The Table

BEING

THE JOURNAL OF
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IN COMMONWEALTH PARLIAMENTS

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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	•	•	•	•	•	•			•	•	•	•
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Fiji						No settled practice						
Hong Kong			•	•		•		•	•			•
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THE JOURNAL OF THE SOCIETY OF CLERKS-AT-THE-TABLE IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

The 1987 edition of *The Table* contains articles on an interesting variety of topics. There is an article on the broadcasting of parliamentary proceedings in the Australian Parliament which usefully complements articles on parliamentary broadcasting published in *The Table* in recent years. The role of the Speaker is of central importance and has been the subject of several articles in recent editions. Two years ago Philip Laundy published his important book on the Speaker in Commonwealth Parliaments (see the review in volume LIII, pp. 154–156). This volume contains a stimulating article by him on electing a Speaker, Canadian style. We also publish a fascinating analysis of bell-ringing incidents and the response of various Speakers in Manitoba. Every Clerk needs to be familiar with the operations of committees. The articles dealing with the Australian Senate's Standing Committee on Finance and Government Operations and with the activities of the House of Commons at Westminster on the Channel Tunnel Bill are valuable contributions to our knowledge of committee work. So too is David Pring's examination of the question: how far are civil servants accountable to select committees? Other articles deal with aspects of parliamentary privilege, procedure and constitutional reform. Two short articles describe unusual and (to some, perhaps) even curious events at Westminster, one in the 17th century and one more recently. We believe that all readers of *The Table* will read these with interest and pleasure. We very much hope that Clerks in other member parliaments will be encouraged to submit similar articles for future editions.

As reported last year (volume LIV, p. 7), the editors have been

carrying out a stocktaking of back issues of *The Table*. A number of back issues is now available. Sets are also available, including the very first volume, but excluding volumes II to V. Most of the volumes, even the oldest, are in excellent condition. They deal with topics which are still lively issues for Clerks and are an interesting reminder that, although the problems which Clerks are faced with are constantly changing, many of the problems would have been familiar to our predecessors at the Table. Following a decision by the Society at the annual meeting in 1986, the editors are now able to offer sets up to and including the volume for 1975 at a nominal price of £20 plus postage. We would be grateful if members of the Society would draw this information to the attention of their colleagues in parliamentary libraries and the like.

Edgar Charles Briggs – It was with deep regret that the Clerks of the Tasmanian Parliament learned of the death on 11 December 1985 of Mr Edgar Briggs, Clerk of the Legislative Council from 1953 until 28 July 1965.

Mr Briggs was 87 years of age and although retired for many years was well remembered and respected by the Clerks, Members and former Members of both Houses of Parliament.

He commenced employment in 1914 with the Lands Titles Office as a Clerk. In 1916 he enlisted in the Army (12th Battalion 1st AIF) and served in the United Kingdom and France, achieving the rank of Lieutenant. He returned to his old Department in 1919.

Mr Briggs joined the Audit Department in 1928 and shortly after, in 1929, he was appointed the Private Secretary to the Minister for Lands, Works and Mines. He became Chief Clerk and Accountant at the Mines Department in 1938.

In 1940 he rejoined the Commonwealth Military Forces (Army Reserve) for the duration of the Second World War, leaving the Army with the rank of Major.

Mr Briggs' parliamentary career commenced in August 1946 as Clerk-Assistant and Usher of the Black Rod in the Legislative Council. In 1953 he was appointed Clerk of the Legislative Council in succession to C. I. Clark, and was responsible for much of the organisation of the visit of HM the Queen to the Tasmanian Houses of Parliament in 1954. As Clerk, Edgar was also responsible for a major revision of the Legislative Council Standing Orders. He retired on 28 July 1965 after 52 years' public service.

(*Contributed by the Clerk of the House, Parliament House, Hobart*)

I. Sitapae – First Clerk Assistant of the National Parliament of Papua New Guinea died suddenly at his home in the Manus Province on 20 January 1987. He is survived by his widow and two children.

Isidore joined the Parliamentary Service in October 1979 after successfully completing a degree course in Economics at the University of Papua New Guinea. He acted in a number of positions within the Office of Bills and Papers. He became First Clerk Assistant, and at the time of his death was acting as Deputy Clerk of the National Parliament in the absence of Mr. Genolagani on study leave.

During his service, he accompanied Members of Parliament on official visits both within Papua New Guinea and overseas. He was a member of the Parliamentary Delegation to Lusaka in 1980.

(*Contributed by the Clerk of the National Parliament of Papua New Guinea*)

D. L. Wheeler – On 12 October 1984, Mr Douglas Leslie Wheeler retired from the office of Clerk of the Legislative Assembly of New South Wales.

During the debate on the special adjournment on 27 September 1984, the Leader of the House, the Honourable T. W. Sheahan and the Leader of the Opposition, Mr N. F. Greiner, paid tribute to Mr Wheeler. The Chairman of Committees and Deputy Speaker, Mr J. R. Face, with several Ministers and senior Opposition Members also offered their thanks for his contribution to the Parliamentary institution and wished him and his wife a happy retirement.

On 16 October 1984, Mr Speaker officially announced Mr Wheeler's retirement when the Premier, the Honourable N. K. Wran, moved:

> 'That Mr Speaker's remarks with reference to Mr Douglas Leslie Wheeler, on his retirement from the position of Clerk of this House be entered in the *Votes and Proceedings*.'

The Premier's remarks were supported by the Leader of the Opposition, the Leader of the National Party, the Leader of the House and a former Leader of the House.

> 'Mr Wheeler joined the Legislative Assembly staff on 17th March 1947, and served in most positions on that staff. That experience gave him first hand knowledge of all ramifications of parliamentary work. On 1st January 1967, he was appointed Second Clerk-Assistant; on 1st February, 1974, Clerk-Assistant; and as from 19th February 1981, was appointed Clerk of the Legislative Assembly. He was attached to the staff of the House of Commons during May and June 1975, where he undertook a procedural course.
>
> During his term of office as Clerk, Mr Wheeler represented the Parliament at a number of Commonwealth Parliamentary Association conferences and at conferences of Presiding Officers and Clerks. He was also Clerk to the Australian Constitutional Convention on several occasions. During World War II he served with the Royal Australian

Air Force as navigator and saw two years' active service while based in England with his squadron operating over Germany. Mr Wheeler's thirty-seven years of service to the Parliament, of which almost eighteen years were as a Chamber Officer, must rank him in the vanguard of those senior staff members whose service to the Parliament entitles them to tribute from the House.'

(*Contributed by the Clerk of the Legislative Assembly of New South Wales*)

Roderick G. Lewis – retired as Clerk of the Legislative Assembly of Ontario with the appointment of Mr. DesRosiers as Clerk. Mr. Lewis announced his retirement on 2 July 1986 on the occasion of his 75th birthday. He had served at the Table since 1946 first as Clerk Assistant to his father Major Alex C. Lewis and then since 1955, on the retirement of his father, as Clerk. Since Major Lewis had been Clerk since 1926, it marked the first time in 60 years a member of the Lewis family did not occupy the Clerk's Chair at the head of the Table.

David G. Callfas – announced his resignation as Clerk Assistant of the Legislative Assembly of Ontario on 1 September 1986. Mr. Callfas had been associated with the Clerk's Office since 1968.

Shri T. S. Barot – Secretary, Gujarat Legislature Secretariat retired with effect from 31 August 1986. One month before his retirement. **Shri J. M. Parikh**, Judge, City Civil Court, Ahmedabad was appointed as Additional Secretary and subsequently Shri Parikh was appointed as Secretary, Gujarat Legislature Secretariat with effect from 1 September 1986.

Mr Charles Mifsud – former Clerk of the House of Representatives of Malta has been appointed Permanent Secretary to the Ministry of Justice and Parliamentary Affairs. He relinquished his assignment as Clerk at the Table in October 1986. **Mr Paul Muscat Terribile** the Clerk Assistant has been appointed Acting Clerk to the House and **Mr Philip Attard** is performing the duties of Clerk Assistant.

T. A. Mmopi – Senior Clerk Assistant, National Assembly, Botswana, retired on 31 August 1986. He has been succeeded by **Mr C. K. Mukhange**.

Shri G. S. Nande – Secretary – 1, Maharashtra Legislature Secretariat, retired on 30 June 1986.

Mr. Craig James – Clerk Assistant of the Legislative Assembly of

Saskatchewan, resigned on 31 January 1987 in order to take up a post with the Legislative Assembly of British Columbia. **Mr. Greg Putz** has been appointed Clerk Assistant of the Saskatchewan Legislative Assembly.

Claude L. DesRosiers – was appointed Clerk of the Legislative Assembly of Ontario as of 1 October 1986. Mr DesRosiers was formerly Principal Clerk of the Committees and Private Legislation Directorate of the House of Commons of Canada. He was an advisor to the Special Committee on Reform of the House of Commons which recommended widespread reform to the rules in 1985. The new Clerk was chosen by a new process in Ontario whereby candidates were interviewed by the Standing Committee on the Legislative Assembly whose report was transmitted to the Speaker who then recommended the appointment of the successful candidate to the Lieutenant-Governor in Council.

J. D. Evans – formerly Clerk Assistant, has been appointed to a new position of Deputy Clerk of the Legislative Council of New South Wales. **D. K. Carpenter** has been promoted to Clerk Assistant. **M. J. Swinson** has been appointed Usher of the Black Rod.

A. Genolagani – Deputy Clerk of the National Parliament of Papua New Guinea, is at present on three years' study leave. He is studying Law.

II. DISAGREEMENT WITH THE COURTS OVER FREEDOM OF SPEECH: AN AUSTRALIAN PARLIAMENTARY COMMISSION OF INQUIRY

BY HARRY EVANS

Deputy Clerk, Australian Senate

Introduction: the issues

During 1985 and 1986 a great deal of time and effort were expended by a large number of people over the various manifestations of the affair of Mr Justice Murphy, a Justice of the High Court of Australia against whom certain allegations were made. From the parliamentary point of view, there were two main strands to the affair: a dispute between the Senate and the Supreme Court of New South Wales over the scope of freedom of speech in Parliament, and the appointment of a statutory parliamentary commission of inquiry to conduct a third inquiry into the judge's conduct. These two aspects were entangled, and this article deals with both of them.

An article in the 1985 issue of *The Table* recounted how the Senate in 1984 had appointed two successive select committees to inquire into the conduct of Mr Justice Murphy, and briefly described the nature and outcome of the two committees. As a result of evidence presented before the second committee, the federal Director of Public Prosecutions decided at the end of 1984 to prosecute the judge on two charges of attempting to pervert the course of justice. As soon as this decision was announced the Senate ceased all consideration of the conduct of the judge and awaited the outcome of the criminal proceedings. This was an act of self-restraint on the part of the Senate: there would have been no constitutional barrier to the Senate proceeding to consider the report of its second committee and commencing proceedings for an address to the Governor-General for the removal of the judge from office, if it thought fit, but all Senators agreed that nothing should be done to prejudice the criminal trial.

An annexe to the article referred briefly to the question of the use by the prosecution and the defence in the course of the trial of the evidence which was given before the two Senate committees, and to the view which was taken by the Senate that it was not permissible for that evidence to be used in court in a way which involved calling the evidence into question in a wide sense. This view was based upon article 9 of the Bill of Rights of 1688, which applies to the Australian Parliament by virtue of section 49 of the Constitution, and provides:

'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.'

In the past the courts have held that the article prevents parliamentary proceedings from being examined or questioned in a wide sense or used to support a cause of action (*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, *Comalco Ltd v Australian Broadcasting Corporation* (1983) 50 ACTR 1; these judgments were based on authorities stretching back to 1688).

The trials and the judgments

The criminal proceedings against the judge were prolonged. In early 1985 there was the committal hearing, a full hearing of the evidence before a magistrate to determine whether the judge should be committed for trial. The magistrate found that the judge had a case to answer, and a trial in the Supreme Court of New South Wales ensued in June 1985. The outcome of that trial, which was itself protracted, was that the judge was convicted of one charge of attempting to pervert the course of justice but acquitted of the other charge. The judge then appealed on a number of grounds against his conviction, and the appeal found its way into the High Court itself, although the High Court remitted the questions raised to the full court of the Supreme Court of New South Wales. As a result of the appeal the judge was granted a new trial, which commenced early in 1986. The outcome of that trial was that the judge was acquitted of the one remaining charge. Thus, it was not until May 1986 that the matter was finally out of the courts and again available for parliamentary consideration. As will be shown, however, by that time there was more for the Parliament to consider than the original allegations against the judge.

Before the commencement of the proceedings, it became clear that there was an intention on the part of the defence to cross-examine the witnesses against the judge on the evidence which they had given before the Senate committees in such a way as to call that evidence into question. It also soon became clear that the prosecution intended to use against the judge the evidence that he had given to the first Senate committee in the form of a written statement provided to the committee. The President of the Senate therefore briefed counsel to appear as amicus curiae at the commencement of the proceedings to submit that the court should not allow this use of the parliamentary evidence. As for the prosecution and the defence, they adopted different attitudes to the question. The prosecution maintained that it should be free to make any use of any of the evidence presented to the Senate committees, including the evidence which was given in camera

and which was not published. The defence, on the other hand, argued that the law of parliamentary privilege protected the defendant and prevented the use of his parliamentary evidence against him, but did not similarly protect the witnesses in the trial from the use against them, in the sense of an attack upon their court evidence, of the evidence which they gave to the committees.

In the committal proceedings, the magistrate generally accepted the submission made by the Senate, and did not permit any use of the parliamentary evidence for the purpose of attacking the evidence of the prosecution witnesses. The accused judge did not give evidence in the committal proceedings. Notwithstanding the magistrate's decision, it was clear that the matter would be argued again when the trial came on in the Supreme Court.

At the beginning of the trial, therefore, counsel representing the President presented a comprehensive submission expounding the parliamentary view of the freedom of speech in Parliament as protected by article 9 of the Bill of Rights. The submission referred to all the previous authorities on the interpretation of article 9 and its basis, and expounded the distinction between a legitimate admission in court proceedings of evidence of parliamentary proceedings and an improper admission which amounted to impeaching or questioning the parliamentary proceedings.

To the surprise of those involved in the proceedings, the trial Judge, Mr Justice Cantor, handed down a judgment which rejected the parliamentary submission and, in effect, upheld the prosecution's view of the effect of the law, that any use could be made of the parliamentary evidence in the court proceedings. The reasons for this judgment were rather difficult to follow, and it was not clear that this was in fact the effect of the judgment until the subsequent proceedings occurred. Mr Justice Cantor expounded a view that the purpose of article 9 was to prevent any 'adverse effects' attaching to parliamentary proceedings, and that no such effects were to be apprehended from the use of the parliamentary evidence in the manner proposed. He also referred, somewhat obscurely, to the need for the protection contained in article 9 to be 'balanced' against the requirements of the court proceedings. His reasons indicated that this interpretation was consistent with the view of article 9 expounded in the earlier judgments, but it was clear that in fact his interpretation was a new one and quite inconsistent with those judgments.

Consideration was given to taking the question to the High Court, but it was determined that the Senate should do nothing to prejudice the trial, which proceeded immediately after Mr Justice Cantor's judgment was handed down. One of Mr Justice Murphy's grounds of appeal following the trial was to have been the violation of parliamentary privilege involved in his being cross-examined on the statement which

he gave to the first Senate committee. Counsel for the President was therefore prepared to participate in the appeal proceedings to support this contention. Unfortunately, the judge had so many other grounds of appeal that he decided not to pursue the one relating to parliamentary privilege, and the court would therefore not consider it. This removed the opportunity for a review of the judgment of Mr Justice Cantor. The Senate was then in the position of awaiting the second trial to argue the matter again.

At the commencement of the second trial the question of parliamentary privilege was raised again before the second trial judge, another judge of the Supreme Court of New South Wales, Mr Justice Hunt. Any hopes that the Cantor judgment would be reversed were quickly dashed by the following exchange, which took place before the counsel for the President had even had an opportunity to present his submission:

'His Honour: The Senate, of course, submits that you cannot even admit evidence of what was said before the Senate.

Mr Simos (counsel engaged by the President): No, your Honour, we don't submit that at all.

His Honour: Oh yes you do.'

In his judgment, Mr Justice Hunt, in effect, came to the same conclusion as his learned brother, but for entirely different reasons. He repudiated the reasons advanced by Mr Justice Cantor, and substituted his own. The essence of his reasoning was that article 9 prevented only the suit or prosecution of a member or a parliamentary witness for what was actually said in the course of parliamentary proceedings, but did not prevent the use of the parliamentary proceedings as evidence of a civil liability or of an offence or to attack the evidence of a witness or the accused. Unlike Mr Justice Cantor, he did not attempt to argue that this conclusion was in accord with the previous judgments and authorities: he found that the previous interpretation of article 9 was profoundly mistaken, and he declined to follow the earlier judgments. He argued that prevention of the suit or prosecution of a member for what was said in the course of parliamentary proceedings was the sole intended purpose of article 9, thereby ignoring a great deal of the history of freedom of speech in Parliament.

Although based on different reasons, both judgments exhibited a profound misunderstanding of the submission which was made by the President. Both judges failed to grasp the distinction which was drawn between the legitimate admission in court proceedings of evidence of parliamentary proceedings, such as to establish as a material fact that certain words were said in Parliament on a particular day by a particular person, and the illegitimate use of parliamentary proceedings against a witness or the accused. Both judges were under the misapprehension that the interpretation of article 9 put to them by the President would,

if carried to its logical conclusion, involve the freedom of speech being invoked to suppress all criticism of parliamentary proceedings. It is rather surprising that they should thereby have ignored the very real distinction between an attack upon a person in court and mere public criticism. Both judges confused the question of the use of parliamentary proceedings in court proceedings with the former practice of the Houses of granting permission for the production of records of their proceedings. Justice Hunt advanced the curious argument that people are more likely to tell the truth if their statements can later be used to prosecute them, a reversal of the rationale of granting witnesses protection of any sort. He also implied that, if the President's argument were accepted, parliamentary privilege would be the only restriction on the type of evidence which may be presented in court, ignoring all the restrictions imposed by the law itself. It is interesting to note that both judgments accepted that there was no distinction to be drawn between the participation of a member of Parliament in parliamentary proceedings and that of a parliamentary witness. Before the trials it was apprehended that some such distinction might be drawn, and that a finding might be made that parliamentary privilege protected members but not witnesses. While any such reasoning also would have been unacceptable to the Parliament, it would perhaps have been slightly more plausible than the reasons which the learned judges in fact put forward.

The implications of the judgments were made very apparent in the course of the trials. In both trials prosecution witnesses were rigorously cross-examined on the evidence which they gave to the Senate committees; it was put to them that they had given false evidence and that they had given evidence out of improper motives. In the first trial the accused judge was also cross-examined on the statement which he had given to the first Senate committee, and it was suggested to him in no uncertain terms that he had lied. This use of his statement to the committee probably significantly contributed to his conviction. The same use of the statement would doubtless have occurred in the second trail but for the decision of the accused judge to exercise his right not to give evidence in that trial. In their addresses to the jury the prosecution and the defence used the parliamentary evidence to attack the credibility of the accused and the witnesses, respectively. In these processes the evidence which was taken in camera by the first Senate committee and not published by the committee or by the Senate, and which the counsel in the trial had no right to possess, was used as freely as the evidence given in public. This, perhaps, was the most serious aspect of the whole matter. All this, according to the learned judges, did not amount to impeaching or questioning proceedings in Parliament!

Action in the Senate

At each stage of the proceedings the President informed the Senate of what had occurred. Both judgments were formally presented to the Senate, and the President made statements responding to them. In subsequent debate, Senators of all parties indicated their rejection of the judgments of the Supreme Court and their unwillingness to allow those judgments to stand. After the second judgment, the President accepted suggestions put to him by Senators that he should not pursue the matter any further in the courts, but that he should prepare legislation to restore and uphold the previously established interpretation of freedom of speech in Parliament. The President accordingly set about preparing a bill for introduction into the Senate, with the assistance of one of the Senate Department's consultant parliamentary draftsmen.

