

(a) (i) to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests;
(ii) to consider any proposals made by Members and others as to the form and content of the register;
(iii) to consider any specific complaints made in relation to the registering or declaring of interests;
(iv) to consider what changes to any code of conduct adopted by the House are necessary or desirable;
(v) to consider what classes of persons (if any) other than Members ought to be required to register and declare their interests, and
(vi) to make recommendations upon these and any other matters which are relevant.

(b) The committee shall consist of 7 Members, 4 Members to be nominated by either the Prime Minister, the Leader of the House or the Government Whip and 3 Members to be nominated by either the Leader of the Opposition, the Deputy Leader of the Opposition or the Opposition Whip:
Provided that, where the Opposition is composed of 2 parties, the committee shall consist of 4 Members to be nominated by either the Prime Minister, the Leader of the House or the Government Whip, 2 Members to be nominated by either the Leader of the Opposition, the Deputy Leader of the Opposition or the Opposition Whip, and 1 Member to be nominated by either the Leader of the Third Party, the Deputy Leader of the Third Party or the third Party Whip.

(c) The committee shall elect as chairman of the committee one of the Members nominated either by the Prime Minister, the Leader of the House or the Government Whip.

(d) The committee shall have power to send for persons, papers

and records but shall not exercise that power, nor undertake an investigation of the private interests of any person, unless approved by not less than 4 members of the committee other than the chairman.

(e) The committee shall have power to confer with a similar committee of the Senate.

(f) The committee shall, as soon as practicable after 31 December in each year, prepare and table in the House a report on its operations during that year and shall also have power to report from time to time.

The standing order gives the committee limited powers of investigation and requires it to report annually on its operations.

Australia: Senate – Although no Standing Orders were actually adopted or amended by the Senate in 1984, 2 recommendations of the Standing Orders Committee were considered by the Senate and agreed to. The first of these was that the *Public Accounts Committee Act 1951* be amended by the insertion of a provision in the same terms as sub-section 12(5) of the *Public Works Committee Act 1969*, so that neither of the two major statutory Committees may then meet during the sittings of either House without the permission of that House. Until this amendment of the Act is made, the Public Accounts Committee should comply with Senate Standing Order 300, as it has prior to 14 September 1983, and not meet during the sittings of the Senate unless the Senate grants permission to do so. The second matter dealt with access to Senate documents and the Senate passed a Resolution authorising the President to grant access to evidence taken by Committees *in camera* or documents submitted to Committees on a confidential or restricted basis, provided that such material is at least 30 years old. The House of Representatives later concurred in this Resolution in respect of the records of joint committees.

Amendments were made to the Sessional Orders in 1984 in relation to the following matters:

—days and hours of meeting;
—adjournment of the Senate;
—routine of business;
—precedence of Government and General Business; and
—consideration of Government Papers.

The majority of these amendments were to provide for new sitting arrangements whereby the Senate sits for 8 days consecutively in each 2 week sitting period (i.e. Tuesday to Friday and Monday to Thursday).

Canada: House of Commons – 1. On 22 March 1984, the House gave its consent to the motion that Standing Order 69(3), concerning joint

House and Senate Committees, be amended to establish a standing joint committee to consider official languages policies and programs (Canadian Commons Hansard, p.2385).

2. On 7 December 1984, shortly after the commencement of the first session of the 33rd Parliament, the House unanimously agreed that the current permanent and provisional Standing Orders (adopted in December 1982 and amended in December 1983) shall continue in force until otherwise ordered, with the proviso that Standing Order 43 be suspended during the current Parliament (Canadian Commons Hansard, p.1006).

The suspended Standing Order 43 reads in part:

'(1) Between the sixtieth and ninetieth sitting days of the first session of Parliament on a day designated by a Minister of the Crown or on the ninetieth sitting day if no day has been designated, an Order of the Day for the consideration of a motion "That this House takes note of the Standing Orders and procedure of the House and its Committees" shall be deemed to be proposed and have precedence over all other business.'

Canada: Nova Scotia – See the following Standing Order relating to Estimates:

Duty of Minister upon Tabling Estimates

62. When the Minister of Finance tables the Estimates, he shall

(a) read and table the message from the Lieutenant Governor transmitting the Estimates for the considertation of the House;
(b) table the Estimate books;
(c) table the Estimate resolutions; and
(d) deliver his budget speech. 1984 R. 62

Response to Budget Speech

62A At the conclusion of the budget speech by the Minister of Finance, one member speaking on behalf of the Official Opposition and one member speaking on behalf of each recognized party may respond to the budget speech. 1984 R. 62A

Committee of the whole on Supply

62B The members of the House shall constitute a Committee of the Whole on Supply to consider the Estimates. 1955 R. 54 am.; 1984 R. 62B

Time Restriction

62C A maximum of seventy-five hours shall be allowed for consideration of the Estimates by the Committee of the Whole on Supply; provided however, that the Estimates shall be considered on

not fewer than twelve sitting days. 1984 R. 62C

Determining Which Estimates Considered First

62D (1) The House Leader of the Official Opposition, or his designate, in consultation with the Minister leading the House at the time, shall determine which Estimates are considered first by the Committee of the Whole on Supply and the order in which they are to be considered, such determination to be limited to the Estimates of no more than four Ministers of Government. 1984 R. 62D (1)

Consideration of Remaining Estimates

(2) All other Estimates shall be considered by the Committee of the Whole on Supply in an order determined by the Minister leading the House at the time following consultation with the House Leader of the Official Opposition, or his designate. 1984 R. 62D(2)

Time Spent Indicated in Orders of the Day

62E The Clerk shall indicate daily in the Orders of the Day the time spent in consideration of the Estimates by the Committee of the Whole on Supply and shall calculate the time from the moment each day following approval by the House of the motion 'That the Speaker do now leave the chair and that this House resolve itself into a Committee of the whole on Supply' and the Chairman calls the Committee to order to the time each day the Committee of the Whole on Supply rises. 1984 R. 62E

Estimates Not All Considered within Time Limit

62F Where all Estimates have not been considered by the Committee of the Whole on Supply after seventy-five hours consideration by that Committee, the Chairman shall put the question, without amendment or debate, 'Shall all remaining Resolutions carry?', which question, when carried, shall carry every Resolution of every Estimate referred to the Committee and the Chairman shall thereupon report forthwith to the House. 1984 R. 62F

Motion to Concur in Report Deemed before House

62G (1) Upon the making of the report referred to in Rule 62F by the Chairman of the Committee of the Whole on Supply, a motion that the report be concurred in shall be deemed to be before the House. 1984 R. 62G(1)

Motion Put

(2) The motion to concur in the report of the Committee of the Whole on Supply shall be put forthwith by the Speaker without amendment or debate. 1984 R. 62G(2)

Appropriations Bill

(3) When the motion to concur in the report of the Committee of the whole on Supply has been carried, a bill for an Appropriations Act may be introduced and upon introduction the questions for second and third reading shall be put forthwith, without amendment or debate, and the Bill shall not be committed. 1984 R. 62G(3)

Fiji – A new Standing Order 66A was adopted by the House of Representatives in 1984, as follows –

'66A. *Standing Select Committee on Parliamentary Appropriations*

(1) There shall be a Select Committee called the Standing Select Committee on Parliamentary Appropriations which shall consist of the Speaker as Chairman and seven other members appointed by the Speaker after consultation with the Prime Minister and the Leader of the Opposition.

(2) The Committee may consult the President of the Senate on any matter and co-opt him to attend and participate in, and vote at, any of its meetings; and shall do so in respect of any matter or meeting which may affect the Senate.

(3) The President may, by written notice, nominate a Senator as an alternate, and revoke any such appointment. In the absence of the President from a meeting of the Committee, or during his inability to act at any time, the alternate may stand in his place for all purposes.

(4) Five members of the Committee shall form a quorum. A co-opted member or his alternate may be counted in determining whether a quorum is present.

(5) It shall be the duty of the Committee to do the following:

(*a*) To prepare the Annual Estimates and any Supplementary Estimates for the revenue and expenditure of Parliament for inclusion in Parliamentary Appropriation or Supplementary Appropriation Bills.

(*b*) Report to the House upon the estimates prepared in accordance with paragraph (*a*) prior to the consideration by the House of the related Parliamentary Appropriation or Supplementary Appropriation Bill.

(*c*) Supervise the expenditure of funds appropriated.

(*d*) Consider and report upon such other related matters as the House may refer to it.'

India: Tamil Nadu Legislative Assembly – The Committee on Rules Constituted for 1984–85 made certain changes. The Report of the Committee was presented to Hon Speaker on 12.10.1984 and the House was dissolved on 15.11.1984 to synchronise General Elections to

the State Assembly with that of the Parliament.

The Report was laid on the Table of the House on 27 February 1985 after the Assembly was constituted after the 8th General Election. The amendments to Rules came into force with effect from 6 March 1985 soon after the amendments were published in the Official Government Gazette.

Some of the important changes made in the Rules are as follows:

1 – *Definition of certain terms*

(a) The term Leader of the Opposition was not defined in the Rules. The term has now been defined as a Leader of the Legislature Party having the largest number of members other than the party which has formed the Government and having more than the quorum strength prescribed and recognised by the Speaker as such. Quorum strength is one tenth of the total membership of the House (Constitution of India Art. 189(3)); at present it is 24, as the total strength is fixed at 234/235.

Provided that –

If more than one party has got equal number of members competing for such recognition, the number of votes polled by the members of each group in the general election shall be taken into account and the Group which polled more votes shall be recognised as the official opposition and its Leader as the Leader of the Opposition;

If the votes polled by both the Groups are equal, then the office of the Leader of the Opposition party shall be held alternatively and the order in which they will hold office shall be decided by lot.

(b) 'Legislature Group' means a group of members belonging to a Legislature Party which fulfils any one of the following conditions, viz.,

(i) It has a strength of not less than eight members;

(ii) that the total number of valid votes polled by all the contesting candidates set up by such Legislature Party as the General Election in the State to the Legislative Assembly is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such General Election.