The preparation of the bill was somewhat delayed by a decision to include in it, at the suggestion of Senators, provisions to carry out the recommendations requiring legislation of the Joint Select Committee on Parliamentary Privilege, which recommended some changes in the law of parliamentary privilege, and by the tabling of the bill in draft form to allow comments before it was finally introduced. The bill was finally presented to the Senate in October 1986, together with documents including a comprehensive statement of the parliamentary view of the scope of article 9 and a refutation of the reasoning of the two Supreme Court judges.

This is the first occasion of a Presiding Officer of either House of the Australian Parliament introducing a bill. The President moved the necessary motions and made his second reading speech from the Chair. This action indicated his own deep personal commitment to preserving the privilege of freedom of speech and overcoming the unacceptable court judgments.

The relevant provision of the bill took the form of a declaratory provision, declaring that article 9 is part of the law of Australia under section 49 of the Constitution (a matter which was not in doubt), and declaring what the article means and has always meant. The draftsman had considerable difficulty in finding words to give statutory expression to the parliamentary view of the scope of the article: it is difficult to improve on the 17th century phrase 'impeached or questioned'.

Since the two judgments were given, they have been repudiated by other judges, including another judge of the Supreme Court of New South Wales. In *R v Jackson*, 1986 [not yet reported], a former Minister of the State of New South Wales was on trial for accepting bribes. The prosecution proposed to use statements which he had made in Parliament as evidence of his guilt, which the Hunt judgment would allow. The trial judge, Mr Justice Carruthers, however, would not allow such use of the accused's parliamentary statements, and handed down a judgment which explicitly accepted the previously established interpret-

ation of article 9 and rejected the reasoning of his learned brother. In a South Australian case (*A.B.C. and another v Chatterton, Chapman v Chatterton, 1986* [not yet reported]) the acting Chief Justice of the Supreme Court of that State also upheld the traditional interpretation of freedom of speech when the question arose of whether a plaintiff could use a member's statement in Parliament to cast light on the intention with which statements were made outside Parliament.

The President's bill had not been dealt with by the Senate at the time of writing, but it is expected that the contradictory court judgments will make the Houses firmer in their resolution to place the matter beyond doubt.

The Parliamentary Commission of Inquiry

Following the acquittal of Mr Justice Murphy in his second trial, the question of any further parliamentary consideration of his conduct was greatly complicated by new allegations which were made against him. Apart from the general question of his conduct arising from the police tape recordings and transcripts of his telephone conversations which were the original source of the Senate committees, and his conduct as revealed by the other evidence gathered by the committees and brought out in the two trials, it was disclosed that the prosecuting counsel after the second trial had recommended that he be prosecuted on new charges of bribery and conspiracy arising from certain matters which were discovered during the trial. It appears that there was also disquiet about his failure to give evidence at his second trial. Following certain deliberations, in which the other justices of the High Court were apparently involved, and the exact nature of which is not known, the Government decided to establish a statutory Parliamentary Commission of Inquiry to inquire into all outstanding questions as to Mr Justice Murphy's conduct.

The Parliamentary Commission was set up by legislation passed by both Houses in May 1986. It consisted of three retired senior judges, and was charged with the task of inquiring into the judge's conduct, hearing evidence in private session and reporting to both Houses of the Parliament its findings of fact and its findings as to whether the judge had engaged in any conduct amounting to misbehaviour and warranting his removal under the Constitution. It is interesting to note that, unlike the resolution establishing the second Senate Committee, the statute did not give to Mr Justice Murphy all the rights of an accused person in a criminal trial, in that, if the Commission came to the conclusion that he had a case to answer, it could compel him to give evidence. The Commission almost exactly followed a blueprint which had been drawn up for consideration by the non-government parties in the Senate early in 1984 when the questions about the judge's conduct first arose.

The very name, Parliamentary Commission, was taken from that scheme.

It is still not clear whether it is lawful for the Parliament to delegate the task of hearing evidence and making findings in this way, and whether such delegation relieves the Houses of the necessity of hearing evidence themselves.

It was observed by a number of people that, had the Government agreed to the establishment of such a commission in 1984, a great deal of difficulty could have been avoided, including the conflict between the Senate and the Supreme Court of New South Wales.

It was expected that the findings of the Parliamentary Commission would be accepted by both Houses of the Parliament, and that this would bring to an end the whole affair, whether or not an address for removal resulted. Unfortunately, nature, or providence, depending on one's view of these matters, intervened. Early in August it was discovered that Mr Justice Murphy was dying of cancer. The Parliamentary Commission, which was about to commence its formal hearings of evidence, reported to the Houses that it would not be consistent with the requirements of natural justice for the hearings to take place, because it was clear that Mr Justice Murphy would be too ill to attend. Legislation was then introduced to wind up the Commission, and it ceased its deliberations. The judge's condition deteriorated rapidly, and he died in October.

Before it went out of existence, however, the Commission presented a comprehensive and closely argued report on the question of what constitutes misbehaviour within the meaning of the Constitution. It may be recalled from the previous article that the Government had adhered to a view that misbehaviour could be constituted only by misconduct affecting the performance of the judicial duties or conviction for a criminal offence of requisite seriousness. Each of the three commissioners came to the conclusion that misbehaviour is constituted by any conduct which, in the judgment of the Parliament, but perhaps subject to review by the High Court, indicates unfitness in a judge to hold office. This was the view put to the first Senate committee by its counsel and adhered to by the Opposition. Since the commissioners' report was presented, its interpretation has been accepted by other authorities, and the question may now be regarded as fairly settled.

Conclusion: an unnecessary affair

It is probable that the dispute over the scope of freedom of speech would not have arisen but for the nature of the proceedings against Mr Justice Murphy. It was not an ordinary trial, but one involving an alleged offence which, as the prosecution argued, struck at the very basis of justice, and the defendant was one of the highest officers of the state. The two trial judges were no doubt acutely aware of this.

Had the question of freedom of speech in Parliament arisen in a less charged atmosphere, it may have been treated differently. This is suggested by the subsequent judgments. Hard cases make bad laws.

It is also obvious that the conflict between the Senate and the courts could have been avoided by the establishment early in 1984 of the Parliamentary Commission of Inquiry, or some other non-partisan and soundly-constituted inquiry into the judge's conduct. It is now being suggested by 'expert' bodies that the removal of judges should be taken away from the Houses. Nothing in the conduct of the Houses themselves justifies such a conclusion. The establishment of the Commission provides a precedent for the way in which questions about the conduct of judges may be resolved, with the ultimate responsibility remaining with the Parliament.

Addendum

The Bill introduced by the President of the Senate, the Parliamentary Privileges Bill, was passed by the Senate on 17 March 1987 and the House of Representatives on 6 May. The Parliament thereby repudiated the unfavourable court judgments referred to in the article, and reaffirmed the traditional protective interpretation of the privilege of freedom of speech.

III. RADIO BROADCASTING AND TELEVISING PROCEEDINGS OF THE AUSTRALIAN PARLIAMENT

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The inquiry

The Australian National Parliament was among the pioneers in utilising the electronic media to make its proceedings available to its citizens. It was the second national Parliament in the Commonwealth to radio broadcast its proceedings, commencing on 10 July 1946 (New Zealand was the first, and the Canadian province of Saskatchewan began radio broadcasting its Assembly's proceedings at approximately the same time as Australia). With the passage of years, however, Australia had lagged considerably behind other countries in taking advantage of technological developments. The presentation and format of the radio broadcasts remained essentially the same as at inception. While the question of televising proceedings had been considered, apart from the internal adoption of limited closed circuit systems, silent stock footage and the televising of 'special' events (Openings and leading speeches on the Budget), no significant progress had been made, and no examination of existing broadcasting arrangements in the 40 years of parliamentary broadcasting had taken place.

The Joint Committee on the Broadcasting of Parliamentary Proceedings (in short, the Broadcasting Committee) plays an instrumental role in relation to Australian parliamentary broadcasts, as has been previously discussed in *The Table* (see, for example vol. XV, for 1946, pp. 182–187 and vol. XXV, for 1966, pp. 74–84). The committee has also considered televising of proceedings (in 1973–74) and recommended a closed circuit trial period preliminary to a final decision (see *The Table*, vol. XLIII, for 1975, pp. 143–145).

In December 1982, televising and radio broadcasting of proceedings was referred by both Houses to the Broadcasting Committee. No progress had been made by February 1983 when both Houses were dissolved simultaneously and the matters were again referred to the committee in May 1983, with terms of reference in relation to radio widened to incorporate continuous and simultaneous broadcasting of both Houses (see *The Table* Vol. LIII, for 1985, pp. 138–140). The committee was approaching the finalising of its report to both Houses when the Prime Minister informed the House on 8 October 1984 of the intention to hold a general election and half-Senate election on 1

December 1984. The matters were again referred to the committee, which finalised its report after seeking comment from specific interest groups and individuals. The committee's report was presented on 4 June 1986.

Radio broadcasting of proceedings

The committee was convinced that the continuous broadcast of parliamentary proceedings has played a vital role in presenting the participants in the parliamentary process direct to the citizens they represent, without the selective and interpretative filter of the media. Continuous broadcasting makes available the sound of the Houses of Parliament as it actually occurs. It enables a balanced presentation between backbench and executive members of all parties represented in Parliament, between the Government, the Opposition and other parties or groups, and between dramatic periods of high emotion and conflict and the more normal atmosphere of consensus and agreement. If the presentation of the broadcast were left to the decisions based on a journalistic interpretation of 'news value', there would be a significant risk of a distorted, atypical presentation; the possibility would be very real of the public having foisted on it an electronic newspaper.

The principal recommendations therefore included that radio broadcasting of proceedings should continue on the present basis with a slight extension. Currently the proceedings of one House only are broadcast at a particular time according to an allocation made by the committee. In practice under the current sitting pattern when both Houses are sitting this has meant that the Senate is broadcast Mondays and Wednesdays, and the House of Representatives Tuesdays, Thursdays and Fridays. A delayed broadcast of question time in the House not being broadcast is made during the dinner break. Proceedings are broadcast continuously from the commencement of the sitting until 11.30 pm Canberra time or until the question for the adjournment is proposed, whichever occurs earlier. The reason for excluding adjournment debates from the continuous broadcasts appears to be a combination of cost considerations in the 1940's and a belief that the debates were essentially of local electorate interest only. However, the committee concluded that matters of national importance were also raised in the debates, which were characterised by short speeches, different speakers and varied subjects, and that the broadcast should include them.

Advocates of simultaneous broadcasts argued that the House being broadcast was not necessarily the one whose proceedings held the interest of the nation at a particular time. It was also advanced that Senators, chosen on a proportional representation basis, represented a wider political divergence of opinion in the political spectrum but that the Senate received less broadcasting time than the House (with the

Senate being half the size of the House, the amount of broadcasting time per Senator is a different matter). However, the committee was aware that there was flexibility in the allocation (as demonstrated in 1971 when the allocation was altered to enable a Prime Minister's announcement of resignation to be broadcast). Also, the cost of providing simultaneous broadcasts was felt to be prohibitive and would be likely to involve further disruption to the regular programs of the Australian Broadcasting Corporation (ABC).

The ABC is required by statute to transmit the parliamentary broadcasts from a medium wave national broadcasting station in the capital city of each state, in Newcastle, NSW, and such other national broadcasting stations as are prescribed (a medium wave station in Canberra and a short-wave station have been so prescribed). The committee received complaints from listeners to regular ABC programs concerning the disruptive effects of the parliamentary broadcasts. The position is aggravated by the fact that the stations which carry the parliamentary broadcasts are also those which provide coverage of sporting events – including descriptions of international and inter-State cricket matches! Over the last 6 financial years the broadcasts have accounted on average for just over 500 hours of transmission (peaking at 725 hours in 1983–84) at approximately 8% of total transmissions. However, offsetting these complaints were representations from citizens in more remote areas who expressed disadvantage in being denied access to the parliamentary broadcasts and thus having to rely on media reports which they described as selective, second-hand and sometimes containing gossip.

The committee examined various options to deliver the parliamentary radio signal without disrupting normal ABC services. Modern technological developments were considered, including ancillary communications services, whereby the parliamentary broadcasts could be 'piggybacked' by means of an FM sub-carrier. Aussat and the Homestead and Community Satellite Service were considered. In the end the committee decided that, rather than become entangled in technological areas where its expertise was limited, it should (a) recognise the desirability of making the parliamentary broadcasts available to 100% of Australians, and (b) recommend the establishment of a separate parliamentary network, assisted by the ABC, to carry the broadcast by whatever option or mix of options that would progressively make it available to all Australians.

Excerpts of proceedings

During the examination of radio broadcasting arrangements the committee considered the matter of authorising excerpts of proceedings. It appeared paradoxical to many that Australian news or news commentary programs could contain actual excerpts from proceedings, for example, in the UK Parliament but that excerpts were not available

from proceedings of the Australian Parliament. Views of the Party leaders were ascertained and trial periods were authorised by resolutions of both Houses for use on radio and television (sound over still-frame or overlay picture), subject to guidelines (originally 12) determined by the committee. The guidelines included provisions that excerpts were not to be used for satire, ridicule or for purposes of political party advertising or in election campaigns. There was to be fairness and accuracy in excerpts broadcast and a general overall balance was to be observed in their use. Unusual events in the galleries were not to be given undue emphasis. However, during 1986, a radio and television network had broadcast, as an excerpt, an allegation which was subsequently withdrawn, impinging on current Opposition Members of some prominence and a former State Premier without the withdrawal or reference to it being included in the broadcast. Certain programs also used material in connection with disruptions in the public galleries. This led to the committee amending the guidelines by inserting a new guideline (5A) making material subsequently withdrawn not available for excerpt purposes. The new guideline and guideline 7 (disturbances in the galleries) were then referred to a sub-committee. The sub-committee consulted with Party Leaders, representatives of the Federal Parliamentary Press Gallery and other media groups and recommended to the committee that (a) guideline 5A be amended to make withdrawn material available for rebroadcast so long as the withdrawal is also reported, and (b) guideline 7 be amended, as suggested by the Clerk of the House, so as to indicate that events in the galleries are not part of proceedings and, as far as practicable, should not be used for excerpt purposes. The committee adopted the sub-committee's recommendations. Authorisation of the use of excerpts on a permanent basis, if the trial period proves successful, was included in the committee's recommendations on the televising and radio broadcasting inquiry.

Televising of proceedings

The committee gave much consideration to the question of televising proceedings. Currently, televising is limited to Openings, leading speeches on the Budget and stock footage without sound taken when the leading parliamentary figures are in attendance for later telecast. In recommending that the proceedings of both Houses be available for television coverage, the committee recognised the importance of the medium as an information source and the need for it as a balance to the filter of parliamentary affairs provided by the newsprint or electronic media. However, the committee did not believe that the 'gavel to gavel' coverage such as that presented in Canada or the USA was appropriate for Australia (which does not have cable television) at this stage. Consequently, in recommending availability, the committee did

not recommend compulsory broadcasting for any group or organisation as currently occurs with the national broadcaster's radio transmission of proceedings. The committee's conclusion was that the sound and vision signal of proceedings should be made available to the networks for telecast. However the committee decided against the televising of proceedings in the provisional Parliament House. Principal reasons were technical problems associated with the physical layout and finishes of the current chambers, the cost/benefit factor and the expectation of a sophisticated audio-visual system in the new building (an expectation which has subsequently been modified given significant expenditure reduction on the new Parliament House). The committee also felt that the makeshift nature of arrangements in the provisional Parliament House would be attended by not inconsiderable inconvenience to Senators and Members. In addition, transmission from the existing chambers could provide quality of presentation far below that possible from the new building which might lead to a false impression by the public and Members of Parliament.

The scope of coverage to be permitted for telecasting was considered. The committee recognised that the electronic *Hansard* approach adopted in guidelines covering televising of the Budget speeches may result in a somewhat distorted perception of parliamentary proceedings, but favoured this approach nonetheless, at least for initial telecasts. Under the guidelines, the ABC was directed to concentrate the main coverage of its cameras, as appropriate, on the Speaker or the Member who had the call. To give the telecast interest, the coverage could include the occasional general, wide-angle picture of the chamber and the galleries returning gradually to focus back on the Member speaking – but panning of the Chamber, 'reaction' shots or coverage of interjections or disruptions were not to be included. However, medium range shots of Members listening to the speeches were permitted. The picture of the Speaker or the Member with the call was to be medium range. No extraneous material (i.e. graphics), other than the name of the Member speaking, was to be included in any live telecast. (There had been a suggestion, for example, that when a Member from a rural electorate was addressing the House, shots of wheat fields swaying in the breeze, cattle grazing etc might be interspersed.)

While presentation according to the guidelines may not have assisted in the presentation of that which professional broadcasters might have described as 'good television', the committee believed that it provided a firm concept for commencement, familiar to Members of Parliament and well understood by Press Gallery members. It was felt preferable to proceed cautiously at the outset. However, the committee stressed that any guidelines adopted by the Houses should remain fluid and

under review, with scope for development of a widened concept (possibly limited reaction shots, panning and split-screen techniques).

Committee proceedings

The question of radio and television access to proceedings of parliamentary committees of inquiry was also considered. The committee felt that parliamentary committees are a significant component of the Australian Parliament which on occasions arouse intense public interest. To make their proceedings electronically available would assist in placing the back-bencher's role in perspective and provide a balance in the operation of the legislature ('balance' was required between executive and backbench as well as between Government and Opposition). Currently committee proceedings are not transmitted 'live' or on a delayed broadcast basis by radio, and for television the practice is for a small segment of a public hearing to be filmed without sound for later use in news or news commentary programs with reporter voice-over. Senate standing orders authorise the standing committees of the Senate to have their proceedings televised subject to rules approved by the Senate. Such rules have not as yet been approved.

The committee recognised that there were certain difficulties associated with committees, for example their propensity to deliberate or take in-camera evidence often at short notice. Nonetheless, it recommended that public proceedings of committees be available for radio broadcast by all radio broadcasters' provided that neither House was meeting at the time, as determined by the Broadcasting Committee. The committee also recommended that, where possible, the public proceedings of committees be available for televising in the new Parliament House.

Parliamentary Audio Visual Unit

The benefits of open media access to proceedings as occurs in the South Australian State Parliament and the UK Parliament were balanced with those benefits attaching to a parliament-controlled signal available from a parliamentary unit such as exists in the Canadian House of Commons, the House of Representatives of the American Congress and the Province of Saskatchewan. The committee concluded that as a sophisticated house monitoring system was being installed in the new Parliament House, it would be practical and economical to extend the signal for media use, as well as providing quality control and instilling Member-confidence during the crucial initial stages. The committee therefore recommended the establishment of a parliamentary unit to be fully operational from the time of occupation of the new Parliament House. The name recommended for the unit was the Parliamentary Audio Visual Unit (PAVU). The committee's preference for 'Audio Visual' rather than 'Broadcasting' (used in comparable legis-

latures) was a deliberate choice, as the committee saw the unit as being responsible also for the development of audio-visual packages and education programs, the performance of archival services and possibly the integration of information retrieval services.

The committee was concerned to seek staffing arrangements that best ensured that the unit's personnel were experts with current state of the art knowledge. So as to resist professional atrophication, movement to and from the PAVU in relation to a progressive media environment would be a definite advantage. A secondment arrangement from a broadcasting organisation such as the ABC was considered. However, the committee concluded that the Houses of Parliament were being provided with the opportunity to establish a PAVU staffed by multi-skilled persons covering the wide range of functions which the unit might pursue. This would also enable individuals to exercise greater flexibility in career path and to incorporate in the required positions potential for individual professional growth and the acquisition of multiple skills. There was also the possibility to establish non-permanent positions, with renewable contract employment an acceptable solution.

Consideration of committee's report

The usual method of treatment of a committee's recommendations is for a considered government response to be given to the appropriate House or Houses and possibly for further debate then to take place. The Broadcasting Committee's report is different from many committee reports in that its recommendations impinge on a number of government departments – Communications (general subject matter and ministerial responsibility for the ABC), Prime Minister and Cabinet (parliamentary and government matters) and Attorney-General's (privilege considerations, proposed legislative changes). The recommendations are of course also of vital importance to the Houses themselves.