(iii) 'Legislature Party' means any party which has been recognised by the Election Commission for the purpose of contesting elections to the Legislative Assembly and allotted a common symbol and has been elected to the House and has not less than the prescribed quorum strength.

Rule 30

Annual Reports and yearly accounts of Public Undertakings under various statutes have to be laid on the Table of the House. At times they are laid on the Table after a long delay. Provision has

been made for furnishing a statement explaining the reasons for the delay along with the copies of the reports to be laid.

Rule 30A

A new Rule has been made enabling a member to raise a discussion on any paper laid on the Table of the House by tabling an appropriate motion.

Rule 54 Call attention notices

Amended, restricting the number of members who may be permitted to ask questions on Call Attention Matters, to save the time of the House.

Rule 116A

Powers have been confered on the Chair to name a member for misconduct in the House and for his suspension thereafter.

Rule 139

Provision has been made for fixing a time limit of six months for presenting the Report of a Select Committee from the date of reference to it; an extension may be granted by the House o' application.

Rule 201

Provision has been introduced restricting the number of Cut Motions to be given notice of by a Member on each Demand to 10.

Rules were made for the Constitution of additional standing Committees, viz., Petitions Committee, Library Committee, and Committee on Papers placed on the Table of the House.

Isle of Man – The Standing Orders of the House of Keys were amended in the following respects on 6 March 1984 –

(a) the Whitsun recess was abolished and replaced with a recess from the last Tuesday in May until the third Tuesday in June;
(b) when a member is taking the Chair in the absence of Mr Speaker, such member shall be addressed as 'Mr Speaker';
(c) the Acting Speaker shall assume the powers of Mr Speaker when Mr Speaker is absent from the Island or not present at a sitting of the House.

The Standing Orders of Tynwald were amended on an experimental basis on 23 October 1984 to provide for a number of special sittings of the Court devoted to debates on the policies of Boards with the object of reducing the length of the annual Estimates Debates. On 21 November 1984 several amendments of a cosmetic nature were made

preparatory to the reprint of the Standing Orders.

United Kingdom: House of Commons – The Standing Order (Select Committees related to government departments) was amended to give any Select Committee appointed under the order power 'to communicate to any other such committee its evidence and any other documents relating to matters of common interest; and to meet concurrently with any other such committee for the purposes of deliberating, taking evidence, or considering draft reports.'

A temporary Standing Order (Short Speeches), to have effect in Session 1984–85, was made on 31 October 1984, as follows:

> '(1) That during the next Session Mr Speaker may announce at the commencement of public business that, because of the number of Members wishing to speak in a debate on one of the matters specified in paragraph (2) of this Order, he will call Members either between six o'clock and ten minutes before eight o'clock or between seven o'clock and ten minutes before nine o'clock, on Monday to Thursday sittings, and between half-past eleven o'clock and one o'clock on Friday sittings, to speak for not more than ten minutes; and whenever Mr Speaker has made such an announcement he may, between those hours, direct any Member who has spoken for ten minutes in such a debate to resume his seat forthwith.
>
> (2) This Order shall apply to debates on:
>
> (*a*) the second reading of public bills;
>
> (*b*) matters selected under paragraph (2) of Standing Order No. 6 (Arrangement of public business) for consideration on allotted Opposition days; and
>
> (*c*) motions in the name of a Minister of the Crown.'

Apart from a brief earlier experiment, this is the first time the House has imposed time limits on speeches in debate.

4. General

Australia (House of Representatives) – Inquiry into radio broadcasting and televising of proceedings

The Joint Committee on the Broadcasting of Parliamentary Proceedings, established pursuant to the *Parliamentary Proceedings Broadcasting Act 1946*, is appointed at the commencement of each Parliament and is required to recommend the general principles under which the parliamentary broadcast shall take place and, subsequently, to exercise control over the broadcast according to the principles adopted by the Parliament. (See *The Table* vol. XV, 1946, pp.182–187 and vol. XXV, 1966, pp.74–84.)

The desirability of televising a portion of the debates of both Houses had previously been considered by the committee in 1974. The committee then concluded that conceptually it was desirable to televise a portion of debates and proceedings and recommended a closed-circuit trial before a final decision was made. (See *The Table*, vol. XLIII, 1975, pp.143–145.) The report had not been debated when both Houses were dissolved on 11 April 1974 and the matter was not subsequently revived. Closed-circuit television was subsequently introduced on a limited basis (black and white and without sound) to several key functional areas (the Speaker's and the Whips' offices).

In December 1982, following a recommendation by the Senate Standing Orders Committee, both Houses agreed to refer to the committee the televising of proceedings of both Houses and their committees in the new Parliament House and the continuous and simultaneous radio broadcasting of both Houses. No progress was made with this inquiry before the simultaneous dissolution of the Senate and the House of Representatives on 4 February 1983.

The matter was again considered by both Houses in the next Parliament in May 1983 when the opportunity was taken to expand the terms of reference to allow for a more extensive inquiry to cover the televising of proceedings in the existing Parliament House and the broadcasting of proceedings of committees.

The widened terms of reference, agreed to in May 1983, required the committee to inquire into and report on:

(a) the televising of the proceedings of the Houses of the Parliament and their committees in the present and the new Parliament House, and
(b) the radio broadcasting of the proceedings of the Houses of the Parliament and their committees including the continuous and simultaneous broadcasting of both Houses.

Submissions from the public and from organisations with a special interest were sought by means of advertising in the national press. The committee received 41 submissions. The power to move from place to place and to form a sub-committee for the purposes of the inquiry was granted to the committee. Public hearings commenced in Canberra on 8 June 1984 and the committee took evidence in other major metropolitan areas. It was planned to report to both Houses before the end of 1984. The Act under which the committee is appointed provides that members hold office as a joint committee until the House of Representatives expires by dissolution or effluxion of time. In October 1984 given the projected dissolution of the House (which in fact occurred shortly thereafter) the committee reported to both Houses that it could not consider adequately the many major issues revealed during its inquiry before the impending dissolution. It recommended

that the matter be referred to it again early in the first session of the 34th Parliament.

(Contributed by the Clerk of the House of Representatives)

Australia (House of Representatives) – Information Systems Developments in the Australian House of Representatives

1984 saw significant developments in the planning and provision of information systems in the Commonwealth Parliament. These notes cover developments in the House of Representatives, but also seek, in explaining them, to refer to the overall context within which these developments are occurring.

The Commonwealth Parliament has, because of the fact that it will move to occupy a new building in 1988, unique opportunities in the planning of information systems. These opportunities are, however, accompanied by quite heavy responsibilities on those involved in the planning as there is a need to make comparatively early decisions about what will be required in the new building.

The Departments of Parliament, since 1980, have recognised the importance of communication and co-ordination with each other in these matters to ensure that services are not duplicated and that a desirable level of compatibility is maintained. The competing factors of shared responsibilities for various matters on the one hand, and the need for co-ordination on the other, are catered for in 2 principal ways:

First there is ISIC – the Information Systems Inter-departmental Committee. This committee consists of the Heads of the Departments or their nominees, the chairmanship alternating between the Senate and the House of Representatives.

This committee has overall policy responsibility for Parliament-wide developments, and reports regularly to the 2 Presiding Officers, and

The ISG-Information Systems Group – consists of the operating level officers of each department who are in very regular contact with each other on various developments, thus ensuring that there is a good flow of communication at the outset.

This framework recognises that there are areas and projects which are quite properly the sole province of one department and that there are others where co-ordination is imperative. The Department of the House of Representatives is responsible for the development of systems for the use of Members, and for the use of officers of the Department. The most significant change that the Department has noted since 1980 is that, whereas in 1980 the Department had an awareness of technology and its potential, Members generally were very reticent participants. By 1983–84 the interest and expectations of

Members had changed very substantially and they were making demands and expressing their own ideas as to what they wanted and how it should be provided.

In April 1984 Mr Speaker gave approval in principle to a departmental Information Systems Strategic Plan which *inter alia* proposed –

—the gradual allocation direct to Members of micro computers so that, by the time of the move to the new Parliament House, a significant proportion of the membership of the House would have gained 'hands on' experience in the use of these facilities;

—the development of departmental information systems.

Funds were obtained in the 1984–85 appropriations for these purposes and, since then, the department has been working to implement the plan. We have enjoyed the benefit of working very closely with officers of the Department of the Senate on the project relating to micro computers for Members as developments in the Senate very closely parallel our own. It should also be added that whilst the units to be acquired are micro computers and will have quite a diverse range of capabilities, the great emphasis will be on word processing. In surveys and interviews in 1983, this was by far the most common need expressed by Members, although there are those who will wish to perform other functions on the facilities. The strategy employed in the Department with Mr Speaker's approval and suppor is that each year we will update our Strategic Plan in the light o experience gained in the preceding year. This means that rather tha having a long-term comparatively inflexible plan, we do have medium and long-term goals but we retain the ability to adjust continually the scope and base of developments in light of experience, the availability of funds and other variables.

(Contributed by the Clerk of the House of Representatives)

Australia (House of Representatives) – Government guidelines for official witnesses before parliamentary committees and related matters

The previous Government tabled its proposed guidelines for official witnesses appearing before parliamentary committees on 28 September 1978, and undertook to review them in the light of experience (VP 1978–80/434). The guidelines were formulated in response to a recommendation in the report of the Royal Commission on Australian Government Administration of August 1976 that conventions relating to appearances of officials be set down in a consolidated form for the guidance of officials.

On 23 August 1984 the then Minister for Finance (who had responsibility for certain Public Service Matters) tabled the present Government's guidelines for official witnesses before parliamentary committees and related matters. The Opposition concurred with the guidelines (VP 1983–84/802).

The guidelines cover procedures relating to requests for official witnesses to appear before parliamentary committees, the preparation of written material, the role of official witnesses, the protection of submissions and witnesses, claims by Ministers that information should not be disclosed, evidence provided in confidence, and the publication of evidence. Related matters covered by the guidelines are party committees, non-parliamentary public inquiries (including Royal Commissions) and speeches, and access by individual Members of Parliament to public servants and officers of statutory authorities.

The guidelines take into account the principles of the *Freedom of Information Act 1982* and draw on relevant recommendations in the exposure draft of the Joint Select Committee on Parliamentary Privilege. Generally there is more detail in the 1984 guidelines, particularly on the matters of protection of submissions and witnesses, claims by Ministers that information should not be disclosed and evidence provided in confidence.

The guidelines are said to reflect the importance of promoting a free flow of information through the parliamentary committees to the public consistent with the protection, in the national interest, of the necessary confidences of government and the privacy of individual citizens, and the achievement of a balance between the need of governments to preserve some confidences and the need of parliamentary committees to be able to conduct thorough inquiries.

One of the major considerations in the development of the 1978 guidelines was the confirmation of the line of responsibility between the Executive and Parliament, where officials are responsible to Ministers and where Ministers should respond to Parliament. While the 1984 guidelines do not differ significantly from those of 1978 on the matter of the role of official witnesses, the Minister stated that the 1984 guidelines 'are grounded in the principle that it must be for Ministers to advocate or defend policy, but recognise the rights and duties of officials as citizens and the importance of informed publice debate' [H.R. Deb. (23.8.84) 289].

Committee experience indicates, particularly for inquiries that originate from Ministers, that public servants are sometimes forthcoming with their views on some policy matters.

As the term suggests, the guidelines are intended to provide general guidance rather than to set down inflexible prescriptions to cover every possible contingency. It should be noted that the guidelines have not been adopted by the Houses, do not have the force of law, are not binding on committees and do not limit the powers which parliamentary committees derive, through the Parliament, from the Constitution.

(Contributed by the Clerk of the House of Representatives)

Australia (Senate) – Disallowance of an Invalid Regulation

An interesting question which arose in the Australian Senate was whether the Senate could disallow a regulation which had been held to be invalid.

A Senator gave notice of a motion to disallow a controversial regulation, but before the motion was moved the regulation had been challenged in the High Court and declared invalid.

The President of the Senate was supplied with an opinion of the Attorney-General's Department, which was to the effect that it is not possible for the Senate to pass a motion disallowing regulations so held to be invalid. The Attorney-General took a point of order to this effect in the Senate when the motion was called on, but no ruling was made in response to the point of order, and the motion to disallow the regulations in question was withdrawn, leaving the matter unresolved.

Neither the opinion nor the debate in the Senate adduced any authority to support the proposition that an invalid regulation may not be allowed, except the argument that because such a regulation is a nullity, there is nothing for the Senate to disallow.

It is clear that a resolution of the Senate disallowing a regulation which has been held to be invalid would have no effect on the actual state of the law. A successful disallowance motion means that the disallowed regulation ceases to have effect from the time of disallowance (sub-section 48(4) of the Acts Interpretation Act), and a regulation held to be invalid is one which has had no effect at all. It may be argued, however, that an invalid regulation still has some residual existence, even though it has no force or effect, and that it is, so to speak, 'still on the statute book'. A resolution of disallowance passed by the Senate would, in this argument, have the effect of depriving the regulation of that residual existence and 'removing it from the statute book'. If this is so, it would be quite proper for the Senate to pass a resolution disallowing an invalid regulation.

There appears to be no precedent for either House of the Parliament disallowing a regulation which has been held to be invalid.

Sub-section 48(6) of the Acts Interpretation Act provides that the disallowance of a regulation shall have the same effect as the repeal of the regulation. If it is possible to repeal an invalid regulation, it follows that it is also possible to disallow an invalid regulation. If the Attorney-General's opinion were correct, it would not be possible to repeal regulations held to be invalid, because the regulations would have had no existence; they would, as it were, be blank spaces in the volume of regulations. It is clear, however, that the executive government has not taken this view in the past.

Cases of regulations made under Commonwealth Acts of Parliament being held to be invalid are not numerous. It is particularly rare in recent years for regulations to be held invalid, partly because the

vigilance of the Senate Regulations and Ordinances Committee ensures that care is taken to see that regulations are in accordance with the Act under which they are made, and partly because Commonwealth legislation of dubious validity is more likely to be contained in Acts of the Parliament than in regulations. Moreover, where regulations are held to be invalid, remedial action other than repeal may be taken.

Nevertheless, there *have* been cases of regulations being found to be invalid and subsequently repealed, which indicates that the executive government regarded those regulations as having some continued existence, notwithstanding their invalidity, which existence was terminated by the act of repeal. These precedents occurred in 1951 and 1953.

It was noted that the view contained in the Attorney-General's opinion has also not been adhered to in relation to Acts of the Parliament; Acts and parts of Acts held to be invalid have also been repealed, one as recently as 1977.

It may therefore be concluded that, just as invalid regulations may be repealed, they may also be disallowed by a House of the Parliament, either of those actions, repeal or disallowance, having the effect of terminating the existence of the invalid regulations.

(Contributed by the Clerk-Assistant (Procedure), Australian Senate)

New Zealand (Table Dress for Women Clerks) – Few Parliaments yet have appointed women as Clerks-at-the-Table. The New Zealand House of Representatives has two women in such positions – the Clerk-Assistant, and the Second Clerk-Assistant. Until this year, while the men wore the traditional dress of evening suit, white bow tie and tabs, in the absence of any equivalent formal attire the women have worn their own usual dress under wig and gown.

In anticipation of further career opportunities for women Clerks-at-the-Table, the Clerk this year approved a proposal for the design and provision of a standard form of Table dress. The design was to meet certain criteria: a broadly similar appearance to the male form of dress; compatibility with the gown; suitability for all seasons (the New Zealand House sits throughout the year); reasonable ease for changing; practicality; and – not least – fashionableness. After much deliberation the outfit selected comprised a plain mid-grey tailored two-piece suit in a light-weight wool, white blouse with neck tie, and black or grey accessories. The outfit is now being worn, and has been the subject of general approbation.

(Contributed by Adrienne von Tunzelmann, Clerk Assistant, House of Representatives, New Zealand)

New Zealand (Broadcasting of proceedings) – The proceedings of the House of Representatives have been broadcast since 1936 during all

normal hours of sitting. Outside normal sitting hours, Standing Orders give a discretion to the Leader of the House to direct whether or not broadcasting should continue.

On 17 August 1984 the Leader of the House (Hon. G. F. Palmer) informed the House that he had determined, pursuant to the Standing Orders, that whenever the House sat outside its normal hours in the future, the broadcasting of proceedings should continue until the House rose. Currently therefore all proceedings of the House are broadcast pursuant to this direction.

XIII. OFFICERS BECOME MEMBERS AND VICE VERSA: SOME AMENDMENTS

In volume LII (pp.170–173) we published a revised and consolidated list of officers who became members and vice versa. A number of colleagues have written with further information and corrections which we are pleased to print below.

Badeley, Sir Henry, Clerk of the Parliaments 1934–49; Member of the House of Lords 1949–51, became Lord Badeley.

Brougham, H. C., Clerk in the House of Lords, 1857–76; Member of the House of Lords 1886–1927, became Lord Brougham and Vaux.

Campion, Sir Gilbert, Clerk of the House of Commons 1937–48; Member of the House of Lords, 1950–58, became Lord Campion.

Courtenay, W., Clerk Assistant of the Parliaments, 1826–35; Member of the House of Commons, 1812–26; Member of the House of Lords, 1835–59, became Earl of Devon (Courtenay's name was wrongly spelt in Vol. LII).

de Grey, W., Reading Clerk, House of Lords, 1753–63; Member of the House of Commons, 1761–71; Member of the House of Lords, 1780–81, became Lord Walsingham.

Dyson, J., Clerk of the House of Commons 1747–62, became a Member of the House of Commons (not Lords), 1762–76.

Henderson, Sir Peter, Clerk of the Parliaments 1974–83, became Lord Henderson of Brompton.

May, Sir Thomas Erskine, Clerk of the House of Commons, 1871–86, Member of the House of Lords 1886, became Lord Farnborough.

Pearson, Hon. Christopher; the entry should read as follows –
Clerk of the Yukon Legislative Assembly, 1966–1973. Government Leader, Yukon Legislative Assembly, 1978–1985.

Pepys, William John, Clerk in the House of Lords 1854–63; Member of the House of Lords, 1863–81, became Earl Cottenham.

Russell, Lord Charles, Serjeant-at-Arms, House of Commons 1848–75; Member of the House of Commons 1832–48. (Russell's name was wrongly spelt in Vol. LII).

Waldegrave, Hon. George, a Clerk in the House of Commons 1845–47 was Librarian of the House of Commons, 1847–57 and a Member of the House of Commons, 1864–68.

The following names should be added to the list –

Aers, I. B., Clerk of the Swaziland Legislative Council 1964–65; Speaker of the Legislative Assembly, 1968–73.

Ewens, Ralph, Member of the House of Commons 1597, 1601; Clerk of the House of Commons 1603–11.