A motion to take note of the committee's report was moved in each House immediately following presentation of the report. After a short debate, the Senate agreed to the motion. Debate on the motion in the House of Representatives was adjourned immediately after the motion was moved, and debate had not been resumed when the House rose for the 1986–87 summer adjournment.

IV. HOW FAR ARE CIVIL SERVANTS ACCOUNTABLE TO SELECT COMMITTEES?

BY DAVID PRING

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In January 1986 there was a disagreement within the UK Cabinet, leading to the resignation of two Secretaries of State, about the right policy towards the helicopter industry and particularly to a firm called Westland. It also led, even more surprisingly, to an attack by the Government on the Select Committee system of the House of Commons. This initiated an interesting constitutional argument on the rights of a Select Committee to question civil servants about their conduct.

What happened was this. In the aftermath of the two resignations, the Prime Minister proposed that it would be appropriate for a Select Committee to inquire into what had happened. The Defence Committee quickly took up the point and, after 39 long sessions of taking evidence and deliberation, produced a Report on 23rd July. The Report was critical of much that had taken place within Government but, even though it dealt with matters of acute political controversy, it was unanimous.

The Treasury and Civil Service Committee had meanwhile been conducting an inquiry into the duties and responsibilities of civil servants and Ministers, and the 'Westland Affair' dramatically cast light for it on the nature of the difficult relationship between Parliament and the executive. In a Report in May 1986, the Committee had made a number of recommendations for improving things.

The Government chose to answer both Reports in a Reply it issued in October, and the Reply had a sting in its tail. It was argued that a Civil Servant did not have an accountability to Parliament separate from that to his Minister. If things went wrong in a Department, it was for the Minister – and not the civil service – to explain. It was therefore 'not appropriate for the inquiries of select committees to be extended to cover the conduct of individual civil servants'. Civil Servants would accordingly be ordered in future not to answer questions directed to the conduct of themselves or of colleagues.

At face value this unexpected outburst from the Government endangered the ability of Select Committees to operate freely in future, especially those – like the Public Accounts Committee, and the Select Committee on the Parliamentary Commissioner for Administration – which deal primarily with civil servants. Select Committees are set up

by the House and not the Government, and there was keen resentment at any suggestion that their operations should be spiked in any way by Government action. The issue was debated in the House and was then the subject of a further Report from the Treasury and Civil Service Committee, a Report from the Liaison Committee (the committee comprised of Select Committee chairmen), a further reply from the Government, and then an exchange of letters between the Liaison Committee and the Government.

These events took place over a six-month period, and during this time the issues were considerably refined. The Government, who protested that they did not intend to hinder or impede the committees' scrutiny of the executive, publicly accepted the unqualified right of Select Committees to summon and question civil servants. They acknowledged that some committees had a special need to interrogate the civil service and, changing their ground somewhat, said that their proposed new action was to be directed only against the fourteen Select Committees overseeing government departments, and not to Select Committees in general. But they clung to their original grievance. There were, they said, signs that committees were looking to assign responsibility for mistakes to individual named civil servants: and this cut across the principle that it is Ministers, and not civil servants, who are answerable to the House.

For its part, the Liaison Committee (speaking on behalf of all the Select Committees) fully accepted that the Committees should not act as disciplinary tribunals. It was generally the case that Ministers would be accountable to the House for what went on in Departments; but rare cases would undoubtedly arise when a civil servant did something which was incompatible with the Minister's instruction or policy, and who then was answerable to the House? Again, in the Westland case itself the Ministers most concerned had both resigned: how could they be expected to account on the Government's behalf to a Select Committee for what had taken place? In a case like that the civil servants, it was argued, had to be prepared to answer for what had happened: and in the Westland case, it was noted, it had been the Head of the Civil Service who had presented the Government's case to the committee.

In the outcome, the Government clung to the principle that when civil servants give evidence to Select Committees they do so on behalf of, and subject to their duty and accountability to, their Ministers; and that it is Ministers who are formally and ultimately responsible and accountable to Parliament. With that in mind they went ahead and instructed civil servants appearing before the departmental committees – but only those committees – not to answer questions about the personal conduct of themselves or colleagues, but to ask that such questions should be put instead to their Minister.

In doing so, however, the Government made concessions to Select Committees which went some way to healing the breach. They reaffirmed that if cases arose of concern about a refusal by a Minister to divulge information to a committee, time would be provided on the floor of the House to debate and decide whether he was right to do so. They pledged that in any case where a civil servant did not answer a question to the committee's satisfaction, the relevant departmental Minister would be prepared to attend the committee and to answer the question himself. Finally, they gave an assurance that in any case where questions arose about the conduct of a civil servant, the Minister would look into it and if necessary institute a formal inquiry. The outcome of such an inquiry would be reported to the committee by the Minister.

For its part, the Liaison Committee acknowledged that the Government could give what instructions it liked to its employees. But it made clear that it did not approve of what the Government was doing, and did not acquiesce in it. It coolly pointed out that whatever happened, the Government could not alter or qualify the committees' traditional power to call for persons or papers. If a witness failed to appear or refused to answer the questions properly put to him, the matter would have to be resolved on the floor of the House. Once there, it would be the view of the House, and not of the Government, that would prevail.

References

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V. THE AUSTRALIAN SENATE STANDING COMMITTEE ON FINANCE AND GOVERNMENT OPERATIONS

BY ANDREW SNEDDEN

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Committee History

The Australian Senate Standing Committee on Finance and Government Operations is one of the eight Legislative and General Purpose Standing Committees of the Senate, which were gradually established, pursuant to a Resolution of the Senate, over an 18 month period beginning in 1970. The Standing Committees are now established under Standing Orders of the Senate.

The Finance and Government Operations Committee had originally been proposed, in a blueprint for consideration of a committee system for the Senate, as the Standing Committee on Statutory Corporations. Thus, as early as 1969 – when the proposal for a fully-fledged system of standing committees was put forward for Senator's consideration – it was realised that the tenets of ministerial responsibility to the Parliament were not strictly applicable to those bodies which, by Parliamentary fiat, were deliberately divorced from the day-to-day operations of a department of state. At the time, however, the need for a specific committee exercising surveillance over those creatures of the Parliament was subsumed by the greater desire to ensure that there was a general financial and operational accountability of all departments to the Parliament which votes taxpayers' money for the carriage of government activity. This perception was reflected in the name given to the Committee set up by the Senate to examine such matters, that is, the Senate Standing Committee on Finance and Government Operations.

During the early period of operation of the Senate's committee system, the Finance and Government Operations Committee undertook sterling work, including, most notably, an examination of death duties. In 1976, however, the Committee, unlike the other Legislative and General Purpose Standing Committees, was not re-established, and it was not until 1977 that the need for a committee to undertake the scrutiny first perceived for it – examination of statutory corporations – was given priority.

During the period from its re-establishment in 1977, the Committee gave much preliminary thought to its originally perceived role as scrutineer of statutory corporations, but quickly realised that to confine its endeavours to statutory corporations, that is, *businesses* established by Parliament, could be seriously limiting. It perceived that all parliamen-

tary-established authorities, whether carrying on business or separated by law from the day-to-day operations of departments of state, fell between the two stools of ministerial responsibility and parliamentary scrutiny. On 6 October 1977, the Senate, at the request of the Committee, referred the matter of statutory authorities, and other corporations, which the Federal Government owns or controls to the Committee for investigation and report. The terms of reference were:

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

Since that time, the Committee has progressively investigated the impact and effect of Federal statutory authorities on the administration of government policy, their financial effect on the economy, and the requirement of accountability to the Parliament and people inherent in the Australian political system.

The Committee was initially faced with the task of developing a methodical approach to the study of such an extensive area. Accordingly, the Committee decided to approach the subject selectively and to publish a series of reports extending over a period of years with each report commenting upon different aspects, and problem areas, of authority behaviour.

To allow for effective recommendations to be made, the Committee has pursued its aim primarily from the viewpoint of the Parliament. Consequently, in its reports, the Committee has emphasised measures which will improve authority accountability to the Parliament. Improvement in both administrative and financial accountability has been of equal importance. Each report has also attempted to add to the breadth of knowledge on the subject and to complement previous findings.

The Committee's Reports

The Committee's First Report was tabled in February 1979 and discussed the general nature of the problem of accountability posed by authorities. The Committee found that it was not possible, for example, to identify precisely the number, role or membership of *all* authorities. The report canvassed the matters on which the Committee now concentrates its attention:

- creation of authorities
- economic impact of authorities
- accountability (including provisions of existing reporting requirements in the private sector) and the Parliament

- presently existing controls on authorities exercised by responsible ministers, audit and the Department of Finance
- the practicality of periodic review, i.e. legislative 'sunset' provisions.

The Committee's Second Report was tabled in October 1979. It published a complete list of Commonwealth authorities, according to category, and the results of a survey of financial activities of authorities and their effect on the economy which was conducted by a consultant to the Committee. The survey was annexed to the Report.

The Second Report also made more detailed findings about the possible improvement of authorities' financial accountability to the Parliament.

The Committee's Third Report was published in January 1980 and attempted to consolidate the Committee's findings to date. It contained an updated list of authorities and gave an initial analysis of the economic impact of authorities. The Report concentrated on three other areas:

- a case study of those authorities which were apparently unable to account to the Parliament for their activities. In this respect the Committee studied (and continues to study) authorities that 'self-select' due to their inability to publish timely annual reports with proper statements of accounts;
- an Annual Reports Act, the case for which was strengthened by the incidence of late reports to the Parliament and the lack of financial and other data; and
- compliance with and enforcement by the Parliament of the provisions of authorities' reporting requirements.

The Committee's Fourth Report was tabled in May 1982 and also published a number of case studies of authorities that had been unable to report to the Parliament in accordance with the requirement of their enabling legislation. It also published a current list of authorities categorised as to both activity and responsible Minister.

In 1981 the Committee tabled a Report of a major inquiry into the affairs of the Australian Dairy Corporation and its Asian Subsidiaries. The conduct of this authority raised basic questions as to the relationship between authorities and their responsible ministers, the establishment of subsidiaries by authorities and the conduct of business by authorities in overseas countries.

In examining the Australian Dairy Corporation and its Asian subsidiaries, the Committee found evidence of extraordinary mismanagement, and indeed possible breaches of the law, by the Corporation and its subsidiaries, and its report highlighted the lack of control by both Ministers and the Parliament itself of the operations of this and other Corporations. To a significant degree, therefore, the report marked a

water-shed in the activities of the Committee, and provided justification, if any were needed, of the worth which had been perceived over a number of years of a Committee of this kind.

The Committee's Fifth Report was tabled in September 1982, after the Committee had taken extensive evidence from the heads of a number of Commonwealth statutory authorities dealing with a range of functions, the Department of Finance, the Auditor-General, and a number of other expert witnesses. The Committee also conducted an informal 'think tank' on the practical problems that are associated with the administration, establishment and proper scrutiny of authority activities by those Ministers and Departmental heads responsible for administration of authorities' legislation. In particular, the Committee examined and reported on the general application of specific problems of considerable concern raised by its findings on the administration of the Australian Dairy Corporation and its Asian subsidiaries.

The Report further consolidated the conclusions contained in the first to fourth reports. The Committee's principal conclusions and recommendations were that

- an Annual Reports Act prescribing times of reporting and standards of reporting of financial and functional activity was essential;
- the relationship between authorities and responsible ministers required either definition or, at least, clarification;
- the degree of operating independence of authorities required definition;
- the creation of subsidiary bodies by authorities with wider powers and capabilities than the parent authority was a practice that required careful examination and was, in the Committee's view, a matter of concern; and
- the sometimes contradictory role of officers of departments concurrently serving as members of authorities should be addressed by government.

The Committee also reported on other matters considered during its inquiry, including the categorisation of authorities, the relevance and importance of the convention of ministerial responsibility in relation to authorities' activities, and the economic impact of authorities, particularly the financial impact of large commercial authorities.

The Committee's Sixth Report, which was a number of case studies and other references, was tabled at the same time as the Fifth Report.

The Government's response to the Committee's reports, and particularly to the principal recommendations made in the Fifth Report, was given on 11 November 1982. In a statement to the Senate the then leader of the Government in the Senate, Senator Sir John Carrick, gave detailed directions and guidelines for the form, content and financial information required in all annual reports tabled in the Parliament.

Amendments to the Acts Interpretation Act were introduced and enacted which make it mandatory for all authorities to report to the Parliament within six months of the end of the authority's financial year (unless a shorter time is specified in the authority's own Act). If an authority cannot report within that time, it must advise the Minister of the fact and the reasons, and seek the Minister's consent to late tabling. If the Minister agrees to the authority's request the correspondence between the authority and the Minister must be tabled in the Parliament.

The incoming Labor Government of 1983 included the Committee's recommendations in its election manifesto at that time; since then, a detailed Government White Paper has been produced, which reflects many of the Committee's recommendations. This paper is still being evaluated by a number of bodies, including the Committee itself.

The Standing Committee undertook in 1982 to examine and report to the Senate on the financial and macroeconomic effects of methods employed in statutory authority financing. To this end, the Committee conducted public hearings on the question in June and August 1982. It commissioned an economic consultant to carry out a survey and evaluation of the financing activities of a number of the larger trading authorities.

Following the double dissolution and election of early 1983 the completion of the inquiry and report was undertaken by the Select Committee on Statutory Authority Financing, the members of which were the members of the Standing Committee on Finance and Government Operations in the previous Parliament. It is also of significance to note that the Chairman of the Select Committee, Senator Peter Rae, had been the Chairman of the Finance and Government Operations Committee from its re-establishment in 1977 until the change of Government in 1983. Under Senate Standing Orders, all Legislative and General Purpose Standing Committees must be chaired by a Government Senator; no such prohibition applies to Select Committees. It is the work of the Finance and Government Operations Committee that his contribution was recognised by the Senate's rare decision to appoint him, a non-Government Senator, as Chairman of the Select Committee.

The report of the Select Committee was tabled in two separate volumes. The first volume was tabled in September 1983 and contained the Committee's report and economic survey conducted by the consultant to the Committee. It provided a detailed description and analysis of the importance of the financing of statutory authority activities and programmes, particularly the long term economic effect.

The second volume of the report, tabled in October 1983, comprised a further econometric study of the macroeconomic effect of authorities

on the Australian economy and the transcript of evidence taken by the Committee.

Other Work

Under the Australian system of parliamentary government, the Federal Parliament has a special responsibility for the laws which govern the Australian Capital Territory, which is the seat of Government of the nation. The Finance and Government Operations Committee, in assisting the Parliament to discharge its responsibility, has been concerned to ensure the highest level of accountability of Australian Capital Territory statutory bodies to the people. In keeping with this philosophy, and as a result of the Committee's recommendations, an amendment similar to that undertaken to the Australia-wide Acts Interpretation Act was also made to the Australian Capital Territory Interpretation Ordinance late in 1986 to give effect to a recommendation by the Committee, following the Committee's report that a large number of A.C.T. authorities were under no obligation to report annually to the Parliament on their activities.

While the Committee has perceived its major on-going function as being to fulfil its obligation to scrutinize and make accountable statutory authorities at the Federal level in Australia and the Australian Capital Territory, the Committee has also been active in examining, on behalf of the Senate, legislation which has been referred to it, and following up – in accordance with its role as a scrutineer of day-to-day administrative activity, as reflected in its title – matters of a financial and operational nature, referred to it on recommendation by Senate Estimates Committees, and by its overall consideration of Commonwealth annual reports. For example, in 1983 and 1984 the Committee reported to the Senate on a number of Bills, particularly relating to taxation, referred to it by the Senate for examination and report.

During 1985 the Committee reported to the Senate on a number of matters. It conducted a major inquiry into issues raised by a detailed, critical report prepared by the Auditor-General on certain practices and investments of the Commonwealth Superannuation Fund Investment Trust. At the same time, the Committee also conducted a short inquiry into the Superannuation Legislation Amendment Bill. The Committee's report on the Bill recommended a number of amendments to the Bill which the Committee believed would improve the Bill. Most of these recommendations were accepted by the Government.

A second major subject of Committee consideration during 1985 was the effect of the changes in the presentation of appropriations and the explanatory notes which accompany the Appropriation Bills introduced by the Government, with particular emphasis on the change in government budgeting from the existing practice of line-by-line appropriation in minute detail to a program budgeting system. The Committee

presented two preliminary reports on the reference in 1985 and expects to report further on the effect of the changes, particularly as to how program budgeting will affect the future work and role of the Senate Estimates Committees, following consideration of further reports from Estimates Committees on the development of program budgeting.

The Committee's Present Role

The Standing Committee's main role may broadly be divided into three categories. The first is the continuing examination of matters referred to it by the Senate under the terms of reference of 6 October 1977 allowing it to undertake continued scrutiny of Commonwealth statutory authorities. So, for example, in this role the Committee conducted a detailed inquiry into a number of special reports by the Auditor-General on the Superannuation Fund Investment Trust for the financial years 1981–82 and 1982–83.

Under the general auspices of the statutory authorities reference, one specific matter is currently under consideration by the Committee, namely, the proposed sale of the Australian Dairy Corporation shareholding in P.T. Australian Indonesian Milk Inc. (P.T. Indomilk).

The Committee maintains a list of Commonwealth statutory authorities which is updated as authorities are created or dissolved by legislation, and publishes a categorised annual list of authorities. The Committee is currently preparing an updated and revised list of authorities which will be stored on a database for convenience to allow storage of a greater amount of relevant information, ease of access, and more regular updating.

It is worth pointing out that the Committee's most regular 'customers' for the service include the Department of Finance and the Auditor-General's Office.

The Committee also continues its examination of those annual reports of Commonwealth and A.C.T. statutory authorities either excessively delayed in tabling, or which show obvious problems of financial management which are revealed in the Auditor-General's report on authority financial statements and accounts.

The Committee, having undertaken seminal work in relation to authorities established by Act of Parliament, has in recent years turned its attention to what might arguably be even more significant, that is, organisations which are neither established by statute – and thus are not demonstrably under Parliamentary control – nor fall within the normal ambit of ministerial responsibility for a department of state. Thus, the Committee's second major role is to examine in detail these Commonwealth 'non-statutory bodies' (NSB's), an area of government administration that has received little attention since it was reported upon by the Royal Commission on Australian Government Adminis-

tration in 1975. The Committee's current terms of reference for this inquiry are:

> The continuing oversight of the establishment, operation, administration and accountability of bodies for which the Commonwealth is wholly or partly responsible, being bodies which are not departments (or parts of departments) nor statutory authorities (or sub-bodies of statutory authorities) nor incorporated companies nor incorporated associations.

In its Interim Report on Non-Statutory Bodies of the Commonwealth tabled in October 1984, the Committee reported its preliminary conclusions on the future scope of the inquiry. The Committee found that a number of questions that had arisen in the early stages of its inquiry into Statutory Authorities had been raised by preliminary examination of NSB's, such as:

- the creation of NSB's
- the number of NSB's
- the accountability of NSB's to ministers, to departments, to audit and (where applicable) to those groups and sections of society represented on NSB's or who contribute to the financing or operation of NSB's
- the need for or practicality of periodic review of NSB's and a means of assessing their effectiveness.

The Committee's primary recommendation was that the annual reports of all Government Departments in future contain a list of all NSB's within a Department's responsibility.

The Committee indicated that it would prepare and circulate a detailed survey of NSB's during 1985, examine the results of the survey, and report further to the Senate on its findings.

The Committee's Report on Non-statutory Bodies was tabled in October 1986. The Committee's principal recommendation was that

> for each NSB and each sub-body, a document be prepared briefly outlining essential data and that the relevant minister be responsible for lodging the document with a coordinating department such as the Department of the Prime Minister and Cabinet, to form a central NSB register. The Committee further recommends that the register be completely established by 30 June 1987 and thereafter be continuously updated.

The Committee also made a number of other recommendations relating to NSB establishment, membership, financial arrangements and accountability.

The Committee's survey of NSB's also revealed that there were an appreciable number of incorporated bodies, either companies or

associations, and they were apparently not subject to proper parliamentary scrutiny. The following terms of reference regarding such bodies constitute the Committee's third main role:

> The continuing oversight of the establishment, operation, administration and accountability of incorporated companies and incorporated associations owned by the Commonwealth holds a major or substantial interest.