Allowed

'coward's castle' (Aust Sen Hans, 12.9.84, p.895)
'distortion' (Alberta L A Hans, 15.5.84, p.875)
'fabrication' (Can Com Hans, pp.5071–3, 5254)
'false' (Can Com Hans, p.408)
'false information' (Can Com Hans, p.830)
'gutless' (Can Com Hans, pp.1961–2)
'hammer' (Zambia N A Debs, p.866)
'idiot' (Bermuda Hans, 1984)
'phony' (Alberta L A Hans, 15.5.84, p.875)
'rubbish' (Bermuda Hans, 1984)
'sidekick' (Can Com Hans, p.5199)
'stupid' (Bermuda Hans, 1984)
'wilfully misrepresented' (Can Com Hans, pp.2474–5)
'yahoos' (Alberta L A Hans, 24.5.84, p.1046)

Disallowed

'alcoholics' (Zambia N A Debs, p.1290)
'all this is being done to bribe the people of the area' (Raj S Procs, 7.3.84)
'animal' (Q'ld Hans, 1983–84, p.2355)
'arse' (Tasm Hans, 6.11.84, p.2084)
'ass, but he can continue to scratch his ass' (Papua N G Hans, 5.6.84, p.41)
'asshole' (Can Com Hans, p.3144)
'*bambe zonke*' (Zambia N A Debs, pp.1452, 1955)
'bastard' (Tasm Hans, 6.11.84, p.2084)
'bestiality, the only one who knows anything about bestiality around here is the Hon . . . . . .' (NSW L C Deb, 1.11.84, p.3142)
'bloody' (Q'ld Hans, p.1675)
'bloody Sepiks and Chimbus' (Papua N G Hans, 6.3.84, p.9/6/4)
'bludgers' (Q'ld Hans, 1983–84, p.2327)
'bootlickers' (Zambia W A Debs, 0,2254)
'bosses' (Zambia N A Debs, p.795)
'bullshit' (N Brunswick Hans, 15.5.84, p.1946)
'bullshits' (Papua N G Hans, 6.3.84, p.9/6/4)
'cargo-boy, members are used as' (ie servant or carrier) (Papua N G Hans, 28.5.84, p.47)
'cheated' (Zambia N A Debs, p.3034)
'cheating' (Zambia N A Debs, pp.831, 2583)
'clown, you clown' (Aust Sen Hans, 9.5.84, p.1954)
'cockeyed' (Zambia N A Debs, p.360)

'comrades' (Zambia N A Debs, p.1834)
'contemptible person' (Aust Sen Hans, 7.3.84, p.573)
'corruption' (Q'ld Hans, 1983–84, p.1917)
'crazy man' (Papua N G Hans, 5.11.84, p.21)
'crook' (Q'ld Hans, 1983–4, p.2440)
'deceive' (Zambia N A Debs, pp.1286, 2838)
'deliberate misleading untruths' (Aust Sen Hans, 6.9.84, p.555)
'deliberately misleading' (Can Com Hans, p.2990)
'deliberately misled' (Can Com Hans, p.1292)
'demagogue' (Can Com Hans, p.2944)
'dill' (Q'ld Hans, 1983–4, p.2191, 1984, p.2908)
'does not have the guts to actually say what he is imputing' (Aust Sen Hans, 4.5.84, p.1583)
'donkey' (Raj S Procs, 8.3.84)
'dopey' (Aust Sen Hans, 21.8.84, p.8)
'evil' (Can Com Hans, p.2193)
'fight is not a joke' (Zambia N A Debs, p.1136)
'get lost, the Minister for Justice can get lost' (Papua N G Hans, 19.8.84, p.30)
'get out' (Raj S Procs, 5.3.84)
'goddam' (Can Com Hans, pp.1092–3)
'good McCarthyist zealot' (Aust Sen Hans, 8.3.84, p.620)
'graveyard' (Zambia N A Debs, p.1077)
'guts, did not have the guts' (Vict L C Hans, 1984, p.2488)
'he has as much respect for the truth as he has for other people's money' (Aust Sen Hans, 5.6.84, p.1491)
he has got his head screwed up his ass' (Papua N G Hans, 31.5.84, p.26)
ıe should be thrown out of the House' (Raj S Procs, 24.7.84)
he went to lick their feet' (Raj N Procs, 30.7.84)
'head of thieves' (Raj S Procs, 1.8.84)
'head reptile' (Can Com Hans, p.1258)
'horizontal refreshment' (Zambia N A Debs, p.694)
'how are you going, big mouth' (Aust Sen Hans, 17.10.84, p.1891)
'humbug, you humbug' (Aust Sen Hans, 12.6.84, p.2809)
'hypocrite' (Can Com Hans, p.125; Vict L A Hans, 1.5.84, p.4155)
'hypocrites' (Zambia N A Debs, p.2265)
'I thought I asked him to stay in the car and bark at strangers, not come in here yapping at me' (Aust Sen Hans, 18.10.84, p.1971)
'if you come to my place I will throw you out' (Raj S Procs, 17.8.84)
'ignorant' (Zambia N A Debs, p.1134)
'incompetence' (Q'ld Hans, 1984, p.1031)
'insulting' (Alberta L A Hans, 11.5.84, p.827)
'it is better to protect the wealthy and privileged, than criminals' (Aust Sen Hans, 4.9.84, p.400)

'It is . . . your right to get a thrill from pornography if that is what turns you on.' (NSW L C Deb, 1.11.84, p.3140)
'kaput' (Zambia N A Debs, p.2822)
'Lady Macbeth of Safdarjung Palace in New Delhi' (referring to the Prime Minister) (Raj S Procs, 21.8.84)
'load of garbage' (Bermuda Hans, 1984)
'lousy' (Can Com Hans, p.4993)
'mad' (Zambia N A Debs, p.2396)
'Minister for slease' (Aust Sen Hans, 23.8.84, p.261)
'Minister for whatever he is' (Q'ld Hans, 1984, p.434)
'never tells the truth' (Can Com Hans, p.1363–4)
'not bloody Pangu Pati' (Papua N G Hans, 16.8.84, p.21)
'on the one hand they commit theft and on the other they wish that the thieves should be apprehended' (Raj S Procs, 1.8.84)
'opportunists' (Zambia N A Debs, p.788)
'paid agent of the South African Government' (Aust Sen Hans, 5.3.84, p.429)
'paid man' (Raj S Procs, 30.7.84)
'people in Government, especially the Ministers, are getting more stupid. The people who get wiser are the criminals.' (Papua N G Hans, 22.5.84, p.32)
'piss' (Tasm Hans, 6.11.84, p.2084)
'piss-poor' (N Brunsw Hans, 22.5.84, p.2357)
'prostitution of the truth' (Bermuda Hans, 1984)
'racism, they had tried to use racism to exploit' (New Brunsw Hans, 13.5.84, p.2661)
'raping' (Zambia N A Debs, p.877)
'royal route' (Q'ld Hans, 1983–4, p.1921)
'scabs' (Q'ld Hans, 1983–84, p.2613)
'screw' (Tasm Hans, 6.11.84, p.2084)
'shanty constituency' (Zambia N A Debs, p.1468)
'shut-up' (Q'ld Hans, 1984, p.1455)
'skulking' (Q'ld Hans, 1984, p.643)
'spineless coward' (referring to a Minister) (Raj S Procs, 23.4.84)
'sponged off the community' (Alberta L A Hans, 26.3.84, pp.153–4)
'spurious question, that is a' (Alberta L A Hans, 26.3.84, pp.153–4)
'sycophant' (Raj S Procs, 27.2.84)
'they are going to "screw" quite a lot of people' (Papua N G Hans, 4.6.84, p.37)
'total disregard for truth' (Bermuda Hans, 1984)
'troglodytes who sit in another place' (Vict LA Hans, p.3569)
'True, we have some Highlanders as Ministers. They are just small "cargo-boys" (i.e. servants)' (Papua N G Hans, 22.5.84, p.31)
'wayawayaling' (Zambia N A Debs, p.360)
'we are like men fighting over a woman' (Papua N G Hans, 19.12.84, p.17)

'we have demonstrated a lot more sensitivity than normally emerges gurgling from that primaeval quarter of the chamber over there.' (Aust Sen Hans, 19.10.84, p.2071)

'why don't you sit down and shut up' (Aust Sen Hans, 24.10.84, p.2394)

'you (Mr Chairman) are adopting dictatorial attitudes' (Raj S Procs, 17.8.84)

'you (Mr Chairman) are doing something illegal against the rules' (Raj S Procs, 17.1.84)

'you have been trying to avoid a discussion (referring to Mr Deputy Chairman)' (Raj S Procs, 9.5.84)

'you "long-long" (i.e. mentally ill). You call me "long-long", I will knock you out.' (Papua N G Hans, 25.5.84, p.5.)

'you only want to sleep with your wife' (Papua N G Hans, 6.3.84, p.9/6/1)

XV. REVIEWS

The Attorney General, Politics and the Public Interest by John Ll. J. Edwards (London, Sweet and Maxwell, 1984, £30)

The Bill of Rights proclaims that 'the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal'. The provision has not been subject to much litigation. However as Professor Edwards points out in his new book, it was with reference to the Bill of Rights that the Chief Justice of New Zealand declared unlawful the actions of the Prime Minister – Sir Robert Muldoon – in purporting to suspend the operation of the Superannuation Act 1974 (see *Fitzgerald v Muldoon* [1976] ZNZLR 615). The victory of the individual against the executive was however hollow since the Attorney General had entered his *nolle prosequi* to prevent criminal proceedings being brought, and the government presumably then changed the law.

Thus the case is not dissimilar to one with which English readers will be more familiar: *Gouriet v Union or Post Office Workers* [1978] AC 435. In that case, the Attorney General refused his *fiat* to allow proceedings to be brought seeking an injunction to prohibit a strike called by the union. It is cases like *Fitzgerald* and *Gouriet* which are at the core of the matters considered by Professor Edwards in his book and which are indicated by the title he has chosen for it.

Dicey wrote in *The Law and the Constitution*

> 'Discretionary authority on the part of the government must mean insecurity for legal freedom on the part of its subjects'

and any lawyer raised in the common law will agree with him. But it is idle to deny that a discretion must be exercised in the administration of the law: use everyone according to his deserts and who shall escape whipping.

In England that discretion ultimately resides in the Attorney General. As *Gouriet* has shown, he is answerable for the exercise of his discretion not to the courts but to the House of Commons.

In *The Law Officers of the Crown* (1964) Dr Edwards considered in some detail the notorious *Campbell Case* and he returns to the subject in his latest book (which is indeed generally designed as a supplement and continuation of the earlier) in the light of the Cabinet papers which have now become available. Few will now be interested in the details of the case which led in 1924 to the fall of the first Labour government. The case illustrates the deviousness of Mr Ramsey MacDonald and the inexperience of the government he headed. (Sir Patrick Hastings – MacDonald's Attorney – ruefully observed in his *Autobiography*, 'Lord Birkenhead was a better politician than I was.')