The scope of the Committee's activities might best be reflected in the references currently before it, and the reports tabled by the Committee in the current Parliament. The references are as follows:

> Statutory Authorities – The continuing oversight of the establishment, operation, administration and accountability of bodies established pursuant to Commonwealth statute.
>
> Non-Statutory bodies – The continuing oversight of the establishment, operation, administration and accountability of bodies for which the Commonwealth is wholly or partly responsible, being bodies which are not departments (or parts of departments) nor statutory authorities (or sub-bodies of statutory authorities) nor incorporated companies nor incorporated associations.
>
> Companies and associations – The continuing oversight of the establishment, operation, administration and accountability of incorporated companies and incorporated associations owned by the Commonwealth and of those in which the Commonwealth holds a major or substantial interest.
>
> Circumstances surrounding advice given, decisions taken and procedures involved with the various court actions relating to the film 'The Return of Captain Invincible'.
>
> The delay in the disposal of the Customs House, Wiltona Hostel, and Rifle Range, Williamstown, Victoria.
>
> Sales Tax (Exemptions and Classifications) Amendment Bill (No.2) 1986.
>
> Briefing note on interest rates, tabled in the Senate by the Minister for Education (Senator Ryan) on 25 February 1987.
>
> Taxation Laws Amendment Bill (no. 5) 1986.

Reports tabled by the Committee during the current Parliament are:

> Superannuation Legislation Amendment Bill 1985 (15 May 1985)
>
> Changes in the Presentation of the Appropriations and Departmental Explanatory Notes (30 May 1985)

The Superannuation Fund Investment Trust (21 August 1985)

Alterations to the list of Statutory Authorities between 1 October 1984 and 30 September 1985 (16 October 1985)

Second Report on Changes in the Presentation of the Appropriations and Departmental Explanatory Notes (6 December 1985)

Health Insurance Commission Annual Report 1984–1985 (7 May 1986)

A.C.T. Registrar of Co-operative Societies Annual Report 1983–84 (7 May 1986)

Northern Territory Superannuation Arrangements (8 May 1986)

Non-statutory Bodies (7 October 1986)

A.C.T. Gaming and Liquor Authority Annual Report 1983–84 (12 November 1986)

ABC Employment Contracts and their Confidentiality (3 December 1986)

Funding of Superannuation by Statutory Authorities (5 December 1986)

The Standing Committee on Finance and Government Operations has a slightly different pattern of inquiry from other Standing Committees. The most notable difference is that the Committee, as a matter of course, examines annual reports of all Commonwealth authorities as they are tabled for indications of problems of financial management and of failure to table a timely report to the Parliament. The Committee defers detailed examination of the matters of concern raised in such reports to see whether the authority improves its performance in following years, or conducts an examination (with or without public hearings) of the problems revealed by the report in question and reports its findings to the Senate.

The Committee's usual form of hearings on such matters is to take evidence in public from the authority concerned, the Auditor-General, officers of the Department responsible for an authority's activities, and, where necessary, from other witnesses.

Conclusion

As the above brief account of the activities of the Senate Standing Committee on Finance and Government Operations indicates, the Committee is an exemplar of the capacity of Senate Standing Committees to undertake any or all of the following functions:

(a) Placing on the public agenda matters affecting the individual

rights of citizens and drawing to public attention the requirement to ensure that the bureaucracy is accountable, through the Parliament, to the taxpayers for the effective spending of money voted to it by the Parliament. (Scrutiny of annual reports; following up of matters raised by Senate Estimates Committees);

(b) scrutiny of legislation (a number of Bills, most notably in recent times complex taxation legislation, has been referred to the Committee);

(c) placing on the public agenda matters which, while having an enormous fiscal and social implication for the operations of Government, might well have remained 'in hiding' if it were not for the activities of the Committee (earlier, statutory authorities of the Commonwealth; now, in addition, non-statutory bodies); and

(d) The most important function of all – providing a conduit for the people of Australia to make their voices heard when policy is being evaluated or initiated (any inquiry undertaken by the Committee, which involves public hearings either to receive information or to consider perceived grievances).

The Committee, despite its somewhat obscure title, epitomises both the worth and the desirability of taking Parliament to the people and giving expression to the system of parliamentary democracy.

VI. ELECTING A SPEAKER – CANADIAN STYLE

BY PHILIP LAUNDY

Clerk Assistant of the Canadian House of Commons

On 30 September 1986 the Honourable John Fraser, Member of Parliament for Vancouver South, became the first Speaker of the House of Commons of Canada to be elected by secret ballot. It was an historic occasion and one which will not soon be forgotten by those involved in the process. Before describing that process it would be useful to provide a concise description of the background to its introduction.

Under the former method of selecting the Speaker the Prime Minister exercised a predominant influence. Although the Prime Minister would normally consult with the leaders of the Opposition parties, it was he who chose and nominated the candidate, who would then be formally elected by the House. The Speaker's election was almost never contested, and his or her nomination was frequently seconded by the Leader of the Opposition. Only one Speaker in the history of the Canadian House of Commons has succeeded in detaching himself completely from his former party affiliation. Nevertheless, the tradition of the Canadian speakership is one of impartiality and non-partisanship which successive Speakers have managed to uphold, sometimes in circumstances of considerable difficulty.

The desirability of promoting the continuity principle as the underlying basis of the Speaker's office had for many years been debated by politicians and academics alike. Some favoured the creation of a special seat for the Speaker and a private member's bill embodying this proposition was debated in the House on 29 October 1971. The idea never attracted widespread support, but a major step towards the establishment of the continuity principle was effected by the Honourable Lucien Lamoureux, Speaker from 1966 to 1974. He resigned from his party and ran successfully as an independent in his constituency in two general elections. He was three times elected Speaker with the support of all parties. His successor, the Honourable James Jerome, Speaker from 1974 to 1979, was not able to detach himself so completely from his party affiliation, but he was a popular Speaker and became the first to be continued in office following a change of government, albeit a minority government. It was suggested by the Special Committee on Standing Orders and Procedure in its fourth report presented on 3 December 1982 that this sequence of events provided some evidence of a desire to remove the nomination of the Speaker from the exclusive control of the Prime Minister of the day.

A recommendation that the Speaker be elected by secret ballot was first made by this committee in the same report. A general election and a change of government intervened before any action was taken, but a subsequent committee, the Special Committee on Reform of the House of Commons, endorsed the recommendation of its predecessor. It was ultimately adopted by the House, although with some significant modifications which had been proposed by the government in its response to the committee's report. The election of the Speaker is now provided for by Standing Order 2 which was adopted, among others, on a provisional basis on 24 February 1986. The full text is appended to this article, but it would be appropriate at this point to underline its key elements.

1. The Clerk of the House no longer presides over the election of the Speaker. Instead, at the opening of a Parliament, the Chair is taken by the Member present who has the longest period of unbroken service, Ministers of the Crown, party leaders and others holding office within the House being excluded. At other times, the retiring Speaker presides, or in his absence the Deputy Speaker.

2. The Member presiding is vested with all the powers of the Chair, with the exception of the casting vote, but he or she is entitled to cast an ordinary vote in the election of the Speaker.

3. The election is conducted by secret ballot, the balloting to continue until one candidate emerges with a clear majority of the votes cast. All Members are eligible as candidates except Ministers of the Crown and party leaders. No motion for adjournment or any other motion is acceptable during the election process.

4. No provision is made for a nominating process. Instead, Members not wishing to be considered as candidates are required to notify the Clerk of the House in writing by 6.00 p.m. on the day preceding the election.

5. No list of candidates is shown on the ballot papers. Instead Members are required to print the name of their favoured candidate on the ballot paper.

6. The counting of the ballots is an exclusive responsibility of the Clerk of the House. No provision is made for scrutineers and the Clerk alone is responsible for the accuracy of the count. At the conclusion of a ballot he provides the Members presiding with, either the name of the successful candidate, or the list of candidates eligible in the ensuing ballot.

7. The Clerk is expressly prohibited from revealing the number of votes cast for each candidate. He is required at the conclusion of a ballot, if no candidate secures a clear majority, to prepare an alphabetical list for the ensuing ballot which excludes the names of the candidate or candidates securing the least number of votes cast. All

ballots and records of the numbers of votes cast must be destroyed as soon as the Clerk is satisfied as to the accuracy of the count.

8. Any Member whose name is on the list of eligible candidates may withdraw his or her name before the commencement of the second and subsequent ballots. Members doing so after the first ballot are required to state a reason. They are not required to do so after subsequent ballots.

9. No debate is permitted during the election of the Speaker and questions of privilege may not be raised. No reference is made in the standing order to points of order which are therefore allowed.

10. The standing order expressly provides that the election of the Speaker shall not be considered a question of confidence in the government.

Prior to the opening of the second session of the 33rd. Parliament, the Speaker, the Honourable John Bosley, gave notice of his intention to resign from the office, his resignation to take effect upon the election of his successor. He indicated that he would himself preside over the election, as provided by the standing order. The circumstances of Mr. Bosley's resignation need not concern us here, although it is known that he was deeply concerned about parliamentary behaviour during the question period and felt that the House faced a crisis of its own making. The Clerk and his staff had approximately three weeks to prepare for the election of a new Speaker and devise the machinery necessary to put the new process into effect.

The standing order, while precise in some of its essential details, was much less so in some of its implications. It posed a number of questions to which it suggested no answers. For example, since no debate is permitted, what limits should be applied to the comments of a Member stating his or her reasons for withdrawing his or her candidature? Could the Clerk of the House, who has exclusive responsibility for the counting in total secrecy of the ballots, be assisted by any of his colleagues? Must the votes be counted in the Chamber or, in view of the secrecy requirement, would the Clerk be permitted to count them in another room? What mechanism should be in place for the distribution of the ballot papers, an orderly voting procedure, the replacement of spoiled ballot papers, and the prevention of irregularities? What kind of points of order would be acceptable? Since questions of privilege could not be raised, what would the Member presiding be expected to do if a gross breach of privilege took place on the floor of the Chamber? Could the Member presiding order a recount, bearing in mind that the Clerk is required to destroy all ballots once he himself is satisfied as to the accuracy of the count? This and other matters were considered by the Clerk and his colleagues at daily meetings which took place during the four weeks which elapsed between the receipt of Mr. Bosley's letter indicating his intention to resign as Speaker and the

opening of the new session of Parliament proclaimed for 3.00 p.m. on 1 October.

It was fortunate that the staff had a reasonable period of time in which to make the necessary preparations as there were many questions to be resolved. It was obvious at the very outset that the process promised to be a long one and that a long delay could be expected before the opening of Parliament could take place. Even if the first ballot were to produce a result, which was highly unlikely, it was estimated that as much as two hours would be necessary to distribute the ballot papers, allow Members to vote, conduct the count and announce the result. It was suggested at one point that Parliament could be opened prior to the election of the new Speaker, since Mr. Bosley intended to remain in office until his successor was elected. This proposal was never seriously considered, however, and in the event the meeting of Parliament was advanced by one day to enable the election to take place prior to the opening of the session. This proved to be a very fortunate decision.

The daily staff meetings highlighted the problems to be resolved and led to the preparation of a detailed programme modified on a day-to-day basis as decisions were taken. Consultations with the House leaders of the three parties represented in the House enabled the Clerk to take several important decisions. It was agreed that the count or counts could take place outside the Chamber under strict security precautions and that he could be assisted in counting and destroying the ballots by the three Clerks Assistant. This was a decision which greatly eased th task of the Clerk and his colleagues at the most crucial period of th election process. It also ruled out any possibility of a recount bein ordered by the Chair. It was agreed also that the Clerk should send all Members a written reminder of the requirement of the standing order that those not wishing to be candidates must notify the Clerk of the House in writing to that effect. It was no doubt thanks to this decision that the eventual list of eligible candidates was not even longer than it proved to be. It was agreed that the Chair should assume the authority to determine a mechanism for an orderly voting procedure. The standing order requires that Members place their ballots in a box on the Table of the House. It was therefore arranged that the Speaker would request Members to leave their seats and file into the Chamber through the curtains at the rear on their respective sides of the House. At each entrance a Clerk Assistant would issue a ballot paper while a Principal Clerk struck the name of that Member from an alphabetical list. Each list would contain only the names of those Members whose seats were on the right or left side of the House as the case may be. A Member seeking to enter on the wrong side would be directed to his or her own side. Another Clerk Assistant would supervise the ballot box.

A wooden ballot box was made, together with six voting booths, three being placed on each side of the Table of the House. Ballot papers were printed in a variety of colours, it having been decided as an added precaution that a different colour would be used for each ballot. As there were no means of forecasting the number of ballots which would be required, thirty-six different sets of ballot papers were made available, although the colours would have been repeated had the process gone on long enough. The ballot paper stubs were numbered in sequence as a means of checking the number which had been issued at each ballot.

Every attempt was made at the daily meetings to anticipate possible points of order, possible mishaps, and the matters likely to be raised by members seeking clarification of an entirely novel procedure. In the event no problems of any magnitude arose. The weeks of preparation paid off, but the staff were left wondering what would have happened at the opening of a new Parliament, or if a Speaker had suddenly died, and there had been no opportunity to lay the detailed ground work which proved so effective.

By 6.00 p.m. on the day preceding the election the list of eligible candidates amounted to 39. There is no doubt that some were inadvertent candidates. Some Members were out of the country while some probably forgot to send in the required letters. It had been decided that only letters signed by the Members concerned would be acceptable. Telegrams, telexes and letters signed by staff on a Member's behalf would not meet the requirements of the standing order. It had also been decided that every Member whose name appeared on the list would be a candidate in the first ballot. No withdrawals would be entertained until after the completion of the first ballot.

When Members assembled for the election of the Speaker at 3.00 p.m. on 30 September, few of them probably realised that they would still be voting in the early hours of the following morning. Eleven ballots took place in all. After the first ballot the original list of 39 was reduced to 16. The standing order provides that the candidate or candidates receiving the fewest number of votes cast be eliminated. This was interpreted to mean that such candidates would be eliminated in addition to candidates receiving no votes, since a count of zero involves no 'votes cast'. The list was further reduced by several Members announcing their withdrawal before the second ballot took place. From then on the balloting proceeded as before until only two candidates were left, Mr. John Fraser and Mr. Marcel Danis, the Deputy Speaker.

At the end of each ballot, the Speaker being the last to vote, the ballot box was removed from the Chamber by the Sergeant-at-Arms. He was followed by the Clerk and the Clerks Assistant as he took it to the room where the counting took place. In the room were two

shredders in which all the ballots and accompanying records were destroyed after the accuracy of each count had been verified.

The result was finally announced at 2.00 a.m. Under the former procedure a Speaker-elect was conducted to the Chair by his or her proposer and seconder, normally the Prime Minister and Leader of the Opposition. The new procedure makes no provision for a proposer and seconder and, in accordance with the wishes of Mr. Bosley, the new Speaker was conducted to the Chair by the outgoing Speaker. He made his acceptance speech and was congratulated by the Prime Minister, the Leader of the Opposition and the Leader of the New Democratic Party. At 2.30 a.m. the House adjourned until 3.00 p.m. later the same day.

A great, if somewhat fatiguing, exercise in parliamentary democracy had taken place. Its success was due to the collective efforts of the procedural staff in developing a well thought out program and the co-operation of Members in ensuring that it proceeded without a hitch. Consultation with the House Leaders of the three Parties was a very important factor in the development of the program as there were a number of issues which the Clerk alone would not have had the authority to resolve. As he pointed out to the House Leaders, the Clerk can propose procedures but he cannot impose them. Certain decisions had to be made by the House Leaders, who were in turn responsible for informing and guiding the Members of their respective Caucuses. On the day of the election itself, the Members, assisted and guided by their Whips, were diligent in ensuring that it was conducted in an orderly manner. The entire process was televised, except for the count, as are all the proceedings of the House of Commons.

The main criticism of the process was that it was very long drawn out and this will probably lead to changes in the Standing Order. The number of ballots might have been reduced had a nominating procedure been in place. The original committee recommendation had proposed that the member presiding would announce the names of the candidates in order of majority after each ballot. This recommendation, had it been adopted, might also have led to a reduction in the number of ballots since candidates would have had some idea of the strength of their support. Others have suggested that the automatic elimination of all candidates failing to secure a specified minimum number of votes might also accelerate the process.

Press comment was varied. Some journalists were impressed by the democratic nature of the process. Others professed cynicism and speculated as to the behind-the-scenes pressures which had been applied, one even describing the process as a farce. But to those of us who were directly involved, it was a genuine election in which Members exercised a free choice. Whatever some journalists might have seen, we saw Parliament at its best.

Appendix

CHAPTER I

ELECTION OF A SPEAKER

First order of business.

2.(1) At the opening of the first session of a Parliament, and at any other time as determined pursuant to section (2) of this Standing Order, the election of a Speaker shall be the first order of business and shall not be interrupted by any other proceeding.

Vacancy in Office of Speaker.

(2) When there is or is to be, a vacancy in the Office of the Speaker whether at the opening of a Parliament, or because the incumbent of that Office has indicated his or her intention to resign the Office of Speaker, or for any other reason, the Members, when they are ready, shall proceed to the election of a Speaker.

Definition of Presiding Officer.

(3) During an election of a Speaker the Chair shall be taken by:

(*a*) at the opening of a Parliament, the Member who has had the longest period of unbroken service as determined by reference to his or her position on the list published in the *Canada Gazette*, and who is neither a Minister of the Crown, nor holds any office within the House including that of leader of a party; or,

When Speaker to act.

(*b*) in the case of the Speaker having indicated his or her intention to resign that office, the Speaker; and

When Deputy Speaker to act.

(*c*) at other times, in the absence of the Speaker, the Deputy Speaker and Chairman of Committees of the Whole as provided by Statute.

Powers and Vote of Presiding Officer.

(4) The Member presiding during the election of a Speaker shall be vested with all the powers of the Chair provided that he or she:

(*a*) shall be entitled to vote in the election of a Speaker; and

(*b*) shall have no casting vote in the event of there being an equality of votes cast for two candidates.

Balloting procedure.

(5) The election of a Speaker shall be conducted by secret ballot as follows:

Notification to Clerk when Member does not wish to be considered for election.

(*a*) any Member who does not wish to be considered for election to the Office of Speaker shall, not later than 6.00 o'clock p.m. on the day preceding the day on which the election of a Speaker is expected

to take place, in writing, so inform the Clerk of the House who shall prepare a list of such Members' names together with a list of the names of all Ministers of the Crown and party leaders, and shall provide the same to the Member presiding prior to the taking of the first ballot;

List of name to be provided to Presiding Officer.

(*b*) Members present in the Chamber shall be provided with ballot papers by the Clerk of the House;

(*c*) the Member presiding shall announce from the Chair that the list provided pursuant to paragraph (*a*) of this section is available for consultation at the Table;

Announcement of availability of list.

(*d*) Members wishing to indicate their choice for the Office of Speaker shall print the first and last name of a Member on the ballot paper;

(*e*) Members shall deposit their completed ballot papers in a box provided for that purpose on the Table;

(*f*) the Clerk of the House shall, once all Members wishing to do so have deposited their ballot papers, empty the box and count the ballots and being satisfied as to the accuracy of the count, shall destroy the ballots together with all records of the number of ballots cast for each candidate and the Clerk of the House shall in no way divulge the number of ballots cast for any candidate;

Counting of ballots. Destruction of ballots. Clerk not to divulge balloting records.

(*g*) in the event of one Member having received a majority of the votes cast, the Clerk of the House shall provide the Member presiding with the name of that Member, whereupon the Member presiding shall announce the name of the new Speaker;

Announcement of successful candidate

(*h*) in the event of no Member having received a majority of the votes cast the procedure shall be as follows:

Balloting procedure when majority of votes not received.

(i) the Clerk of the House shall provide the Member presiding the names of the candidates for the next ballot in alphabetical order, provided that the Clerk of the House shall first determine the number representing the least total number of votes cast and the Clerk shall exclude the names of all Members having received that total number of votes from the list of candidates so provided, and provided that in the event of every candidate receiving the same number of votes no names shall be excluded from the list so provided;

Clerk to provide Presiding Officer with alphabetical list of candidates. Elimination of candidates with least number of votes. Tie votes.

(ii) whereupon the Member presiding shall announce the names of

Announcement of candidates. Reasons for not accepting further consideration to be stated.

the candidates, which shall be the only names thereafter accepted, in alphabetical order, provided that prior to the taking of the second ballot, he or she shall ask that any Member, whose name has been so announced and who does not wish to be further considered for election to the Office of Speaker, state his or her reason therefor;

Subsequent ballots.

(*i*) subsequent ballots shall be conducted in the manner prescribed in paragraphs (*d*) through (*h*) of this section except that following the second and all subsequent ballots the Member presiding shall not ask the candidates to state their reasons for not wishing to be further considered for election to the Office of Speaker but shall forthwith proceed to the taking of that subsequent ballot and the balloting shall continue, in like manner, until such time as a new Speaker is elected; and

No debate or questions of privilege allowed.

(*j*) during the election of a Speaker there shall be no debate and the Member presiding shall not be permitted to entertain any question of privilege.

Ministers of the Crown and party leaders not eligible.

(6) No Minister of the Crown, nor party leader, shall be eligible for election to the Office of Speaker.

Precedence over all other business. Adjournment of the House.

(7) The election of a Speaker shall take precedence over all other business and no motion for adjournment nor any other motion shall be accepted while it is proceeding and the House shall continue to sit, if necessary, beyond its ordinary hour of daily adjournment, notwithstanding any other Standing or Special Order, until a Speaker is declared elected, and is installed in the Chair in the usual manner provided that if the House has continued to sit beyond its ordinary hour of daily adjournment, the Speaker shall thereupon adjourn the House until the next sitting day.

Question of confidence.

(8) The election of a Speaker shall not be considered to be a question of confidence in the government.

February 24, 1986

VII. BELL-RINGING REVISITED: A LACK OF LEADERSHIP FROM THE SPEAKER

BY TOM MCMAHON

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Introduction

The struggle to make the Manitoba legislature comply with the joint constitution of Manitoba and Canada in respect of language and education has been marked by interested parties adopting different strategies to achieve their goals. One strategy has been court challenges, beginning in 1892 and continuing to the present day, most recently highlighted by the *Bilodeau* case.[1] The counter strategy has been to ignore adverse court decisions or present questionable legal doctrines such as the 'mandatory-directory' distinction.[2] A second strategy has been negotiated on informal settlement, which began with the Laurier-Greenaway compromise in 1897 and, by a two steps forward – one step backward approach, resulted in a fairly satisfactory restoration of education rights in Manitoba by 1970.[3] The third strategy has been to address the question by constitutional amendment. If the legislature cannot comply with the Constitution, perhaps the Constitution can be made to comply with the legislature. In 1984 the three strategies and the court challenges were suspended in anticipation of a legislative solution. The strategy used to defeat the constitutional proposal was bell-ringing, and it was the success of this strategy that resuscitated *Bilodeau*.[4]

Manitoba's law makers, media and public spent nine months debating passionately and angrily the rights of the small French minority. The legislature concerned itself with almost no other issues and the lack of concensus resulted in the most protracted procedural battle in Canada's history. Bell-ringing became a much used and well publicized method to prevent the majority of members in the Legislature from voting on their legislative program. Three hundred and eighty-two hours of bell ringing over nine months could not get the Speaker or anyone else to give a detailed explanation of what bell ringing is or how it could be allowed to paralyse government.

The opposition-imposed paralysis dissuaded the government from pursuing its legislative proposal and the *Bilodeau*[5] case was revived.

This paper presents an in-depth examination of bell-ringing. Although bell-ringing was spotlighted in Manitoba, a study of bell-ringing requires a study of parliamentary procedure in many jurisdictions, going to the British Parliament and especially the Canadian

House of Commons where bell-ringing as an obstructionist ploy was invented and where the first precedents were established. To understand bell-ringing requires understanding that a technical breach of parliamentary law is often accepted because of its political justifiability. This paper looks at different forms of obstruction with a view to comparing them to bell-ringing and more importantly this paper discusses the function and duty of the Speaker in relation to obstruction. This paper provides a thorough explanation of bell-ringing. It *does not* draw a conclusion as to whether the Speaker should have intervened in any particular bell-ringing situation. It *does* argue that the Speaker has the discretion to intervene and that the conduct of Speakers exposed to bell-ringing in Canada has been unsatisfactory because no Speaker involved has given an adequate explanation of the decision not to intervene.

Recent Bell-ringing Episodes

The history of bell-ringing is impossible to discover. How much time is required to pass before ordinary 'call in the members' bell-ringing becomes a form of protest or a parliamentary crisis? Canada's first mass-media coverage of bell-ringing occurred in March 1982 during a battle to defeat an omnibus energy bill. There is reason to believe this was not the first time bells rang for an unusually long period although details concerning other incidents are very difficult to uncover. Madam Speaker Jeanne Sauvé referred to an hour long bell-ringing that occurred in 1961.[6] Different procedural experts recall that bells rang a long time the day Lester Pearson's government lost a budget vote in the mid-1960's and that the bells also rang an unusually long time when Joe Clark's minority government went down to defeat in 1979. Manitoba had a bell-ringing in 1971 that caused the special committee on the Rules of the House to consider placing a time limit on the bells.[7] One report of a 1982 Ontario bell-ringing described that incident as the first time the bells had rung longer than 24 hours in Ontario[8], implying that no one could say for certain how long previous bell-ringings had been. Another report described a 1984 Saskatchewan bell-ringing as the longest since a six hour bell-ringing in 1980 calling on members to vote on legislation to end a dairy strike.[9] In conversation with Binx Remnant, presently Clerk of the Manitoba Legislature and formerly of the governing council of the Northwest Territories, he recalled vaguely that there had been a bell-ringing in the Northwest Territories. The information about these and other bell-ringings is sketchy. What seems clear is that until March 1982 prolonged bell-ringing did not become the subject of extensive review by the Speaker.

Since 1982 there have been a number of bell-ringing incidents. On all of these occasions the Speakers involved simply followed without comment the example set by Madam Speaker Jeanne Sauvé in relation

to the energy bill bell-ringing. A review of these bell-ringings will serve to show the different motivations and resolutions of bell-ringing and the extremes to which the procedural weapon can be put to use.

In the House of Commons on February 26, 1982, the Energy Security Bill (C-94) was tabled. On March 1, 1982, the official opposition's energy critic, Harvie André, rose on a point of order that Bill C-94 was too expansive in scope and had no identifiable principle. As second reading of a bill is designed to debate the principle of a bill while committee hearings and third readings are devoted to examining detail, it was argued that Bill C-94 could not be presented to the House for second reading. André argued for almost an hour that the Speaker could and should divide the bill into parts. On March 2, 1982, Speaker Sauvé gave a ruling that lasted two minutes and failed to touch on any of the points raised by André. She simply stated that there were no precedents that allowed her to break up the bill. After a series of exchanges between Conservative members and the Speaker during which the Conservatives sought elaboration and clarification from the Speaker, André made this motion:

> In view of our inability to get that explanation (of the principle of Bill C-94) and my inability therefore to know how to approach this particular question in any meaningful and realistic way, I have no choice, but to move that this House now adjourns.[10]

The Conservatives then left the House and the bells calling the members in to vote rang until March 17. One might well interpret the actions of the Conservatives as a challenge or a censure of the Speaker as much as a partisan battle with the Liberals. The problem was resolved when the Liberals, who refused to negotiate while the bells were ringing, granted two opposition days to debate other matters in order that negotiations could take place. The agreement reached was to break Bill C-94 into eight parts while providing for time allocation – a maximum period of time for debate.[11]

In Ontario on May 14, 1982, the Liberals protested a raise in the sales tax by refusing the traditional unanimous consent for leave to introduce a bill. After a division had been called on the motion to introduce the sales tax bill the opposition walked out, leaving the bells ringing until they returned May 17. The walk-out was clearly a symbolic protest as no demands were issued and no negotiations took place.[12]

On December 14, 1982, the bells in the House of Commons rang for five hours as part of a plan to delay the passage of the Canagrex bill, which would establish a Crown corporation to sell Canadian farm implements.[13]

On May 9, 1983, the third party NDP refused to give leave to introduce a bill to change the Crows Nest Pass freight rates. The government was caught by surprise and allowed the bells to ring as it

scurried to get enough members to win the vote. Then the Conservatives kept the bells ringing as they tried to decide upon a strategy in respect of the bill.[14]

On May 17, 1983, the bells rang on a motion to adjourn and on May 24, 1983, the bells rang on a motion to move to orders of the day, in order to prevent the NDP from reading more petitions against freight rate changes.[15]

Both of the bell-ringing incidents in late May 1983 were 'lapsed' by the Speaker. Because the motions were superfluous once the appointed time for adjournment arrived the motions could then be disregarded. Why this was not done in March 1982 has not yet been explained.[16]

In Manitoba the opposition Conservatives brought bell-ringing to the brink of its most absurd conclusion – the complete blockage of parliament for an infinite period of time. Between July 28, 1983 and February 27, 1984, the division bells rang 24 times, sometimes for as little as five minutes but usually for two hours or more, and the last bell-ringing lasted more than 263 hours before the government prorogued the session and stopped all legislative efforts to address the French language issue. Bells had rung for more than 382 hours over the nine month period, in opposition to virtually every stage of proceedings for the government proposals. For most of the nine months the proposals were the only business before the legislature or the inter-sessional committee set up to study the proposals. While the Conservative objection that more time was needed to fully consider new amendments may have had merit, at no time did it appear they had a middle ground to offer – time allocation was not going to be the solution that had worked in the House of Commons. Unlike any other bell-ringing, the Manitoba incident seemed to be inspired by a single 'winner take all' objective – to make it impossible for the parliamentary majority to succeed in enacting or even voting on its proposals. The government responded to challenges by the opposition by agreeing to a free vote, and agreeing that if it lost such a vote it would call an election. The opposition promptly reversed its position and continued to prevent a vote. The whole time the Speaker was almost completely silent on the issues of parliamentary procedure involved, simply relying on Madam Speaker Sauvé's earlier rulings.[17]

In Saskatchewan the eight member opposition of the 64 member legislature rang the bells for 122 hours between April 26 and May 1, 1984. The issue concerned a lawsuit launched by a Regina businessman against an opposition M.L.A. for remarks he had made in the legislature. The M.L.A., Ned Shillington, had been questioning the propriety of a sale of a government office building to the businessman. On a point of privilege concerning the lawsuit he moved that the businessman be required to attend the privileges committee to answer questions about the sale. The government moved an amendment that

a letter of apology would suffice. When the amendment came to a vote and then a division the opposition walked out. The bell-ringing ended when the lawsuit was dropped.[18]

On June 26, 1985, the tiny Liberal minority in the House of Commons allowed the bells to ring for over an hour for a vote on an NDP amendment to the Agricultural Stabilization Act. This was because the Liberals were celebrating their newly remodelled headquarters, combined with Donald Johnston's birthday and their weekly wonderful Wednesday party.[19]

What all these incidents show is that there are many different ways to use bell-ringing. The federal Conservatives used it as a last resort protest against a Speaker who would not give an adequate explanation of her ruling and against an excessively broad bill. The Saskatchewan NDP used it as a means to enforce the absolute privilege that attaches to comments made by members in the Legislature. The Manitoba Conservatives used it to dictate their ideology to the majority of the members who held opposite views. The Ontario Liberals used it as a symbolic protest. The Federal Liberals used it in the way the practice originally developed – as a courtesy between parties to postpone a vote for a relatively short period of time for their convenience. Each of these uses has differing degrees of justifiability. How should the Speaker deal with bell-ringing in these varied circumstances?

Bell-ringing as a filibuster

There can be no denying that bell-ringing is parliamentary obstruction. Parliamentary obstruction has a long, respected history. A system of majority rule puts many roadblocks in the path of opposition and effective opposition requires that on those issues considered to be of exceptional importance by the opposition there must be a way to make objections known in an exceptionally forceful way. To rely on informed debate alone does not adequately distinguish the nature of the opposition's objections on a particularly contentious item from less combative opposition on other items. The government will be forced to pay a price for introducing controversial legislation. Exceptional forms of objection and protest are devised, accepted by all sides, and often grudgingly admired by the government. The obstruction exerts pressure on the government to reconsider its position and to move more slowly. It also gives the opposition an opportunity to stand up and say to the public 'look at us, we're an effective opposition'. There is something admirable about a show of bravado against hopeless odds. Political conviction and procedural mastery make an opponent worthy. The united, last-ditch stand, the heart and character of the underdog, and the battle of procedural wits lend both drama to the nation's business and legitimacy to the filibuster process. Traditional methods of obstruction take place *in* the House, on appearances alone as if everything as

normal. They have an aura of civilized competition and require physical and mental endurance and vigilance or the tactic will fail quickly. Obstruction derives much of its political legitimacy from these constituent elements. Only energy, perseverance and attentiveness can get the tactics to work and hard work is always meritorious.

Obstruction also gains legitimacy because of what it accomplishes. It is often successful in forcing compromise and turning potentially divisive legislation into legislation by concensus.

Furthermore obstruction is not always procedurally illegitimate. The point at which the use of the letter of the rules violates the spirit of the rules is often blurred. Allegations of procedural illegitimacy often never rise above the status of mere allegations.

The foregoing is to stress that any evaluation of different methods of obstruction must take into account two factors: political and procedural legitimacy. However, a review of assorted methods of obstruction shows that parliamentary history has been guided by one unbreakable rule: the majority must prevail over the minority, sooner or later.

The original form of obstruction centered around extremely prolonged speeches. One of the most famous incidents of this in the history of Parliament and one that Canadian Speakers have been invited to treat as a precedent for intervening during an obstruction occurred in England between 1877 and 1881. A group of Irish Nationalist M.P.'s decided upon a strategy of disrupting the House of Commons to draw attention to their cause and to convince the British that both the British and the Irish would be better off without each other. The Nationalists moved many procedural motions, called for many recorded votes, and made extremely long, peripherally relevant speeches to prevent proceedings from moving smoothly or quickly. In 1877 Speaker Brand declared that 'any member wilfully and persistently obstructing public business without just and reasonable cause is guilty of a contempt of this House.'[20] In January 1881 debate on the Protection of Person and Property (Ireland) Bill exceeded all foreseeable durations, including a 22 hour sitting on January 24 and a 41½ hour sitting that started on January 31. Josef Redlich, a leading authority on parliamentary procedure, described the events this way:

> The energy and seriousness with which Parnell (the Irish leader) strove to realize their absurd plan shook the parties and their leaders out of their sleep. Their eyes were opened, and they saw obstruction in its true character as parliamentary anarchy, a revolutionary struggle, with barricades of speeches on every highway and byway to the parliamentary market, hindering the free traffic which is indispensable for the conduct of business. It was no longer argument against argument, but force against force . . . Nay, it had become abundantly clear that the fundamental principle of British parliamen-

tary government was now at stake, the principle on which its framework rested, that of government by the majority . . . 'It is the first condition of parliamentary existence for which we are now struggling,' said Mr. Gladstone in his great speech, 'the House of Commons has never since the first day of its desperate struggle for existence stood in a more serious crisis – a crisis of character and honour, not of external security . . .'

In the end, relief came from the quarter whence in the nature of things it might never have been expected. Now that parliamentary anarchy had become open, it was only the supreme guardian of order in the House, the Speaker, who could lay claim to moral authority adequate to the inevitable act of dictatorship. Speaker Brand said:

'A crisis has thus arisen which demands the prompt interposition of the Chair and of the House. The usual rules have proven powerless to ensure orderly and effective debate . . . the dignity, the credit, and the authority of this House are seriously threatened, and it is necessary that they be vindicated. Under the operation of accustomed rules and methods of procedure the legislative powers of the House are paralyzed. A new and exceptional course is imperatively demanded; and I am satisfied that I shall best carry out the will of the House and may rely upon its support if I decline to call upon any more members to speak, and at once proceed to put the question from the Chair.'[21]

The 28 Irish Nationalists refused to vote, which was against the rules, and were named by the Speaker and suspended by the House. Many would not leave until the Sergeant-at-Arms threatened them with physical ejection. Speaker Brand's invention of closure was a remarkable example of a Speaker setting a precedent and of eliminating the classic form of filibuster – a potentially unending series of speeches by members in opposition on a single question. Undoubtedly Speaker Brand's decision was made easier because the overwhelming majority of M.P.'s and presumably the public supported him but that does not detract from the importance of the precedent.

Speaker Brand's precedent has now been enshrined into the rules of the House[22], and other rules have been adopted to control obstruction by prolonged debate. The limited duration of speeches[23], the limited number of times a member is allowed to speak on a given question[24], and rules requiring relevancy[25] have all whittled down this form of filibuster.

In its place have risen procedural filibusters, a strategy of using permitted procedures to disrupt Parliament. An example is the use of multiple amendments. While a member may only speak once on a question, an amendment to that question gives a fresh chance to speak. An infinite number of amendments is theoretically possible and there-

fore an infinite number of occasions to speak.[26] This tactic can be countered by a closure motion or by a motion that the question now be put, which, despite its literal meaning, is basically a mechanism to prevent new amendments while allowing debate on the original question to continue.[27]

Another method of obstruction is to raise numerous and often specious points of order and privilege.[28] This may be countered by a Speaker refusing to hear frivolous points or by placing time limits on a member explaining his point.[29] Petitions may be read in the House and if many petitions grow into hundreds of petitions this tactic can have a significant impact. It may be countered by a motion to proceed to Orders of the Day, which normally means government business.[30]

Another form is to move dilatory motions, which are motions of a procedural nature such as motions to adjourn (as opposed to substantive motions such as bills, resolutions, or amendments). A more precise definition of a dilatory motion is still elusive.[31]

Calling for a recorded vote can be used to slow the House's progress. This is done by five Members rising immediately after the Speaker announces his decision as to the winner of a voice vote. This forces a standing vote count to be taken, also known as a division. This can be quite time-consuming. Done repeatedly for major and minor motions the tactic can create an impact.

A similar tactic is to refuse unanimous consent on the few occasions, usually non-contentious, when this request is put.

Finally the House of Commons rules specifically provide for a motion to delay for six months debate on an issue, but the opposition's chances of winning such a vote are minimal.[32]

Bell-ringing is also a form of obstruction. It is different from other forms because it does not occur in the House. It is a boycott of House proceedings and blocks all parliamentary business. It does not require ingenuity nor hard work. In certain jurisdictions it does not have, as yet, a counter-balancing measure to ensure that the parliamentary majority will be able to govern.

By contrast, many jurisdictions have express limitations on bell-ringing.[33] The profusion of time limits on bell ringing is a good indication that members of legislative assemblies do not view bell-ringing as an acceptable form of obstruction. However Ontario, Saskatchewan, the Canadian House of Commons and the Northwest Territories are still subject to the dangers of bell-ringing. The question of how to deal with any future bell-ringing will have to be dealt with by interpreting *Beauchesne's Parliamentary Rules*, 5th ed., 1978. The question as to whether past Speakers have made good decisions in past bell-ringings is open.

What's In A Practice?

Before precedents, traditions, discretion, the spirit of the rules and the interest of Parliament as a whole can lead a Speaker to a decision, he must have an intimate understanding of the procedural dispute before him. As discussed earlier most if not all procedural filibusters have counter measures that prevent them from continuing infinitely. The filibusters also stem from extremely well understood procedures: motions and points of order and privilege. The nature of voting should be as clear. If Parliament is based on the principle of majority rule, then it must follow that the House must not be prevented from determining who is the majority. It may be permissible to delay that determination but it cannot seriously be doubted that the House does not have the right to have a vote. Section 49 of the Magna Carta states the principle of majority rule and it is repeated in section 49 of the 1867 British North America Act:

> Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

Another important principle is that the Speaker presides over and controls the voting process.