However it has had a lasting significance. The Labour Cabinet had resolved that 'no public prosecution of a political character should be undertaken without the sanction of the Cabinet being obtained.' Although it entailed a reduction of independence of the Attorney General and as such may have been undesirable, such a resolution was not inconsistent with the constitutional practice that had prevailed up to that time. However on resuming office Mr Baldwin excised the instruction as 'unconstitutional, subversive of the administration of justice and derogatory to the office of the Attorney General.'

The currently received view of the Attorney General's position is most clearly stated in the so-called 'Shawcross Statement' when after wide consultations Sir Hartley Shawcross – Mr Attlee's Attorney – put matters thus:

> '. . . it is the duty of the Attorney General, in deciding whether or not to authorise the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other consideration affecting public policy. In order so to inform himself, he may, although I do not think he is obliged to, consult with any of his colleagues in the government, and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand . . . [t]he responsibility for the eventual decision rests with the Attorney General, and he is not to be put, and is not put, under pressure by his colleagues in the matter.'

It will be apparent that although under this doctrine the Attorney does enjoy an independence, it is a qualified independence. He is after all a member of the government; he very properly will have the interests of the government at heart; and he is entitled to consult other members of the government. At the same time he ought to own a higher duty i.e. to the public interest. Put shortly, the Attorney should not take a decision simply because it suits his party. It is however difficult to imagine a case in which the Attorney could not plausibly think that party and public interests coincide. In the recent past the Attorney General has been very often criticised by the Opposition for taking a 'party' decision, but it is often difficult not to feel that the criticism is at least as party political as that at which it is aimed i.e. it is the stock-in-trade of parliamentary debate. Obviously it is very likely that the Opposition will take a different view of what the public interest requires. It is thus not by seeking to define the Attorney's higher duty that the public interest will best be served, nor even by ensuring that the Shawcross Statement is complied with (although it provides important safeguards). The public interest is safeguarded because the Attorney General is answerable in Parliament for his

decisions, and this must give him pause.

The point may be illustrated by the *Ponting Case*, which occurred after Professor Edward's book was published. The details of the circumstances surrounding the decision to prosecute in this case will shortly be as uninteresting as the details of the *Campbell Case*, and it appears that the Shawcross Statement was scrupulously respected. The significance of the case in terms of the exercise of the Attorney's discretion is the furore to which it gave rise. The accusation that the administration of justice has been interfered with is, if it can be substantiated, especially damaging. Whether the Attorney is an honourable man or not he will not lightly put himself in the position where such an accusation can be made.

If this sounds unduly complacent, Professor Edwards reminds us of the *Rhodesian Sanctions Case*. The allegations which led to the appointment of the Bingham Commission were violation of the sanctions laws against Rhodesia by Shell and BP, with the connivance of previous Labour and Conservative administrations. No prosecutions were brought and Professor Edwards accepts that in 1979 the Attorney's decision not to prosecute may well have been in the interests of justice: given the complexity of the cases and the time that had elapsed since the commission of the alleged offences. However he suggests that the decision might have been different had matters come to the Attorney's attention 10 years earlier. The problem is that it seems that the Attorney did not then know what was going on. Professor Edwards is right to be concerned about this.

This book will be invaluable to everyone who is interested in knowing how the office of the Attorney General works. If this reviewer has considered chiefly its main theme, Professor Edwards is interested in, and lucidly describes, each aspect of the Attorney's work. He is not so much concerned to expound a constitutional thesis as to explain what actually happens. He does not abjure criticism of particular decisions but his comments are restrained. In this his instinct is surely right. He has written a work of legal scholarship, albeit dealing with matters of recent controversy. It is appropriate to lay the material before the reader and allow him to form his own judgments. In reading he will garner the fruits of a wealth of learning, taking into account Scottish, Irish and Commonwealth experience. Happily not all of it is significant. It is excellent to learn that the Lord Advocate is entitled to wear his hat when appearing in court; and that during the war, the defendant lost his right of peremptory challenge to potential jurors (by virtue of the Defence (Administration of Justice) Regulation (SR&O 1940 No.1028 Regulation 13(1)). If this was another example of the pretended power of suspending laws by regal authority, nobody seems to have taken the point.

(Contributed by Philip Petchy, barrister, London)

The Office of Speaker in the Parliaments of the Commonwealth by Philip Laundy (Quiller Press, London, £19.50)

With the support and encouragement of the C.P.A., Philip Laundy has written a fascinating account of the development of the Speakership in all the differing Commonwealth soils into which it has been transplanted – plus, one must add, a description of those relatively few cases where the office is native-grown. He is, of course, extremely well qualified to produce such a study, having served Commonwealth Parliaments throughout his career, and being the secretary of the Standing Committee of the Conference of Speakers and Presiding Officers. The present and immediate-past Speakers of the United Kingdom House of Commons have contributed Forewords to the book, in which they pay tribute to the author's previous study of the office of Speaker (1964). The present work begins with a summarised version of the background, origins and history of the office contained in the earlier book. It then proceeds to review the Speakership in the United Kingdom during the twentieth century and to devote chapters to Canada; Australia; New Zealand; India; Africa; Sri Lanka, Malaysia and Singapore; and the smaller nations of the Commonwealth. Some attention is paid to provincial and state legislatures, but the main descriptions are of the development and present state of the office in national lower Houses.

The 'model' Speakership which was supplied to most of the countries under review was based on a strong, independent United Kingdom example which had only relatively recently achieved either its strength or its independence. These attributes had emerged out of necessity rather than any abstract view of constitutional propriety. They flowed from the need to balance the rights of majorities and minorities in a House of over 600 Members with an extremely heavy work load and a will to obstruct rampant amongst a large section of the membership. One solution would have been a 'business committee' type of management, with the Speaker acting as chairman of a group of party leaders and senior Members who would actually control the business and the debates. The chosen course was otherwise – to elevate the Speaker's office and person above the battle, and to entrust him with powers such as the selection of amendments, acceptance or refusal of the closure, and absolute choice of who should speak in debate. This meant that the achievement of balance and fair play became a quasi-judicial matter rather than a party-political carve-up. To achieve such a Speakership it was necessary not only that the Speaker should leave his party on election, but that he should never re-join it. Thus his sole objective is to be remembered as a good Speaker and he has no further ambition in public life.

It is not to be expected that the conditions that produced the United Kingdom Speakership will be found in the same proportions elsewhere, and, as Viscount Tonypandy observes in his foreword, 'each Parliament will inevitably evolve according to the requirements of its own circumstances'. But the obligation to act fairly, and the duty to uphold the best Parliamentary traditions while in office have survived even in those countries where the Speakership has not ceased to be a party matter. Speakers still feel obliged, in the words of an English Lord Mayor, 'to tread the narrow path between partiality on the one hand and impartiality on the other'.

It is unlikely that many people enter public life with the ambition of becoming Speaker of their Parliament. Suitable candidates for the office have to emerge, and it is perhaps to be expected that it will be easier to find such in large assemblies with stable memberships. It is a healthy sign that so many Parliamentarians in so many diverse situations have come forward who have added to the standing of the Speakership, and have become convinced themselves of the value, where at all possible, of freeing the office and the individual from party ties and from the need to fight elections on a party ticket. Attempts in Australia and Canada to achieve this release have never actually come off, despite the stature and acceptability of some Speakers. And there can be no doubting the personal authority and independence of action achieved by Indian Speakers despite their party affiliation. At Westminster it is generally accepted that Mr Speaker must be a constituency Member, experiencing the same demands and strains as his colleagues. At the same time the size of the House permits one six-hundred and fiftieth part of the country to be acceptably without a party representative for a few years. The author usefully refers to the Report of the Select Committee of 1938 on the question of whether there should be a special Speaker's seat (House of Commons Paper No. 98 of 1938-39). That Report contains an interesting review of Commonwealth practice at the time, as well as coming down emphatically against the idea of a special seat. The very smallest assemblies, of course, may have to find their Speaker from outside Parliament and in such cases even more may depend on the personality of the individual to enable him to control and cajole a body of which he cannot claim to be a member in the fullest sense. Again, it is heartening that such people continue to be available and give distinguished service. The debt that such Speakers – or indeed any Speakers – owe to the Clerks of their Assemblies is something about which the book is discreetly silent.

Not surprisingly, this study has been widely welcomed by authoritative reviewers, since it provides the only accessible source of comparative information about a key office in all our Parliaments, together with an invaluable historical introduction that will inevitably be heavily plundered by all who have to speak or write on the subject. It is

written in an easy narrative style which combines facts and anecdotal illustration in a most acceptable way. There is a first rate bibliography; only the index might be found inadequate by someone seeking to use it as a subject-index for comparative study. Philip Laundy is to be congratulated on this book. Every bookshelf should have one.

(Contributed by Clifford Boulton, Clerk Assistant, House of Commons, Westminster)

The British Polity by Philip Norton (Longman, 1984, £9.95)

The British Polity is directed to the 'Serious student of British politics'. Whether this renders its inclusion in The Table more or less appropriate, I shall leave others to decide.

Dr Norton has provided an introductory text on British politics written primarily for American students. However, its numerous comparisons of British and American institutions which highlight the differences and similarities of the two political systems mean that it is as interesting for the British reader who wishes to achieve a general understanding of the American system as I would expect it to be for the American student who wishes to learn more of the British.

The British Polity is divided into six parts, each with its own conclusion. This means that it need not be read as a whole but can instead be dipped into as lectures or interest direct. Its introductory chapters deal not only with the contemporary scene but also provide a historical perspective to enable the reader to understand that scene. Philip Norton acknowledges that he was advised by an American professor to 'Make sure you incorporate as much historical detail as possible'. The advice was well-founded. The historical background which is provided throughout the book helps to put its analysis into context while adding to the readability of the text.