> He alone puts the question to the House, certifies the result, and has supreme control over the often complicated course of the voting . . . The process of division is bound to take place if the Speaker's statement of opinion as to the result of taking the voices is challenged.[34]
>
> If any difficulty arises, in point of order, during the division, the Speaker must take upon himself to decide it, 'peremptorily'; for, as it cannot be decided by the House, and so have a decision upon a division, there is no other mode but to submit implicitly to his determination; subject however to the future censures of the House, if that determination appears to be irregular or partial. But in order to form that determination, though there can regularly be no debate, it has frequently happened that old and experienced members have, by the permission of the Speaker, assisted him with their advice, sitting on their seats, and speaking with their hats on, to avoid even the appearance of a debate; but even this cannot be done but by the Speaker's leave; for, if it could, the division might last several hours; the determination of the Speaker, therefore, under these circumstances, is absolute; and the Members present ought to submit quietly to his directions.[35]

What is the procedural trigger for an indefinite bell-ringing and is it a procedural irregularity? Simply put, the Speakers in the House of Commons, Manitoba, Ontario and Saskatchewan all acknowledged a

practice that the bells would shut off only when both the government and official opposition whips entered the House together. Like all unwritten conventions the substance is easy to agree on, the problem is identifying the limits. The result of this convention has been that a unilateral decision by either whip keeps the bells ringing indefinitely, until that whip chooses to end them. But what are the precise limits of the practice?

Beauchesne's Parliamentary Rules, 5th edition, 1978, says this:

> Should five or more Members rise to request a recorded vote, the Speaker says: 'Call in the Members'. The Sergeant-at-Arms ensures that the bells are rung; *The Whips take steps to assemble their Members*. Except under S.O. 9(2) there is no special time fixed for calling in the Members. It generally takes at least ten to fifteen minutes to get them, the Speaker remaining in the Chair, although order is not strictly maintained. *The signal for taking the division is the return of the Government Whip and the Opposition Whip*.[36] (my emphasis)

Beauchesne's 4th edition is inferentially adopted to Manitoba's rules in rule 1(2) which adopts for Manitoba the customs in the House of Commons at July 12, 1955. The 4th edition says this:

> . . . and the Sergeant-at-Arms immediately sees that *all* bells are rung, and that other steps are taken to bring in all the members from the lobbies and the adjacent rooms. The Whips gather their co-partisans who may be in the neighborhood . . . *The signal for taking the vote is the return of the Sergeant-at-Arms*.[37] (My emphasis)

It has been noted as early as 1877 that the Whips help the Sergeant-at-Arms gather the members.[38] In 1977 the practice was described this way:

> How long the Whips, one for the government and one for those in opposition, will keep the bells ringing is determined by various considerations. Naturally, the government Whip will not let the division begin when he is short if by waiting he can remedy his plight; but for the opposition Whip the number voting is usually of not great importance unless his party wants to make a very good showing for some special reason. Occasionally the bells ring long enough to let the Prime Minister, two or three Ministers, or the Leader of the Opposition come bustling in from a dinner party somewhere in the city or its environs. Their advent in starched shirts causes merriment. Sometimes it is suspected that the Whips conspire together to let the bells ring a few extra minutes on an amendment so as to leave just enough time for the vote on the main motion before the hour of adjournment, thus making it difficult for persistent members, who

> are often the most boring members, to take the floor once again. *When the whips have taken their seats, the bells are silenced.*[39] (My emphasis)

A 1958 description says that the Speaker puts the question when he thinks that all available members are present.[40] A 1984 description says:

> There is, however, a convention whereby the division bells may ring indefinitely in cases where a vote was not anticipated. *This convention is based on courtesy*, it being accepted that the House will not be called upon to vote until the Whips on both sides have satisfied themselves that all their members are assembled.[41] (My emphasis)

These descriptions leave many questions unanswered about the practice. Does it matter that the Whips do not act independently but are in fact controlled by their parties and their party leaders? Negotiations to end bell ringings typically involve the House Leaders and not the Whips. In 1961 Mr. Speaker Roland Michener ordered the Whips to enter the House for a division after the bells had rung for only one hour. There was no parliamentary crisis it would seem.[42] Does this mean that the Speaker can intervene where there is no parliamentary crisis? What is a parliamentary crisis? Who decides when one exists? It seems a reasonable assumption that in the 1961 incident the Whips were acting independently and not on orders from their caucuses.

That the opposition Whip may be part of a tiny minority does not seem to matter.[43] One report of the 1982 Ontario bell ringing states that the Whip of a third party has equal say on when to end the bells in Ontario.[44] What happens to the practice if there are two opposition parties of equal number? If infinite bell-ringing is outlawed but indefinite bell-ringing is allowed, when do the bells have to stop and who but the Speaker could make such an order?

How does the convention apply to free votes? From where do the Whips derive their authority? Surely it must be because they are intimately connected with delivering a block vote. In a sense they are responsible for those votes. How can they have a similar moral claim on free votes? What is a free vote? Presumably there are always many factors which influence a member's vote. A free vote seems to be one in which he risks no loss of good standing in his political party by voting a certain way. When there is that risk it is said that 'the Whips are on'. Clearly the bell-ringing convention acknowledges a House where the Whips are almost always 'on'. In fact, the only difference between a 'free' vote and one where the whips are 'on' is that a member has one less factor to consider when deciding how he will vote in a 'free' vote. Often it is perceived that the opposite of a 'free' vote is a bought vote. The party buys a member's vote with promises of future promotion or at least no reprisals. Should parliamentary procedure be so heedful of

political realities that they become enshrined as binding practice? Does a practice which enshrines the roles of whips condone their roles and mitigate against a House where members are more genuinely independent?

Why should the government whip and the official opposition whip be the only two with the power provided by the convention? Imagine a debate in which the government and the official opposition agree on an issue but a third partly strongly opposes the proposal. Why should that third party, which on that occasion is the only true opposition, be denied the power to ring the bells?

What happens if a party whip refuses to make the bells ring against the wishes of his party and is replaced after the bells have begun but before the whips have entered the House by a member who will agree to use his role as whip to continue to ring the bells?

At its core the practice is that the ringing of the bells ends when the whips enter the House together. Their authority is drawn from a recognition of the fact that they are the ones best able to account for the presence of their Members and are, in effect, somewhat responsible for delivering the votes for their parties. They also have the discretion to delay a vote for some length of time to ensure that the maximum number of Members or at least some prominent Members can attend.

However, it would be difficult to cite a precedent for the whips using the bells for a purpose other than assembly of their members. After all, what does 'Call in the members' mean? It is not a code by which the Speaker summons both whips to advise him whether and when there will be a vote. The Canadian bell-ringing episodes are classic examples of Speakers examining only the single-most prominent feature of a practice without studying the reasons for the practice or its implications on other parliamentary traditions.

The foregoing shows how vague a practice can be. The more one examines the limits of the practice and its results the more evident it becomes that obstructionist bell-ringing is inconsistent with the basic concepts of parliamentary procedure.

The bells can be used by a government, especially a minority government, to prevent a vote of confidence from taking place on which it may be defeated. The opposition can use the bells to win concessions it could not win any other way. The bells can interfere with the granting of Royal Assent and thus be a nuisance if not an insult to the Queen's representative.[45] The bells can force a government to obtain Governor-General warrants in order to pay the country's bills. The bells can precipitate a prorogation.[46] Once bells are adopted as a legitimate tool, the strength of conviction of a party's stand can be measured by their willingness to ring bells on an issue, and then by how long they are prepared to keep the bells ringing.[47] The bells also interfere with the rule under the Constitution that all members are expected to attend

regularly in their places and perform their duties.[48] Although this rule has rarely received much respect it should at least support a participating in a parliamentary proceeding. While a division is a parliamentary proceeding, where obstructionist bell-ringing occurs it is an ongoing proceeding in a technical sense at best, and certainly this is all the more strained when the opposition promises that it will give notice before any vote will be allowed to occur.[49]

One of the most astonishing products of the Speakers' decisions on bell-ringing is the effect on motions of adjournment. Traditionally, following the rules in *Beauchesne*, an unscheduled adjournment could be obtained only by presenting a motion to adjourn, and then by winning the vote. With the precedent of bell-ringing an entirely new method of obtaining an adjournment is created, and it does not include the risk of losing a vote. The new procedure is to move any dilatory motion, challenge the Speaker's ruling on the voice vote, and then leave. This procedure is a logical consequence of obstructionist bell-ringing but is completely foreign to *Beauchesne* or the Standing Orders. The procedure seems to destroy the need for the traditional procedure. Surely this is an undesirable result.

The practice recognised by Canadian Speakers that makes obstructionist bell-ringing possible has produced other surprising results. The political parties were handed a tool by which they could unilaterally suspend Parliament's proceedings. The Speaker and the other Members of the House do not even have the right to inquire into the good faith or reasons for such a suspension.

In effect each whip is given a veto on the timing of a vote. The series of rulings which allow the bells to be shut off after the normal hour of adjournment to be restarted the next morning if the motion is substantive and not dilatory, that all but one of the bells may be turned off, that bells on dilatory motions of any kind lapse, and that allow the Speaker, by taking advice from one ship, to announce to the House that because the bells are ringing the Members can go home and that he will return later to adjourn an empty house is astounding.[50] They reduce the bells to a solely symbolic function which they have never had: announcing that a division is only technically in progress. These rulings give the bells a function absolutely contrary to their intended purpose which was to call the Members in to vote. With obstructionist bell-ringing the bells tell the Members to stay away. If the motion being used to trigger obstructionist bell-ringing is a dilatory motion the Speaker will have to return to the Chamber later to adjourn an empty House at the prescribed hour.[51] If the motion is substantive the Speaker will have to remain in the House at all times, at least during normal sitting hours.[52] Why should the Speaker have to perform such an undignified, futile function? If only one bell is going to ring the function of the bells is defeated so the last one may as well be shut off.

If one were to attempt to define obstructionist bell-ringing as it has developed so far, what would be an accurate description? By observing the way Speakers have addressed bell-ringing the description might be this: In every vote (except possibly a 'free' vote) either the government whip or the whip of the official opposition, if acting on orders from their party leaders, may ring the bells for an indefinite period of time, regardless of the numbers of members supporting them, of the reasons for the bell ringing, or of other rules or traditions of Parliament detrimentally affected by obstructionist bell ringing.

A new method of obtaining an adjournment, with exactly the same effect as that produced by obstructionist bell-ringing on dilatory motions, would be for either official whip to rise and inform the Speaker and the other Members that the House is adjourned.

The above reflects the way bell ringing has developed in the Canadian experience. How are these results justified by Canadian Speakers?

How Canadian Speakers Have Responded to Bell-Ringing

How any given Speaker reacts to obstructionist bell ringing will depend on how that Speaker views his function as Speaker. Will, can, and should a Speaker intervene when the letter of the rules conflicts with the spirit of the rules? Inevitably the answers are matters of personal judgment, but that judgment should have a basis in parliamentary theory. Two of the leading Canadian procedural authorities, Beauchesne and Bourinot, agree that:

> The principles that lie at the bases of English parliamentary law, have always been kept steadily in view by the Canadian parliament; these are: To protect a minority and restrain the improvidence or tyranny of a majority; to secure the transaction of public business in an orderly manner; to enable every Member to express his opinions within limits necessary to preserve decorum and prevent an unnecessary waste of time; to give abundant opportunity for the consideration of every measure, and to prevent any legislation being taken upon sudden impulse.[53]

After the House of Commons bell-ringing on the energy bill in March 1982 Speaker Sauve made a statement to the House of Commons in defence of her non-intervention. While she acknowledged that 'it is the Speaker's responsibility to ensure that Parliament can function'[54] she stated that in her view she was the servant, not the master of the House and that the rules and precedents of the House provided no authority for her to intervene.

The description of the Speaker as the servant of the House stems from that part of Parliamentary history that saw a very real conflict between the Crown and the Commons, and hence created many compli-

cations for the intermediary, the Speaker. John Hatsell, one of the earliest procedural experts, traces the Speaker's duties this way:

> (On March 9, 1620 there was) . . . a long debate in which the conduct of the Speaker was very much blamed. The Speaker was rebuked in these words:
>
> 'That Mr. Speaker is but a servant to the House; and not a master, nor a master's mate; and that he ought to respect the meanest Members, as well as those about the Chair.' . . .
>
> The Speaker, though he ought on all occasions to be treated with the greatest respect and attention by the individual Members of the House, is in fact as is said on the 9th of March, 1620, but a servant to the House, and not their master; and it is therefore his first duty, to obey implicitly the orders of the House, without attending to any other commands. This duty is very well expressed, in a very few words, by Mr. Speaker Lenthall; who, when that ill-advised monarch, Charles the First, came into the House of Commons, and, having taken the Speaker's chair, asked him, 'Whether any of the Members that he came to apprehend, were in the House? Whether he saw any of them? And where they were? made this answer,
>
> 'May it please your Majesty,
>
> I have neither eyes to see nor tongue to speak, in this place, but as the House is pleased to direct me; whose servant I am here; and humbly beg your Majesty's pardon that I cannot give any other answer than this, to what your Majesty is pleased to demand of me . . .'
>
> Mr. Serjeant Glanvylle, when he was presented to the King, for his approbation, on the 15th of April, 1640, says,
>
> 'The House of Commons have met together and chosen a Speaker, one of themselves to be the mouth, indeed the servant of all the rest; to steer watchfully and prudently in all their weighty consultations and debates; to collect faithfully and readily the vote and genuine sense of a numerous assembly; to propound the same seasonably, and in apt questions, of their final resolutions; and to represent them, and their conclusions, their deliberations and petitions, upon all urgent occasions, with truth, with right, with life, with lustre, and with full advantage, to Your Most Excellent Majesty.'[55]

From this historical perspective is painted a good idea of what it means to be a servant of the House. The Speaker is a servant of the House, and not of the monarch, nor is he a master or master's mate of any other outside interest. When these are stripped away and the Speaker is clearly in no service other than the House's, as in the twentieth century, little can be gained from these famous phrases that will help a Speaker administer the rules. To defend non-intervention by declaring a role of servant is to show slavish devotion or opportunism in respect

of past rhetoric. The true problem is one of interpreting the will of Parliament and the necessity of a determination being made. Through all the various instructions given the Speaker, most especially through the rules, the Speaker must find his way. What is the letter of the rules, what is the spirit of the rules, how should a Speaker act when faced with a lack of concensus among the members, should a Speaker consider what is the best interest of Parliament as an institution, and should only the members sitting at one particular time have exclusive authority over the direction of Parliament, to the exclusion of centuries of great parliamentarians and traditions? Clearly the duties of the Speaker create competing problems.

> It is he who ensures that every body of opinion gets a fair hearing, who protects the rights of minorities while ensuring that Government business is not brought to a standstill . . . It is not only minorities and back-benchers who are entitled to the Speaker's protection. The Government and Opposition front benches must have his cooperation if debate and the very process of government itself are not to be reduced to a farce . . . He is the servant of the House, not its master, and the authority which the House vests in him is its own authority, which he exercises in accordance with the interests and wishes of the House. Thus in regulating the course of debate, in calling on Members to speak, in ensuring that the established conventions of debate are observed, and in utilising the powers conferred on him by usage and the Standing Orders, he is implementing and interpreting the will of the House . . . He will look for a punctilious observance of certain forms, such as that whereby a Member is referred to in debate other than by name, for those conventions are basic to the traditional dignity with which the House has always striven (although lapses have sometimes occurred) to conduct its proceedings.[56]

The primary source of explaining the bell ringing developments comes from Madam Speaker Sauve, in a speech she gave on March 18, 1982. The full explanation follows the body of this paper. In that explanation Madam Speaker Sauve stresses her role as a servant of the House, powerless when the House is unable to give clear instructions. She also stresses that she must not set a precedent. In support of her decision she quotes one of the most respected parliamentary procedural experts, Josef Redlich.[57] Here are the passages Madam Speaker Sauve quoted:

> The modern president of the House of Commons . . . is a judge who has to apply the rules of procedure to the best of his ability and with perfect impartiality, maintaining with a firm yet sensitive hand the proper relations between the two parties to the proceedings before

him, the majority and the minority; he must do so by maintaining the rules and the usage of centuries, and by taking care that both majority and minority are unimpeded in their use of the forces and the weapons which the order of business provides for strong and weak.

It is no part of (the Speaker's) office to consider how he may use his power to devise new reins or bridle for the House. The guiding principle is that the Speaker is not the master of the House but its representative . . . He must always be sure . . . in making any change of practice, that he is in accord with the average opinion of the House . . . And . . . when precedents are not conclusive, the Speaker is to lay the matter before the House for decision. Protection of a majority against obstruction and protection of a minority against oppression are both alike functions of the Chair. It is hardly too much to say that they exhaust the duties of the high office held by the impartial guardian of parliamentary law . . .[58]

The rest of the Canadian Speakers followed Madam Sauve's example by maintaining a strict silence and by relying on the House of Commons precedent.

The next part of this paper will evaluate justifications for non-intervention in bell-ringing.

Evaluating the Response

It is important to note that simply because a reknowned expert has described his view of Parliament in a particular way that does not make his ideas correct. The source of the idea is unimportant, it is the idea itself that must be examined. Further, it must not be forgotten that Redlich was describing the British Parliament at the turn of the century. A Speaker may well renounce a authority's understanding of Parliament. But where a Speaker justifies his actions by relying on an authority's text, those passages quoted may be scrutinised to ensure that selective quotation of relatively obscure works does not lead us into deception. Here is a more complete quotation of Redlich, taken from the same pages as Madam Sauve's quotes. The sections that are quoted by Madam Sauve are in bold type. I have underlined parts of the passages Madam Sauve chose not to quote, which I think emphasise that Madam Sauve has misinterpreted Redlich. All of the following quotes appear in the order they appear in Redlich's *The Procedure of the House of Commons* between pages 143 and 151.

Of great importance too are his functions upon a division. He alone puts the question to the House, certifies the result, and has supreme control over the often complicated course of the voting . . . We need only say now that the tradition of centuries, copious almost to excess, has established fixed conceptions and conventions to guide

the Speaker in his action. His powers in relation to the debates have never been looked upon as entitling him to express or enforce any completely new or purely personal opinion as to what is on principle allowable in debate or otherwise. The conception lying at the root of English parliamentary law is this, that the rules and the law deducible from the precedents in the journals and from traditional usage are reins by which the action of the House is to be kept in form and order, and that the Speaker is the person who, with firm and cautious hand, is to hold and use them for guiding the House on the lines which have been handed down. **It is no part of his office to consider how he may use his power to devise new reins or bridle for the House. The guiding principle is that the Speaker is not the master of the House, but its representative**, its leader and authoritative counsellor in all matters of form and procedure. Not that in case of need it is not both right and proper for him to take the initiative, if there is occasion to censure unparliamentary acts or similar behaviour calling for restraint. Only **he must always be sure**, in all important decisions, and especially **in making any change of practice, that he is in accord with the average opinion of the House**. In the ordinary course of things, with the abundance of precedents that exist, there can, for an expert on the rules, be very little doubt as to the decision of the Speaker; his task is only hard when he finds himself face to face with a new situation. Even then he must try to deduce his decision logically from rules or precedents which are already in force; the great number of the latter, and the elasticity which necessarily belongs to customary rules, together with the parliamentary training in their interpretation which the Speaker has always had, make the task of bringing new circumstances within the existing law very much easier. No better method could be devised for protecting tradition, upon which indeed the greater part of parliamentary procedure rests, from becoming rigid; it provides a means of taking into account the material changes in conditions that occur during long periods, and of giving authoritative expression by new precedents to new conceptions of parliamentary form and usage. It is perhaps the most difficult and responsible, certainly the highest, of the duties which fall to the Speaker's share. For it assumes that he is familiar with the whole labyrinth of precedents which have been laid down by the practice of centuries, so far as they are not wholly obsolete, and that he is capable, by selecting from them, of finding the best way of proceeding in any new situations which may arise. This duty of the Speaker's, perhaps the most important department of his official work, may best be understood by comparing it with the corresponding attitude of an English judge to the law which he administers. The immense and many-meshed net of the common law with its thousands of decided cases wraps him in its folds, but gives him in compensation thousands

of chances to use the unwritten law stored up in precedents for extending the law itself by exposition, even for creating a new law: so, too, is it with the Speaker. Behind the comparatively meagre body of positive enacted rules stretches the wide expanse of century-long parliamentary usage, as recorded in the journals of the House. Here, too, the Speaker has the opportunity of drawing new judge-made law out of the old decisions, a function which must be acknowledged as the highest authority which he possesses.

It must not, of course, be overlooked that, from a purely technical standpoint, the House is the sole and absolute master of its order of business. Its jurisdiction is most clearly seen in its power at any time to alter the rules of business: as we have already remarked, no special procedure, no particular majority is required for this purpose. In point of fact alteration in rules is nowhere subjected to so few difficulties as in the House of Commons. But so long as they remain unchanged, whether they depend on some express order of the House or on customary practice, their maintenance is confided to the Speaker alone; it is his duty to see that they are obeyed, to explain and apply them. In principle the supreme authority of the House is retained; it is clear enough from an express order, made so long ago as 1604, that **when precedents are not conclusive the Speaker is to lay the matter before the House for decision:** but it is entirely in the Speaker's discretion to judge whether and when to call for such a decision of the House. If he deems it unnecessary to do so, his ruling is final. Among so great a multitude of precedents it can but rarely happen that the Speaker will be unable to find a more or less relevant guide for his conduct without an appeal to the House. It has, as a matter of fact, very seldom happened that a Speaker, instead of giving the ruling of the Chair on his own responsibility, has requested the decision of the House on a special case.

Moreover, one purely external indication shows that it is not merely a use of analogy to conceive of the Speaker in the modern House of Commons as above all things a judge, nay as the sole judge, of parliamentary law. His decisions are called by a name used for expression of judicial opinion, 'rulings.' **The modern president of the House of Commons, then, is a judge who has to apply the rules of procedure to the best of his ability and with perfect impartiality, maintaining with a firm yet sensitive hand the proper relations between the two parties to the proceedings before him, the majority and the minority; he must do so by maintaining the rules and the usage of centuries, and by taking care that both majority and minority are unimpeded in their use of the forces and the weapons which the order of business provides for strong and weak.** He must further, like a judge, watch to see that the advance of the majority and the resistance of the minority observe the spirit of the rules and the whole

spirit of parliamentary life. It is only when the Speaker is looked upon as a judge that we reach a complete understanding of his attitude to the rules on one hand and to the House on the other. As the law stands above judge and parties, so do settled tradition and the unwritten standards of parliamentary law stand above the Speaker and the House. To apply this law, to deal with wise discrimination between the House and the individual member and between party and party, to do this according to the rules and in the spirit of parliamentary law is the essential, the crowning task of the Speaker. If we would understand the spirit of parliamentary law we must clearly grasp the principle that is provisions, however various, are all directed to one end, namely that of keeping the activity of Parliament in full swing, and of securing that in any event those affairs of state shall be attended to which could not be dealt with without a regulated course of proceedings in the House of Commons. On the one hand the legislative proposals placed before the Parliament by the Government must be promptly despatched; on the other, the minority must, under certain circumstances, be given a chance of postponing the decision of Parliament as to some particular subject, or even, at times, of preventing its ever being reached. These conflicting requirements may both, under different conditions, become necessities of state, to the securing of which the order of business and its treatment by the Speaker must contribute. **Protection of a majority against obstruction and protection of a minority against oppression are both alike functions of the Chair. It is hardly too much to say that they exhaust the duties of the high office held by the impartial guardian of parliamentary law** under the aegis of which alone can new legislation be legally brought to completion.

The whole elaborate duty of driving the parliamentary machine is thus placed in the Speaker's hand.

A full appreciation of Redlich's description of the functions of the Speaker can lead to different conclusions than those drawn by Madam Sauve. It is clear that when Redlich says it is not for the Speaker to devise new reins or bridle for the House he is not saying that a Speaker cannot set precedents. Redlich discusses taking the iniative, extending the law, creating new law, and points out that only rarely could a situation arise where a Speaker could not deduce the appropriate course from precedent. The reins that Redlich views as being impermissible are those that are not deduced logically from Parliamentary tradition and precedent.

It is interesting that Madam Sauve acknowledged her position as representative but not as leader and authoritative counsellor.

Madam Sauve's quote is noteworthy as well, where she refers to Redlich's description that balancing the interests of the majority and

minority exhaust the duties of the Speaker. This accords with the view that *every* aspect of Parliamentary procedure is designed with that balance in mind and that any decision by the Speaker must be explainable in those terms. Indeed at one point Redlich says that under certain circumstances the minority must be given a chance to postpone a decision of Parliament or prevent its ever being reached.

I suggest where such extraordinary circumstances arise the Speaker has a duty to explain his decision in terms of why the minority should be given the extraordinary power in the particular instance. To give the minority the power without explaining why, or even worse, by saying that there was no option for the Speaker, denies the nature of decision-making by Speakers.

Of course it goes without saying that the fundamental role of the Speaker is to ensure that it functions in the best manner possible. Keeping Parliament going is of the highest priority, and it is under the aegis of the Speaker alone that new legislation can be brought to completion. These are concerns not addressed by Madam Sauve.

If the Speaker cannot decide how to rule, or what the average opinion of the House, is, ordinarily he can place the matter before the House. But this changes when a vote (or division) is in progress. Recall that one expert considers it impossible for there to be a division upon a division[60] and so the Speaker must act on his own during a bell-ringing. In any event if the members are not in the House it is all the more difficult to obtain their decision, doubly so when the question is whether the House has a right to make any decision. That the Speaker must be in accord with the average opinion of the House is not very helpful when the all too likely event occurs where the House is divided on an issue. It should not be used as a convenient excuse for the Speaker to do nothing. To do nothing during a bell-ringing is to make a decision. The views of those refusing to vote are implicitly sanctioned.

At one point Madam Sauve said this:

> The House gets itself into a mess. The House gets itself out of a mess . . . There are no procedural means at my disposal to bring about a solution to the crisis.[57]

Harvie Andre, in criticising the Speaker's refusal to break up the energy bill on her own initiative responded:

> We are in a dilemma in that you have ruled that since there is no precedent you cannot address the question that this bill has no principle, or that it has a multitude of principles, and all the other problems. If the Speaker cannot do anything because there is no precedent, the Speaker can never do anything. Precedents are only established by Speakers. Having ruled that you cannot act because there is no precedent, Madam Speaker, you have in essence ruled

that no Speaker can ever act. But you have to start somewhere: which is the chicken and which is the egg . . . I humbly submit, Madam Speaker, that there is no protection of this chamber from tyranny of the majority in those circumstances.[61]

It is almost ludicrous to believe that when faced with an unprecedented situation the rules of the House forbid the Speaker to act. Any course of conduct in an unprecedented situation becomes a precedent. A decision not to intervene is no less a decision than one to intervene, and no less a precedent. A Speaker may wish to rise above the mire, wash his hands of the problem, and take shelter behind a pretense of not doing anything but in the end something has happened and the reason for it should be explained. The problem lies in the conception of what a precedent is and how the body of precedents should be used. I think Redlich has it right when he says new courses of conduct are to be *deduced* from the whole body of past rulings and usages. It may be a lot more difficult than applying one rule in two virtually identical situations but a Speaker's job is not supposed to be easy. Seeking an identical past situation is usually an exercise in futility and to do so exclusively is to deny oneself the opportunity and advantage of centuries of principles and traditions cascading through the individual rulings.

> The interpretation of both the written rules and tradition is in the hands of the Speaker and his deputies, with their rulings forming a fundamental part of procedure . . . it must be noted that rarely are two points of order precisely the same. While previous rulings may be useful guidelines, they may well lack the precision and certainty which might be desired.[62]

Speaker Sauve defends her course of conduct by alluding to 'our insistence on tradition'[63] in her statement on March 18, 1982. She then cites the 1961 bell-ringing in the House of Commons and the 1881 ruling by Speaker Brand[64] as precedents referred to her but, being that their fact situations were different, she could not draw any guidance from them. Although Speaker Sauve's statement was not a ruling and though she questioned whether the events of the bell-ringing should become enshrined as a precedent, the other jurisdictions where bell-ringing occurred clearly took their cue from Speaker Sauve. In Manitoba it was made clear that only the House could resolve the problem. Specific decisions about oppression and obstruction or the exact nature of the whips practice cannot be found.

The impossibility of a Speaker not setting precedents is almost self-evident but a few examples help establish the case. Note first, however, that Speaker Sauve had acquired a reputation for being loathe to set any precedents[65] or even to use her discretion, so that while Lucien

Lamoureux, Speaker from 1966–1974, would not hear frivolous points, his successor became much more lenient and this trend was followed by Speaker Sauve.[66] Sauve won praise for finally taking a stand in 1981 on questions of privilege:

> Sauve demonstrated her new-found, and hard-won authority. She told Conservative MP's to limit to just five minutes each the questions of privilege they have used to prevent the government from restarting the debate on its constitutional resolve. Yukon MP Erik Nielsen, who had orchestrated the filibuster, protested Sauve's ruling. But he accepted it, and, in what was the moment of truth for Sauve, he did so without suspicion or rancor in his voice.[67]

On May 17, 1983, Speaker Sauve, confronted with bells ringing to call members to vote on a motion to adjourn, said this:

> Our standing orders make no reference to this particular situation and the House has not provided any solution in this particular procedural problem. Under the present circumstances, I believe it in the best interests of the House that I should take an initiative.[68]

Without the Conservatives being present she declared the motion lapsed and adjourned the House until the following day. On May 25, 1983, she lapsed a motion to proceed to orders of the day when the time of adjournment arrived.[69] The Conservatives did not complain about these initiatives saying Speaker Sauve had acted within parliamentary rules.[70] Speaker Lloyd Francis succeeded Madam Sauve and summarised the new precedents.

> In the absence of any guidelines, certain initiatives have been taken by the Chair. Dilatory motions have been declared lapsed if not voted on by the hour of automatic adjournment. On three occasions, when the question before the House has been a substantive one, the bells have been suspended overnight and have continued the following day. This practice in no way interferes with the indefinite ringing of the bells when substantive questions are before the House . . . The Chair was also influenced by the need to maintain the dignity of the House. The spectacle of a lone occupant of the Chair and a gowned clerk, during the fullness of the night in an otherwise empty House, prisoners of a theoretical assumption that the House might be ready to vote at any time appeared to the Chair to be absurd . . . the credibility of the parliamentary institution is at stake. I believe we have the duty to protect it.[71]

It is difficult to see why a Speaker and gowned clerk attending an otherwise empty House is less absurd when it occurs during the day than when it occurs at night. Manitoba's Speaker, Jim Walding, recognised this and the fact that the official opposition whip had a veto over

the timing of any vote. When a division was requested on a dilatory motion he would say:

> Call in the members. Order please. I have been advised by the Official Opposition Whip that the opposition will not return before 2:00 p.m. tomorrow. In view of this advice, I have informed chamber staff that they will not be required to remain on duty outside normal working hours. I have made arrangements to secure the Chamber, and the sounding of the bells will be minimised to the greatest extent possible. I am accordingly leaving the Chair to return at 10:00 p.m. this evening in order to adjourn the House.[72]

In the House of Commons and elsewhere all bells were deactivated save one, to remind people that a division was in 'progress'. All of the above shows that a whole series of precedents were adopted in respect of bell-ringing. It is intellectual dishonesty then to say that intervention is prohibited because it would be a precedent.

Another example of a recent House of Commons precedent occurred when Speaker James Jerome declared that parliamentary secretaries could not be expected to be recognised by him during question period.[73]

A more striking example occurred in Australia on February 18, 1982, just before Speaker Sauve's first encounter with the bells. In the Australian House of Representatives Speaker Billy Snedden asked a certain member several times to withdraw his use of unparliamentary language. The member refused and was named by the Speaker. The Government House Leader then moved that the member be suspended from the service of the House. It became very clear that there was a potentially explosive situation. Mr. Speaker unsuccessfully asked the Prime Minister to make a conciliatory statement. Then Mr. Speaker said this:

> I have reflected on the matter and I have come to the conclusion that I need to take a solution which is going to enable the Parliament to proceed and I am therefore not going to put the motion in relation to the honorable Member for Wills. (I did not put the motion) because I judged the interests of the House overall to be better served and a superior consideration than the exercise of enforcement of the Standing Orders on this occasion. I will add only these words: my decision on this occasion is not to be taken in any way as a precedent in the future.[74]

This example shows the reluctance of Speakers to be accused of setting precedents, but it also shows a Speaker disregarding the Standing Orders, let alone an uncodified practice, for the best interests of the House and to allow Parliament to proceed.

Recall as well the example Speaker Brand took in 1881 to set a precedent to prevent paralysis of the House.

In addition to simply taking a bold initiative in accordance with a concept of Parliamentary tradition and function, a Speaker could rely on more specific rules to justify an intervention during a bell-ringing. For example, excessive bell-ringing may constitute a breach of privilege, either of an individual member or of the House as a whole. If it is a breach of the privileges of the House a Speaker should feel justified in acting on behalf of the House. If it is a breach of an individual's privilege the Speaker must nonetheless take an initiative for the matter of privilege cannot be raised during a division. A peremptory ruling will be required.

Privilege includes those rights which are absolutely necessary for the due execution of Parliament's power. Those rights are enjoyed by the House as a single entity for the protection of its members and the vindication of its own authority and dignity. Allegations of a breach of privilege:

> which amount to complaints about procedures and practices in the House are by their very nature matters of order . . . to constitute 'privilege' generally there must be some improper obstruction to the member in performing his parliamentary work in either a direct or constructive way.[75]

It has been frequently decided that the following matters fall within the category of breaches of privilege:

> 1. Disobedience to, or evasion of, any of the orders or rules which are made for the convenience or efficiency of the proceedings of the House.
>
> 2. Indignities offered to the proceedings of Parliament.[76]
>
> The Speaker is the guardian of the Common's privileges but their collective privileges must take precedence over the privileges of individual members.[77]

If a Speaker is uncomfortable with points of privilege he may still find a contempt of Parliament. An individual may be charged with contempt and punished by the House if he has offended the authority or the dignity of the House.[78] The procedure for this is the same as a question of privilege. A point is raised, the Speaker must decide whether it is indeed a question of privilege, then place the matter before the House for it to decide how to deal with the matter.[79] Nonetheless a peremptory ruling will still be necessary to avoid having a division on a division. It may, however, not be necessary to resort to the privilege procedure. In 1877 Speaker Brand ruled that any member wilfully and persistently obstructing public business without just and reasonable cause is guilty of a contempt and in 1881, in the face of such a contempt, Speaker Brand ended debate and held a vote on his own initiative.

Irregularities, Speaker's initiatives, and the absence of the opposition have all occurred during divisions and should serve as aids which point

the way for Mr. Speaker. For example, that the opposition may choose not to participate in a proceeding should not intimidate the Speaker. In Manitoba on August 1, 1983, the opposition refused to participate in a question period to protest a government attempt to force a debate on bilingualism to take place. Then the opposition left the chamber during a second reading of a *Pensions Benefits Act* to make the same symbolic protest.[80] It has happened that the entire opposition in the House of Commons has abstained from voting on the view that a Speaker's proposal that the House return to normal business, with the effect that a point of privilege being debated the day before be dropped, was not a proper question to put to the House.[81] It has happened that on a vote after a 1:00 closure no points of order were allowed, with the result that a vote on a committee report and the vote to concur in that report were held without the Conservative opposition being present.[82] These protests are not threats to Parliament, although a consistent series of this form of abdication would cause problems, perhaps ultimately leading to the suspension of members and by-elections for their seats. A Speaker must not be afraid to do what he considers right in the face of possible protests or even a motion of censure.

It is interesting to note that Canadian Speakers have not referred to the conduct of British Speaker faced with somewhat similar problems as bell-ringing. In England the members do not rise in their place on a division. Instead they pass into an 'aye' lobbyroom and a 'nay' lobbyroom. As they enter these rooms they are counted. The Speaker will appoint two members from each side to be 'tellers' and report the votes. These functions are roughly similar to the functions of whips in Canada during a division in that a division cannot occur without their cooperation and without their report to the Speaker. Also there is no set provision on how to proceed when faced with a refusal to act by any one teller. It has happened that a teller has refused. In that event Speakers have declared the other side had won the vote[83] or ordered a new division.[84] Where no members were willing to act as a teller for one side the Speaker declared the other side had won the vote.[85] Other irregularities also led to new divisions[86] but in no case was a division allowed to be delayed until a person decided he would perform his appointed function as teller. In these British examples it would not appear that the irregularities were the result of any concerted effort of an entire caucus to delay proceedings but rather the result of tellers acting independently.

Another tool for interpreting parliamentary rules and procedures is to adopt principles of interpretation developed in the interpretation of legislation by courts of law.

One such rule is that one cannot do indirectly what one is unable to do directly. Thus, where the rules manifestly prevent the affairs of the

House from being unilaterally suspended for an indefinite period by a minority decision this result should not be possible through indirect means such as an unintended development of a parliamentary practice.

Another interpretative principle is that rules must be given meaning. They are presumed to have been set down for a reason. Thus for the rules governing the adjournment of the House to have meaning, it should not be possible to obtain an adjournment simply by ringing the bells on a motion to adjourn or on some other dilatory motion. In addition the prescribed words 'Call in the Members' and the bells themselves lose all meaning if indefinite bell-ringing is permitted.

A final principle to note is that a grant of exceptional powers should be made in explicit language and not implied, (especially from a vaguely defined practice).

The precedents and interpretation principles that exist do provide a groundwork for deducing that bell-ringing is against the spirit and traditions of Parliament. The authorities and precedents agree that the Speaker has the discretion to intervene. A Speaker should not be seen pleading lack of jurisdiction in his own court.

How not to rule

When faced with a party boycott orchestrated through the party's Whip a Speaker is necessarily confronted with difficult questions. What is the exact nature of the convention that permits bell-ringing? How can continued bell-ringing be reconciled with the function of bells, with the Speaker's words 'Call in the Members', with the rules governing motions, with a right to have a vote, with the mandate of Parliament to function and govern, with the duty of members to attend the House and with a duty not to unduly obstruct the House? A Speaker who simply refuses to intervene saying that he has no discretion, that the practice is in order, and that the House has not provided him with guidelines to resolve the situation is abdicating his duty. The tough procedural questions arising from the bell-ringing should be addressed publicly. The Speaker most definitely should have considered those questions before deciding not to intervene. If so then how did he resolve the problems? A practice that is ruled in order should be described in detail. The opinion that a practice supersedes the spirit of the rules, as well as certain specific rules and that permits an interference with the ability of Parliament and of the division bells to function as they were intended to should be explained thoroughly. If the Speaker is of the opinion that bell-ringing is a legitimate tool of protest in an ever decreasing supply of ammunition for the opposition then the Speaker should say so. If the Speaker feels that a minority is being oppressed he should say so. If the Speaker is of the opinion that bell-ringing must not be infinite he should say so. If the Speaker views bell-ringing as a tool to protect either the majority or minority he should say for what

ends the tool is legitimate and should announce whether, in a given circumstance, he feels that the majority will rule. If the Speaker is of the opinion that only the party using bell-ringing can decide when majority rule will return that must be defended. To say nothing is an abdication.

One reason that a Speaker may decide to refuse to intervene is because he is afraid that he does not have the moral authority necessary to rule effectively. In a jurisdiction where Speakers are often chosen by the first minister, have highly partisan and even cabinet experience, are relatively inexperienced in procedure, and are offered the Speakership as a consolation prize for being excluded from cabinet, the concern is real. However any person with a strong respect for the institution of Parliament must realise that however flawed the process for choosing a Speaker is, Parliament must have a strong, independent Speaker. It is only common sense that the only way a Speaker will gain moral authority is through independent, impartial and well-reasoned conduct. The Speaker must do what he believes is right, must demonstrate those motives to the House by exposing the reasons behind his rulings, and must not be intimidated by repercussions that may arise in the face of his acting in such a manner. How else can a Speaker acquire moral authority? How much moral authority will be lost by hiding the reasons of a course of conduct or by being intimidated by an anticipated negative response? The March 1982 decision not to break up the omnibus energy bill did not discuss the main points raised by the Conservatives. Almost immediately after Speaker Sauve's curt dismissal the Conservatives set the bells ringing. Subsequent Speakers' statements and rulings followed this lead and shed little light on the procedural implications of permitting bell-ringing.