The chapters range over subjects as diverse as the monarchy, the mass media, local government and enforcement of the law. Perhaps two chapters of particular interest to students are those which describe the development of political parties and changes in the form of Cabinet Government. Dr Norton concludes that 'the cabinet remains at the heart of British government, but its behaviour and decision-making are forcing many old assumptions to be revised'. His conclusion seems an ideal subject for discussion. Of especial interest to the general reader may be the chapter on the Civil Service which in places sounds like a preliminary draft for the script of 'Yes Minister'. For all chapters, the author has provided a detailed bibliography.

The only criticisms which can be levied against *British Polity* are of a minor nature. Firstly, although it is reasonable for a book intended primarily for the American market to use American spelling, it is less

reasonable to extend that spelling to the names of British Government Departments or Parliamentary Committees. There is, for example, a House of Commons Committee on Defence not Defense.

Secondly, the method of production has left the text with words which are occasionally rendered briefly unrecognisable by the injudicious use of hyphens, eg gener/-al and constituen/-cy. Such irritations may seem very minor but they tend to become more and more obtrusive as one continues reading.

These complaints excepted, *the British Polity* provides a useful and thorough analysis of the British political system. It concludes with a powerful discussion which could with advantage be read both at the beginning and at the end of a reader's consideration of the British Polity.

(Contributed by Mrs J. Sharpe)

XVI. RECENT BOOKS ON PARLIAMENT AND RELATED TOPICS

Arter, David
The Nordic Parliaments, Hurst, 1984
Barzini, Luigi
The impossible Europeans, Widenfeld & Nicolson, 1983
Bentley, M. and Stevensen, J.
High and low politics in modern Britain, Clarendon, 1983
Beyne, Klaus von
The political system of the Federal Republic of Germany, Gower, 1983
Bogdanor, Vernon
What is proportional representation?, Martin Robertson, 1984
Boyd, Andrew
Atlas of world affairs, Methuen, 1983
Brendon, Piers
Winston Churchill, Secker and Warburg, 1984
Brittain, Samuel
The role and limits of government, Temple Smith, 1984
Butler, David
The British General Election of 1983, Macmillan, 1984
Butler, W. E.
Soviet law, Butterworth, 1983
Calvert, Peter
The Falklands crisis, Frances Pinter, 1982
Campbell, John
F. E. Smith, Ist Earl of Birkenhead, Cape 1983
Chapman, Richard A.
Leadership in the British Civil Service, Groom Helm, 1984
Chard, Stephen
Directory of British Official Publications, Mansell, 1984
Craig, F. W. S.
British parliamentary election results 1974–83,
Parliamentary Research Services, 1983
Dale, Sir William
The modern Commonwealth, Butterworths, 1982
Englefield, Dermot
The Study of Parliament Group: The First Twenty-One Years, Study of Parliament Group, c/o Deputy Librarian, House of Commons, London SW1A 0AA, 1985
Forsey, Eugene Alfred
How Canadians govern themselves, Government of Canada

Foster, Elizabeth R.
The House of Lords 1603–49,
University of North Carolina Press, 1983
Goehlert, Robert U.
The Parliament of Great Britain, Lexington Books, 1983
Greenwood, John R. and Wilson, David
Public Administration in Britain, Allen and Unwin, 1984
Gregory, F. E. C.
Dilemmas of government, Robertson, 1983
Hain, Peter
Political trials in Britain, Allen Lane, 1984
Halsbury's *Laws of England*, Butterworths, 1983
Harlow, Carol
Law and administration, Weidenfeld and Nicholson, 1984
Holdaway, Simon
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XVII. RULES AND LIST OF MEMBERS

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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.

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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.

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(d) The annual subscription of a Member who has retired from parliamentary service shall be £3.00 payable not later than 1st January

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List of Members

5. A list of Members (with official designation and address) shall be published in each issue of the JOURNAL.

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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.

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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 £6.50 a copy.

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9. Authority is hereby given to the Clerk of the Overseas Office and the Officials of the Society to open a banking account in the name of the Society and to operate upon it, under their signature; and a statement of account, duly audited, and countersigned by the Clerks of the two Houses of Parliament at Westminster shall be circulated annually to the Members.

LIST OF MEMBERS

Antigua

L. Dowe, Esq., Clerk to the Parliament, St John's.

Australia

*A. R. Cumming Thom., Esq., B.A., LL.B., Clerk of the Senate, Canberra, A.C.T.

H. C. Nicholls, Esq., Deputy Clerk of the Senate, Canberra, A.C.T.

H. Evans, Esq., B.A., Dip Lib., Clerk Assistant (Procedure), The Senate, Canberra, A.C.T.

P. N. Murdoch, Esq., B.A., Clerk Assistant (Table), The Senate, Canberra, A.C.T.

T. H. G. Wharton, Esq., B.Ec., Clerk Assistant (Management), The Senate, Canberra, A.C.T.

Miss Anne Lynch, Clerk-Assistant (Committees), The Senate, Canberra, A.C.T.

D. M. Blake, Esq., V.R.D., J.P., Clerk of the House of Representatives, Canberra, A.C.T.

A. R. Browning, Esq., Deputy Clerk, House of Representatives, Canberra, A.C.T.

L. M. Barlin, Esq., Deputy Clerk, House of Representatives, Canberra, A.C.T.

I. C. Harris, Esq., Clerk Assistant, House of Representatives, Canberra, A.C.T.

B. C. Wright, Esq., Clerk Assistant, House of Representatives, Canberra, A.C.T.

J. K. Porter, Esq., Clerk Assistant, House of Representatives, Canberra, A.C.T.

I. C. Cochran, Esq., Serjeant-at-Arms, House of Representatives, Canberra, A.C.T.

L. A. Jeckeln, Esq., Clerk of the Parliaments and Clerk of the Legislative Council, Sydney, N.S.W.

J. D. Evans, Esq., Clerk-Assistant, Legislative Council, Sydney, N.S.W.

D. K. Carpenter, Esq., Usher of the Black Rod, Legislative Council, Sydney, N.S.W.

D. L. Wheeler, Esq., Clerk of the Legislative Assembly, Sydney, N.S.W.

G. H. Cooksley, Esq., Clerk-Assistant, Legislative Assembly, Sydney, N.S.W.

R. D. Grove, Esq., Second Clerk-Assistant, Legislative Assembly, Sydney, N.S.W.

* Barrister-at-Law or Advocate.

A. R. Woodward, Esq., Clerk of the Parliament, Brisbane, Queensland.

R. D. Doyle, Esq., Clerk-Assistant, Parliament House, Brisbane, Queensland.

D. G. Randle, Esq., Deputy Clerk-Assistant and Serjeant-at-Arms, Parliament House, Brisbane, Queensland.

I. W. Thompson, Esq., Deputy Clerk-Assistant, Parliament House, Brisbane, Queensland.

P. J. Byrnes, Esq., B.A., S.T.L.(Rome), Grad.Dip.Lib. Deputy Clerk-Assistant, Parliament House, Brisbane, Queensland.

C. H. Mertin, Esq., Clerk of the Legislative Council, Adelaide, South Australia.

Mrs J. M. Davis, Clerk-Assistant of the Legislative Council and Usher of the Black Rod, Adelaide, South Australia.

B. M. Sergeant, Second Clerk-Assistant, Legislative Council, Adelaide, South Australia.

T. R. Blowes, Esq., Parliamentary Officer, Legislative Council, Adelaide, South Australia.

G. D. Mitchell, Esq., B.A., Clerk of the House of Assembly, Adelaide, South Australia.

D. A. Bridges, Esq., B.Ec., Clerk-Assistant and Serjeant-at-Arms of the House of Assembly, Adelaide, South Australia.

G. R. Wilson, Second Clerk-Assistant, House of Assembly, Adelaide, South Australia.

.. J. Shaw, Esq., J.P., Clerk of the Council, Legislative Council, Hobart, Tasmania.

Commodore G. Histed, B.Sc., R.A.N. (Retd), Clerk-Assistant and Usher of the Black Rod, Legislative Council, Hobart, Tasmania.

W. E. C. Ward, Esq., B.A., Second Clerk-Assistant, Legislative Council, Tasmania.

P. T. McKay, Esq., B.A., Dip.P.A., Clerk of the House of Assembly, Hobart, Tasmania.

P. R. Alcock, Esq., Clerk-Assistant and Serjeant-at-Arms, House of Assembly, Hobart, Tasmania.

Miss J. C. Cunningham, Second Clerk-Assistant, House of Assembly, Hobart, Tasmania.

P. M. Bennison, Esq., Third Clerk-at-the Table, House of Assembly, Hobart, Tasmania.

R. K. Evans, Clerk of the Legislative Council, Melbourne, Victoria.

A. V. Bray, Esq., Clerk-Assistant and Clerk of Committees of the Legislative Council, Melbourne, Victoria.

W. R. Tunnecliffe, Esq., Usher of the Black Rod and Clerk of the Records, Legislative Council, Melbourne, Victoria.

J. H. Campbell, Esq., Dip.P.A., Clerk of the Parliaments and Clerk of

the Legislative Assembly, Melbourne, Victoria.
R. K. Boyes, Esq., Deputy Clerk, Legislative Assembly, Melbourne, Victoria.
J. G. Little, Esq., Assistant-Clerk and Clerk of Committees, Legislative Assembly, Melbourne, Victoria.
P. J. Mithen, Esq., Serjeant-at-Arms, Legislative Assembly, Melbourne, Victoria.
Laurie Marquet, Esq., Clerk of the Legislative Council and Clerk of the Parliaments, Perth, Western Australia.
L. A. Hoft, Esq., A.A.S.A., Clerk-Assistant and Usher of the Black Rod, Legislative Council, Perth, Western Australia.
I. L. Allnut, Esq., Second Clerk Assistant, Legislative Council, Perth, Western Australia.
B. L. Okely, Esq., Clerk of the Legislative Assembly, Perth, Western Australia.
L. G. C. Farrell, Esq., Clerk-Assistant of the Legislative Assembly, Perth, Western Australia.
D. S. Green, Esq., Serjeant-at-Arms, Legislative Assembly, Perth, Western Australia.
H. G. Smith, Esq., Clerk of the Legislative Assembly, Darwin, Northern Territory.
N. J. Gleeson, Esq., Deputy Clerk, Legislative Assembly, Darwin, Northern Territory.
G. P. Gadd, Serjeant-at-Arms, Legislative Assembly, Darwin, Northern Territory.
I. F. McKendry, Esq., Acting Clerk of the Legislative Assembly of the Australian Capital Territory, Legislative Assembly, Canberra, A.C.T.

Bahamas

P. O. Saunders, Esq., Chief Clerk of the House of Assembly, P.O. Box 3003, Nassau.

Barbados

G. E. T. Brancker, Esq., Deputy Clerk of Parliament, Bridgetown, Barbados.
N. R. Jones, Esq., Deputy Clerk of Parliament, Bridgetown, Barbados.

Belize

A. F. Monsanto, Esq., Clerk to the National Assembly, National Assembly Building, Independence Hill, Belmopan.
J. Ken, Esq., Deputy Clerk to the National Assembly, National Assembly Building, Independence Hill, Belmopan.

Bermuda

J. T. Gilbert, Esq., Clerk of the Legislature, Hamilton.
Mrs M. Y. Roach, Assistant Clerk of the Legislature, Hamilton.

Botswana

Bahiti K. Temane, Esq., Clerk to the National Assembly, P.O. Box 240, Gabarone.

Canada

C. A. Lussier, Esq., Ll.L, Clerk of the Senate, Ottawa, Ont.
Richard Greene, Esq., Clerk-Assistant of the Senate, Ottawa, Ont.
C. B. Koester, Clerk of the House of Commons, Ottawa, Ont.
*Marcel R. Pelletier, Q.C., Law Clerk and Parliamentary Counsel, House of Commons, Ottawa, Ont.
Philip Laundy, Clerk Assistant (Administration and Procedural), House of Commons, Ottawa, Ont.
Robert Marleau, Clerk Assistant (Legal), House of Commons, Ottawa, Ont.
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Michael B. Kirby, Principal Clerk (Journals), House of Commons, Ottawa, Ont.
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A. McFedries, Esq., Legislative Assembly, Parliament Buildings, Toronto, Ont.
D. Callfas, Esq., Legislative Assembly, Parliament Buildings, Toronto, Ont.
*A. S. Forsyth, Esq., Legislative Assembly, Parliament Buildings, Toronto, Ont.
Jacques Lessard, Esq., Secretary-General of the National Assembly, Parliament Buildings, Quebec.
Pierre Duchesne, Esq., Assistant Secretary-General of the National Assembly, Parliament Buildings, Quebec.
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*D. L. E. Peterson, Esq., Clerk of the Legislative Assembly,

* Barrister-at-Law or Advocate.

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*H. F. Muggah, Esq., Q.C., B.A., LL.B., D.C.L., Chief Clerk of the House of Assembly, Halifax, N.S.
R. K. MacArthur, Esq., B.A., LL.B., Assistant Clerk of the House of Assembly, Halifax, N.S.
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*I. D. Izard, Esq., B.A., LL.B., Law Clerk and Clerk-Assistant of the Legislative Assembly, Victoria, B.C.
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C. H. James, Clerk Assistant (Procedural), Legislative Assembly, Regina, Sask.
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Miss Elizabeth Murphy, Clerk-Assistant of the House of Assembly, S John's, Newfoundland.
W. W. Reid, Esq., Clerk of the Legislative Assembly, P.O. Box 2000, Charlottetown, Prince Edward Island.
Douglas B. Boyland, Esq., Clerk-Assistant to the Legislative Assembly, P.O. Box 2000, Charlottetown, Prince Edward Island.
B. J. D. Stefaniuk, Esq., Clerk of the Legislative Assembly, Edmonton, Alberta.
Robert Bubba, Esq., Clerk Assistant of the Legislative Assembly, Edmonton, Alberta.
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Mrs Jane Steele, Clerk Assistant (Administrative) of the Legislative Assembly, Whitehorse, Yukon.
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Mrs E. Gay Jackson, B.S., Clerk of the Legislative Assembly, Grand Cayman.

* Barrister-at-Law or Advocate.

Cook Islands
M. T. Puna, Esq., Clerk of the Legislative Assembly, P.O. Box 13, Rarotonga.

Falkland Islands
P. T. King, Esq., Clerk of Councils, The Secretariat, Stanley.

Fiji
Mrs L. B. Ah Koy, O.B.E., J.P., Clerk to Parliament and Clerk of the House of Representatives, Government Buildings, Suva, Fiji.
D. Mahabir, Esq., Clerk-Assistant to Parliament and Clerk of the Senate, Government Buildings, Suva, Fiji.

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Shrimati K. K. Chopra, Additional Secretary, Rajya Sabha, Parliament House, New Delhi.
Dr Subhash C. Kashyap, Secretary-General of the Lok Sabha, Parliament House, New Delhi.
Shri Raj Krishan, Secretary of the Haryana Legislative Assembly, Chandigarh, Haryana.

*Dr R. Prasannan, M.K., LL.M. J.S.D., Secretary of the Kerala Legislative Assembly, Trivandrum, Kerala.

*Thiru P. Pallikondaperumal, B.A., B.L., Commissioner and Secretary of the Tamil Nadu Legislative Assembly Secretariat, Fort St George, Madras-9.

Thiru C. K. Ramaswamy, B.A., B.L., Secretary of the Tamil Nadu Legislative Council, Fort St George, Madras-9.

*Shri G. S. Nande, B.A., LL.B., Secretary (I), Maharashtra Legislature Secretariat, Bombay 400 032, Manharashtra.

*Shri V. M. Subrahmanyam, B.A., LL.B., Secretary (II), Maharashtra Legislature Secretariat, Bombay 400 032, Maharashtra.

Shri D. G. Desai, Secretary of the Gujarat Legislative Assembly, Gandhinagar, Ahmedabad, Gujarat.

*Shri K. S. Singri Gowda, Secretary of the Karnataka Legislature, Bangalore, Karnataka.

Shri U. P. Guru, Secretary of the Orissa Legislative Assembly, Bhubaneswar, Orissa.

*Sardar Partap Singh, M.A., LL.B., Secretary of the Punjab Vidhan Sabha, Chandigarh, Punjab.

Shri Pyare Mohan, Secretary of the Rajasthan Legislative Assembly, Jaipur, Rajasthan.

Sri H.N.S. Bhatnagar, Secretary of the Uttar Pradesh Legislative Council, Lucknow, Uttar Pradesh.

*Shri Bhal Chandra Shukla, Secretary to the Uttar Pradesh Legislative Assembly, Lucknow, Uttar Pradesh.

*Shri E. Sadasiva Reddy, M.A., B.L., Secretary of the Andhra Pradesh Legislature Public Gardens, Hyderabad, Andhra Pradesh.

Isle of Man

*R. B. M. Quayle, Esq., Clerk of Tynwald, Clerk of Tynwald's Office, Legislative Buildings, Douglas, I.o.M.

T. A. Bawden, Esq., Clerk of the Legislative Council and Clerk-Assistant of Tynwald, Legislative Buildings, Douglas, I.o.M.

Jamaica

E. L. Deans, Esq., Clerk of the Legislature, Parliament House, Kingston, Jamaica.

Jersey

*E. J. M. Potter, Esq., Greffier of the States, States Greffe, St Helier, Jersey, C.I.

Kenya

L. J. Ngugi, Esq., Clerk of the National Assembly, P.O. Box 41842,

* Barrister-at-Law or Advocate.

Nairobi.
R. V. Mugo, Esq., Deputy Clerk, P.O. Box 41842, Nairobi.
J. K. Masya, Esq., Assistant Deputy Clerk, P.O. Box 41842, Nairobi.
S. W. Ndindiri, Esq., Senior Clerk Assistant, P.O. Box 41842 Nairobi.
P. G. Gichohi, Esq., First Clerk Assistant, P.O. Box 41842, Nairobi.
M. Werunga Esq., Second Clerk Assistant, P.O. Box 41842, Nairobi.

Kiribati
Atrera Tetoa, Esq., Clerk of the House of Assembly, P.O. Box 52, Bairiki, Tarawa.

Lesotho
T. E. Ntlhakana, Esq., Clerk to the National Assembly, P.O. Box 190, Maseru. 100.
J. M. Khaebana, Esq., Deputy Clerk, National Assembly, P.O. Box 190, Maseru, 100.
M. D. Thulo, Esq., Clerk Assistant, National Assembly, P.O. Box 190, Maseru. 100.

Malawi
P. J. S. Mpaso, Esq., Clerk of the Parliament, P.O. Box 80, Zomba.

Malaysia
Datuk Azizal Rahman bin Abdul Aziz, Clerk of the House of Representatives, Parliament House, Kuala Lumpur.
A. Hasmuni bin Haji Hussein, Clerk of the Senate, Parliament House, Kuala Lumpur.
Mohd. Salleh bin Abu Bakar, Deputy Clerk of Parliament, Parliament House, Kuala Lumpur.
Ghazali bin Haji Abdul Hamid, Clerk-Assistant, Parliament House, Kuala Lumpur.
Abdulla bin Abdul Wahab, Second Clerk Assistant, Parliament House, Kuala Lumpur.
Lim Kian Hock, Clerk of the Legislative Assembly, Kuching, Sarawak.
Francis T. N. Yap, Esq., Clerk of the Legislative Assembly, P.O. Box 1247, Kota Kinabalu, Sabah.

Malta, G.C.
C. Mifsud, Esq., Clerk of the House of Representatives, Valletta.
P. M. Terribile, Esq., Clerk-Assistant of the House of Representatives, Valletta.

Mauritius
Maurice Bru, Esq., Clerk of the Legislative Assembly, Legislative

Assembly, Port Louis.

Monteserrat
Mrs Cynthia Pym, Clerk of the Legislative Council

New Zealand
*C. P. Littlejohn, Esq., C.B.E., LL.M., Clerk of the House of Representatives, Wellington.
*D. G. McGee, Esq., B.A., Deputy Clerk of the House of Representatives, Wellington.
Miss A. F. von Tunzelmann, Clerk-Assistant of the House of Representatives, Wellington.
*Ms Christina McPhail, Second Clerk-Assistant, House of Representatives, Wellington.

Nigeria

Federal Parliament in suspension

A. O. Adedipe, Clerk-at-the-Table, Lagos State House of Assembly Obafemi Awolowo Way, Ikeja.
A. B. Fashola, Clerk-at-the-Table, Lagos State House of Assembly, Obafemi Awolowo Way, Ikeja.
E. A. Pearse, Serjeant-at-Arms, Lagos State House of Assembly, Obafemi Awolowo Way, Ikeja.
Chief I. O. Ayodele, Deputy Serjeant-at-Arms, Lagos State House of Assembly, Obafemi Awolowo Way, Ikeja.
M. I. Doko, Esq., Clerk of the Niger State Legislature, House of Assembly, Minna.
Five Clerks-at-the-Table, House of Assembly, Ogun State of Nigeria, Oke-Mosan, Owode Road, Abeokuta.

Northern Ireland
*John A. D. Kennedy, Esq., Clerk of the Assembly, Stormont, Belfast.

Papua New Guinea
S. G. Pentanu, Esq., B.A., Clerk of the National Parliament, National Parliament, Post Office, Parliament House, WAIGANI, Papua New Guinea.
A. Genolagani, Esq., Deputy Clerk of the National Parliament, National Parliament, Post Office, Parliament House, WAIGANI, Papua New Guinea.
I. Sitapai, Esq., First Clerk Assistant of the National Parliament, National Parliament, Post Office, Parliament House, WAIGANI,

* Barrister-at-Law or Advocate.

Papua New Guinea.
A. Kelvin, Esq., Principal Clerk – Table Office, National Parliament, Post Office, Parliament House, WAIGANI, Papua New Guinea.
G. Tola, Esq., Serjeant-at-Arms, National Parliament, Post Office, Parliament House, WAIGANI, Papua New Guinea.

St Lucia
Mrs S. Louis, Acting Clerk of Parliament, St Lucia.

St Vincent
J. Clement Noel Esq., Acting Clerk of the House of Assembly, Kingstown, Saint Vincent.

Singapore
A. Lopez, Esq., Clerk of Parliament, Singapore.
Neo Seng Kee, Principal Assistant Clerk, Parliament, Singapore.
Mrs Liaw Lai Chun, First Assistant Clerk, Parliament, Singapore.

Solomon Islands
Festus Fama'aea, Esq., Clerk of the National Parliament, P.O. Box G.19, Honiara.

Sri Lanka
*S. N. Seneviratne, Esq., LL.B., Secretary General of Parliament, Colombo.
*B. S. B. Tittawella, Esq., LL.M., Deputy Secretary General of Parliament, Colombo.

Tanzania
Ndugu Elias Kazimoto, Clerk of the National Assembly, Speaker's Office, P.O. Box 9133, Dar-es-Salaam.

Trinidad and Tobago
J. E. Carter, Esq., Clerk of the House of Representatives, Port-of-Spain, Trinidad.
R. L. Griffith, Esq., Clerk of the Senali, Red House, Port-of-Spain, Trinidad.

Turks and Caicos Islands
Mrs Ruth Blackman, Clerk to the Legislature, Grand Turk.

Uganda
in suspension

* Barrister-at-Law or Advocate.

United Kingdom

J. C. Sainty, Esq., Clerk of the Parliaments, House of Lords, S.W.1.

*J. E. Grey, Esq., C.B., Clerk Assistant of the Parliaments, House of Lords, S.W.1.

M. A. J. Wheeler-Booth, Esq., Reading Clerk and Clerk of Outdoor Committees, House of Lords, S.W.1.

J. A. Vallance White, Esq., Fourth Clerk-at-the-Table (Judicial), House of Lords, S.W.1.

Air Chief Marshal Sir John Gingell, G.B.E., K.C.B., Gentleman Usher of the Black Rod and Serjeant-at-Arms, House of Lords, S.W.1.

Brigadier D. M. Stileman, O.B.E., Yeoman Usher of the Black Rod and Deputy Serjeant-at-Arms, House of Lords, S.W.1.

K. A. Bradshaw, Esq., C.B. Clerk of the House of Commons, S.W.1.

C. J. Boulton, Esq., Clerk-Assistant of the House of Commons, S.W.1.

D. W. Limon, Esq., Principal Clerk of the Table Office, House of Commons, S.W.1

J. F. Sweetman, Esq., T. D., Clerk of the Overseas Office, House o Commons, S.W.1.

Major G. V. S. LeFanu, Serjeant-at-Arms, House of Commons S.W.1.

Major P. N. W. Jennings, Deputy Serjeant-at-Arms, House of Commons, S.W.1.

Virgin Islands

Miss Margaret Borde, Clerk of the Legislative Council, Road Town, Tortola.

Miss Mary Cills, Clerk Assistant, Legislative Council, Road Town, Tortola.

Western Samoa

Isitolo Lemisio, Esq., Acting Clerk of the Legislative Assembly, Apia, Western Samoa.

Zambia

N. M. Chibesakunda, Esq., Clerk of the National Assembly, P.O. Box 1299, Lusaka.

A. C. Yumba, Esq., Clerk-Assistant of the National Assembly, P.O. Box 1299, Lusaka.

N. M. C. Tembo, Esq., Second Clerk-Assistant of the National Assembly, P.O. Box 1299, Lusaka.

Zimbabwe

Dr J. W. Z. Kurewa, Secretary to Parliament, P.O. Box 8055, Harare.

A. N. Nyarota, Esq., Under Secretary to Parliament, P.O. Box 8055, Harare.

* Barrister-at-Law or Advocate.

C. K. Nyangoni, Esq., Assistant Secretary to Parliament, P.O. Box 8055, Harare.
A. M. Zvoma, Esq., Assistant Secretary to Parliament, P.O. Box 8055, Harare.

Ex-Clerks-at-the-Table

D. J. Ayling, Esq., O.B.E., J.P., (Papua New Guinea).
I. J. Ball, Esq., O.B.E., (South Australia).
O. S. Barrow, Esq., (St. Vincent).
R. H. A. Blackburn, Esq., LL.B., (Northern Ireland).
D. J. Blain, Esq., CD., Alberta.
K. O. Bradshaw, Esq., O.B.E., (Australia).
E. C. Briggs, Esq., (Tasmania).
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G. D. Combe, Esq., C.M.G., M.C., (South Australia).
*H. N. Dollimore, Esq., C.B.E., LL.B., (New Zealand).
Alistair Fraser, Esq., (Canada).
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N. J. Parkes, Esq., C.B.E., A.A.S.A., (Australia).
R. W. Perceval, Esq., (United Kingdom).
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*A. W. Purvis, Esq., LL.B., (Kenya).
Sir David Stephens, K.C.B., C.V.O., (United Kingdom).
M. A. van Ryneveld, Esq., (Zimbabwe).
M. O. Onajide, Esq., (Oyo State of Nigeria).

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* Barrister-at-Law or Advocate.

Note. – **b.**=born; **ed.**=educated; **m.**=married; **s.**=son(s); **d.**=daughter(s).

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.

NTLHAKANA, THABO EPHRAIM – Clerk, Lesotho National Assembly; *b* 23 June 1935; Leribe, Lesotho; *ed.* Hlotse Primary School, Leribe, Lesotho High School, Maseru, Lesotho Teacher Training College, Morija, Pius XII University College of Lesotho, graudated Bachelor of Arts; Secondary School Teacher 1957–1962; joined Lesotho Civil Service as Information Officer, Newspaper Editor, Broadcaster and later Director of Information and Broadcasting, 1965–1970; Counsellor at the Lesotho High Commission, London, 1970–1974; Chief of Protocol, Ministry of Foreign Affairs, 1974–1975; Director of Information and Broadcasting 1975; High Commissioner for Lesotho, London, 1975–1976 Ambassador to Belgium and the EEC, 1976–1978; Permanent Secretary for Information and Broadcasting, 1978–1979; High Commissioner to Kenya, Ghana and Tanzania, Ambassador to Egypt, Ethiopia and Algeria, Permanent Representative to O.A.U., UNEP and UNHABITAT, 1979–1982; Director of Middle & Far Eastern Countries desk in the Ministry of Foreign Affairs, 1982–1984; Clerk to the National Assembly, September 1984.

P. PALLIKONDAPERUMAL, B.A., B.L. – Secretary, Tamil Nadu Legislative Council; India; *b* 25 January 1931 in Tirunelvia District; *ed* Hindu College, Tirunelvi and Law College, Madras; joined Tamil Nadu Legislature Secretariat Service in July 1955; Judicial Sub-Magistrate 1969-1972; appointed as Under Secretary in Tamil Nadu Legislative Assembly in June 1977; and as Deputy Secretary in October 1983; promoted and appointed as Secretary, Tamil Nadu Legislative Council with effect from 1 July 1985.

THULO, MONARE D – Clerk Assistant, Lesotho National Assembly; *b* 23 November 1949; *ed.* Kabi and Moyeni Primary Schools, Quthing District; Peka High School, Leribe District; National University of Lesotho; *m*; 1 *s*; joined the National Assembly as Interpreter on the 9 July 1979; appointed Clerk Assistant on 1 March 1984.

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ABBREVIATIONS

(Art) = Article in which information relating to several territories is collated.
(Com.) = House of Commons.

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