There can be no doubt that Madam Sauve and Manitoba Speaker Walding had almost no moral authority – the Houses had no confidence in their rulings. Well before the bell-ringing MPs and observers acknowledged that Speaker Sauve had little control over the House and that there were hostile feelings against her.[87] Speaker Walding had to survive a censure motion one year into his term as Speaker and only a brief perusal of Hansard reveals that Members were angry about the tenor of proceedings.[88] However, despite the frailties of Canada's Speaker selection process there have been good Speakers and where there is a lack of order in the House it must reflect on the quality of the Speaker of the day. Speaker Sauve judged that even if she had wanted to intervene to end the bells 'I feel at this point that perhaps I would be acting in a sort of vacuum'. The authority of the Speaker, she said, 'only goes so far as the House will allow it to go. When the Speaker does something in the House she has to be certain the House will accept it. I'm not certain that kind of climate exists at the present time.'[89] Speaker Sauve is wrong if she was implying that a Speaker

must prevent at all costs a motion of censure against him, especially if the perceived threat interferes with his ability to follow what he thinks is correct parliamentary procedure. Speaker Sauve was probably wrong if she thought the House would have been any more angered by an intervention in the bell episode than it was with her decision not to break up the Energy Security Bill.

In a recent article by Charles Robert, a table research officer of the House of Commons, the Speaker's conduct during the bells episode is tacitly justified. He emphasises that a prime concern of the Speaker was the anticipated aftermath. What if the whips did not return if ordered to do so? Would an intervention have appeared arbitrary or partisan? Would an intervention restore calm or cause serious damage?[90] Considerations such as these encourage members to threaten all manner of boycott and protest in order to influence the Speaker. If a whip refuses to enter after so ordered by the Speaker the vote should proceed, without him and his party if they choose. It has happened before and it will happen again that a vote has occurred in the absence of the opposition.[91] A Speaker should do what he thinks is right and not concern himself with guessing games as to what the House, or more accurately the losing side to a decision, will do after the decision is rendered. If his conduct is well explained he will be seen to have ruled in good faith to all sides of the House. It is highly questionable whether Speaker Sauve's inaction contributed any calm to the situation or avoided any future rupture in Parliament. Indeed, filibusters and bell-ringings occurred on several occasions afterward.[92] The Speaker should not be fooled into thinking he has a special ability to reduce conflict ir a highly polarised House on highly controversial bills where the oppo sition feels it has the majority of public support. There is especially no such ability when the Speaker resorts to inaction and inadequate explanations. The Speaker may aspire to control the conflicts but he is an arbitrator of procedure only, not an arbitrator of partisan ideological conflicts.

Neither should the Speaker be affected by his view of the legislation. Speakership by public opinion poll, that is to say allowing the perceived public opinion of the legislative conflict to influence the Speaker, is equally precarious, and is an example of the Speaker serving a master other than the House. Whether the public is protected by Parliament being allowed a full and fair hearing of a matter is the key issue. In Manitoba many commentators stress that one cannot properly grasp the situation before the Speaker without taking account of how highly charged the issue of bilingualism had become and how very bitter and embattled the opposition was. As is often said in legal judgments, however, hard cases make bad law. A Speaker must try to view matters from a procedural point of view and reflect without emotion and without feeling intimidated. Allowing too great a consideration for the public

turmoil created by an issue may well impair his ability to deal correctly with a matter of procedure.

One consideration that the Manitoba Speaker may have included in his deliberations is the previous consideration given to bell-ringing by the Manitoba House. In 1971 the members of the rules committee decided that the practice did not need changing, and when the Speaker placed it on the rules committee agenda in 1982 the committee refused to consider it. In 1983, the Government and Opposition House Leaders signed an agreement that would allow bell-ringing to last two weeks. The agreement did not specify if the two weeks would cover collective incidents or single incidents and whether two weeks meant 14 days or two weeks of normal House sitting time – 10 days. The House was prorogued after 12 days of bell-ringing on a single motion. Over 350 hours of bell-ringing had occurred to obstruct the passage of the proposals. In late 1983, the Government House Leader who signed the agreement was replaced. The new House Leader attempted to have the bells stopped as a point of order. When told only the House could stop the bells he moved a point of privilege. When the point of privilege went to division, the opposition began what turned out to be the last bell-ringing. In 1881 Speaker Brand was faced with a somewhat similar situation, having ruled in 1877 that obstruction was a contempt that the House could act on. When no rule changes were forthcoming and faced with a new obstruction he acted on his own.[93] The previous dealing of the bell-ringing may well have been decided by Speaker Walding to have been pertinent, but his rulings were not specific on the point. Does a Speaker have a right to take notice of party agreements that are not House documents? What weight do previous dealings have when the House or at least one side has changed its mind? These are still unanswered questions.

Conclusion

Many different causes of bell-ringing may be identified, most relating to a feeling of impotence among members and a realisation that our electoral system produces governments which do not adequately reflect public opinion. Many solutions to these problems are being discussed today but in the absence of a crisis they lack impetus.

Whether the opposition parties were indeed justified in their use of bell-ringing in different situations and whether their motives truly related to a feeling that the majority rule procedures in those circumstances were oppressive requires political judgment. These are issues which, in a more ambitious project, may well be worth investigating.

This paper has shown that bell-ringing creates many anomalies in its interrelation with other rules and indeed the spirit of parliamentary law. It has also shown that Speakers do indeed have the power and discretion to intervene to stop the bells. Whether or not a Speaker

intervenes his decision should be clearly elaborated, in order to enhance his moral authority and, if the decision is not to intervene, in order to justify this decision because bell-ringing, on its face, goes against a theoretical analysis of the purpose of the bells and the spirit of the rules.

Speaker Sauve quoted Josef Redlich as saying:

> Protection of a majority against obstruction and protection of a minority against oppression are both alike functions of the Chair. It is hardly too much to say that they exhaust the duties of the high office held by the impartial guardian of parliamentary law . . .[94]

I have the impression that after two weeks of mounting pressure and criticism, and continuous bell-ringing the Speaker had in mind physical exhaustion. I think a better interpretation of Redlich's words is that the entire Speaker's function consists of two things: protecting the minority from tyranny of the majority and respecting the principle of majority rule. An issue raising as many procedural problems as bell-ringing and which can only be justified as a means of protecting a minority must be explained by Speakers in those terms. A failure to do so is a failure to provide leadership and guidance. The bell-ringing situations in Canada thus far are marked by such a failure.

Appendix

Jurisdiction	*Time Limit on Bell ringing*
House of Commons – Canada	15 minutes respecting votes on supply, throne speech, and budget debates when proceedings have been interrupted to call such votes pursuant to the Standing Orders (S.O.). This rule was adopted provisionally in 1967 and permanently in 1968. See S.O. 12(2).
	No longer than 15 minutes to summon a quorum. Adopted provisionally in December 1982. See S.O. 5(3).
House of Commons – England	Eight minutes, determined by timing how long it takes a Member in the furthest office to walk at a measured pace to the House.
Alberta	Rules are silent although there is an eight minute limit by practice deter-

	mined the same way as in England. The date of adoption is unknown though a time limit has been observed for at least ten years.
British Columbia	Not less than two minutes and not more than five minutes. Adopted in 1930. S.O. 16(2).
Manitoba	Fifteen minutes, although the Speaker may grant an extension up to 24 hours after consulting with the government and official opposition whips, for the purpose of permitting absent members time to travel to the legislature. Adopted in June 1984 after the climax of the French language issue bell-ringing in February 1984. S.O. 10.
New Brunswick	Not more than five minutes. Adopted on 19 June 1963. S.R. 41(3).
Newfoundland	Not more than ten minutes. Adopted on 23 July 1979. S.O. 82(b).
Northwest Territories	No longer than 15 minutes to summon a quorum. Adopted 10 September 1983.
Nova Scotia	A reasonable period of time and in case longer than one hour. Adopted in 1980. Rule 38(4).
Ontario	Not more than five minutes on private members business. S.O. 64(g).
	Not more than ten minutes in Committee of the Whole House. S.O. 95(b).
	Not more than 20 minutes in Standing or select committees. S.O. 89(c).
	Not more than 30 minutes for votes prearranged by all-party agreement. S.O. 94(f).

	All of these rules were adopted before May 1980.
Prince Edward Island	Not more than five minutes. Adopted 24 March 1984. Rule 40(3).
Quebec	Speaker orders bells turned off when he considers they have rung for a sufficient period of time. Adopted 13 March 1984. S.O. 217.
Saskatchewan	No rules on this point.
Yukon Territory	Not less than two nor more than five minutes. S.O. 25(4).

(1731f)

1. *Bilodeau* v. *Attorney General of Manitoba*. [1981] 5 W W R. 393 (Man. C.A.).
2. See the Manitoba Court of Appeal decision in *Bilodeau*, *supra*, and the comments of the Supreme Court of Canada in the *Manitoba Language Reference*. The doctrine holds that in some cases a statutory command is directory only, having no consequences if not observed. In other cases identical words may be held to be mandatory, resulting in a nullity if not strictly observed. Decisions in *Pellant* v. *Hebert*, 1892, reported in (1981) 12 RGD 242; and *Bertrand* v. *Dussault*, 1909, reproduced in (1977) 77 DLR (3d) 459, decisions of Prud'homme J. Saint Boniface County Court, insisted on the observance of Article 23 of the *Manitoba Act* and were ignored and forgotten until very recently.
3. The Laurier-Greenway compromise ended in 1916, when English-only instruction became the official policy. Over time this policy was eroded by secret French teaching, by wilfully blind school division officials, and by small changes in legislative policy.
4. *Supra*, note 1.
5. *Ibid*.
6. House of Commons Debates, 18 March 1982, p. 15555–15557.
7. See minutes of the rules committee of the House (Manitoba), 14 October 1971, 10:00 a.m.
8. Andrew Nikiforuk, 'A Ringing Weekend', Globe and Mail, 17 May 1982, p. 1.
9. 'Saskatchewan NDP sets bells ringing over lawsuit', Winnipeg Free Press, 28 April 1984, p. 20.
10. See 'Hostility to Sauve growing in Commons', *Winnipeg Free Press*, 26 June 1982, p. 64.
11. See *The Parliamentarian*, vol. 63, no. 3, July 1982, pp. 159–60.
12. See note 8; Paul Palango and Rosemary Speirs, 'Legislature in limbo as Liberals walk out over sales tax', *Globe and Mail*, 15 May 1982, p. 1; Rosemary Speirs, 'Ontario Liberals end walkout over budget', *Globe and Mail*, 18 May 1982, p. 1.
13. 'Tory MP's in second day of filibuster', *Halifax Chronicle Herald*, 16 December 1982, p. 1; (Commons shut down again over Crown rate proposals', *Toronto Star*, 25 March 1983, p. A14.
14. *Ibid*.
15. *Ibid*.
16. *Canadian Parliamentary Review*, vol. 6, no. 3, Autumn 1983, pp. 36–7; 'Sauve cancels vote to end Tory boycott', *Winnipeg Free Press*, 28 May 1983, p. 1; 'Tories refuse to attack Sauve on adjournment', *Winnipeg Free Press*, 19 May 1983, p. 4; 'Sauve quiets bells again', *Winnipeg Free Press*, 25 May 1983, p. 14.
17. *The Parliamentarian*, vol. 64, no. 4, October 1983, p. 252; *Canadian Parliamentary Review*, vol. 6, no. 2, Summer 1983, p. 43 and vol. 7, no. 1, Spring 1984, p. 43; Manitoba Legislative Debates, for example 8–14 February 1984 exchanges concerning free votes and remarks by Gary Filmon, Wally McKenzie and Harry Enns; Proceedings in Standing Committee on Rules of the House (Manitoba), esp. remarks by Bud Sherman, pp. 39 and 47.
18. 'Saskatchewan NDP sets bells ringing over lawsuit', *Winnipeg Free Press*, 28 April 1984, p. 20.
19. 'Liberal celebration holds up Commons', *Winnipeg Free Press*, June 17, 1985, p. 59.
20. Josef Redlich, *The Procedure of the House of Commons*, (1908, London, Archibald Constable and Co.), vol. 1, p. 143.
21. *Ibid*.
22. House of Commons Standing Order (S.O.) 37.
23. House of Commons S.O. 35.
24. House of Commons S.O. 41.
25. House of Commons S.O. 34(2).
26. A recent example of filibuster by multiple amendment occurred during consideration of the *Western Grain Transportation Act* (Crows Nest Pass freight rates) when 174 amendments were proposed and 79 ruled out of order: *Canadian Parliamentary Review*, vol. 7, no. 1, Spring 1984, p. 43. *The Parliamentarian*, vol. 62, no. 4, October 1981, pp. 290–2 concerning an *Act to amend the Excise Tax Act and the Excise Act* where 135 amendments were proposed, these being grouped to 45. Voting on the bill took more than two hours and eleven

divisions; *The Parliamentarian*, vol. 64, no. 4, October 1983, p. 252, where the Manitoba opposition proposed an adjournment of the House from August until 31 December 1984. After losing the vote they moved adjournment until 30 December 1984, then to 19 December 1984. Finally the Speaker ruled the motions out of order there being no substantial difference between them. See also comments by Andy Anstett, Manitoba Standing Committee on Rules of the House, 30 April 1984, p. 45, where he shows that a 23 member opposition has, in theory, a possibility of making 11,638 speeches on one bill, taking 7,757 hours of debate.

27. Rules, Orders and Forms of Proceeding of the Legislative Assembly of Manitoba Rule 63.
28. A recent example of points filibuster occurred in April 1981 when the House of Commons Opposition raised 60 points of order and privilege and stopped Parliament's business for 12 days; 'Speaker Sauve shaken by MP's "scream therapy"', *Vancouver Sun*, 1 April 1981, p. A12; 'Opposition counters Liberal plan', *Winnipeg Free Press*, 2 April 1981, p. 4; 'Speaker feeling a little ragged', *Winnipeg Free Press*, 3 April 1981, p. 11; Michael Doyle, 'Tories claim debate delay as a victory', *Winnipeg Free Press*, 3 April 1981, p. 1; 'PC's used parliamentary rule book to hogtie Commons', *Winnipeg Free Press*, 6 April 1981, p. 11; Richard Gwyn, 'Filibuster has increased Jeanne Sauve's stature', *Winnipeg Free Press*, 8 April 1981, p. 7; 'Speaker of House "only a human in a golden prison"', *Vancouver Sun*, 9 April 1981, p. A7; 'Tories claim victory in patriation deal', *Vancouver Sun*, 10 April 1981, p. A1; 'Tory tactics called "fascist"', *Winnipeg Free Press*, 11 April 1981, p. 1; 'Fascist element in tactics of PC's. Trudeau suggests', *Globe and Mail*, 11 April 1981, p. 1.
29. 'Tory tactics called "fascist"', *Winnipeg Free Press*, 11 April 1981, p. 1; Richard Gwyn, 'Filibuster has increased Jeanne Sauve's stature', *Winnipeg Free Press*, 8 April 1981, p. 7.
30. A recent example of petition filibuster occurred during debate on the Crows Nest Pass freight rates, see *Canadian Parliamentary Review*, vol. 6, no. 3, Autumn 1983, pp. 36–7.
31. See 'Sauve quiets bells again', *Winnipeg Free Press*, 25 May 1983, p. 14, the NDP House Leader Ian Deans took the view that a motion to move to orders of the day should not lapse.
32. *Beauchesne's Rules and Forms of the House of Commons of Canada*, 5th ed., ed. Alistair Fraser, G. A. Birth, W. F. Dawson, (1978, Toronto, Carswell Co.), citation 742, p. 225.
33. See Appendix II.
34. Redlich, *op. cit.*, note 20, vol. II, p. 132.
35. John Hatsell, *Precedents of Proceedings in the House of Commons*, (1818, England, Hansard), vol. II, p. 198.
36. *Beauchesne's* 5th ed., *op. cit.*, note 32, 5th ed., citation 217, p. 74.
37. As quoted by Andy Anstett, *Manitoba Legislative Debates*, 23 January 1984, p. 5642 and Arthur Beauchesne, *Beauchesne's Parliamentary Rules and Forms*, 4th ed. (1958, Toronto, Carswell Co.), citation 63, p. 51.
38. John Bourinot, 'The House of Commons in Session', *The Canadian Monthly*, 1877, Toronto, p. 284.
39. John B. Stewart, *The Canadian House of Commons* (1977, Montreal, McGill-Queen's University Press), p. 47.
40. Norman Wilding and Philip Laundy, *An Encyclopedia of Parliament* (1958, London, Carswell and Co.), p. 55.
41. Philip Laundy, *The Office of the Speaker in the Parliaments of the Commonwealth* (1984, London, Quiller Press), p. 123.
42. Speaker Sauve, *House of Commons Debates*, 18 March 1982, pp. 15555–7.
43. In the Saskatchewan bell-ringing the eight member opposition of the 64 seat assembly rang the bells.
44. Rosemary Speris, 'Ontario Liberals end walkout over budget', *Globe and Mail*, 18 May 1982, p. 1.
45. See Yvon Pinard, *House of Commons Debates*, 30 March 1984, p. 2572.
46. Fred Youngs, 'NDP faced money concerns', *Winnipeg Free Press*, 29 February 1984, p. 3.
47. See Andy Anstett, *Proceeding of the Standing Committee on Rules of the House (Manitoba)*, 17 April 1984, p. 22.
48. See *Bourinot's Parliamentary Procedure*, 4th ed., ed. Thomas Flint (1916, Toronto, Cassell and Co.), p. 153.
49. See Speaker Walding, *Manitoba Legislative Debates*, 16–27 February 1984, p. 6097.
50. For example see Speaker Walding, *Manitoba Legislative Debates*, 6 February 1984, p. 5874.
51. Because there is a pre-arranged adjourning time, a motion to adjourn or concerning the order of business of the day becomes redundant when the day ends, and when that time arrives the Speaker can announce the House is adjourned.
52. When there is a motion to vote on a substantive issue then the vote takes precedence over the pre-arranged adjournment time. The Speaker must be prepared to hold the vote at any time.
53. *Beauchesne's*, 5th ed., *op. cit.*, note 32, citation 1, p. 3.
54. Speaker Sauve, *op. cit.*, note 42.
55. Hatsell, *op. cit.*, note 35, vol. II, pp. 239–42.
56. Laundry, *op. cit.*, note 42, pp. 35–6.
57. Redlich, *op. cit.*, note 20.
58. Speaker Sauve, *op. cit.*, note 42.
59. Hatsell, *op. cit.*, note 35, see p. 9 *supra*.
60. Bruce Ward, 'Why the bells can't save Jeanne Sauve', *Toronto Star*, 13 March 1982, p. B1.
61. Harvie Andre, *House of Commons Debates*, 2 March 1982, p. 15533.
62. *Beauchesne's*, 5th ed., *op. cit.*, note 32, citation 11, p. 6.
63. Speaker Sauve, *op. cit.*, note 42.
64. *Ibid.*, and see p. 6, *supra*.
65. Mary Tanigan, 'The Shadow over Parliament', *Macleans*, 22 March 1982, p. 28.
66. 'Tory tactics called fascist', *Winnipeg Free Press*, 11 April 1981, p. 1.
67. Richard Gwyn, 'Filibuster has increased Jeanne Sauve's stature', *Winnipeg Free Press*, 8 April 1981, p. 7.
68. 'Sauve cancels vote to end Tory boycott', *Winnipeg Free Press*, 18 May 1983, p. 1.
69. 'Sauve quiets bells again', *Winnipeg Free Press*, 25 May 1983, p. 14.
70. 'Tories refuse to attack Sauve on adjournment', *Winnipeg Free Press*, 19 May 1983, p. 4.
71. Speaker Francis, *House of Commons Debates*, 30 March 1984, p. 2569.
72. For example see Speaker Walding, *Manitoba Legislative Debates*, 6 February 1984, p. 5874.
73. 'Sauve quiets bells again', *Winnipeg Free Press*, 25 May 1983, p. 14.
74. *The Parliamentarian*, vol. 63, note 3, July 1982, pp. 183–4.
75. Joseph Maingot, *Parliamentary Privilege in Canada* (1982, Toronto, Butterworth and Co.), p. 13.
76. *Bourinot*, 4th ed., *op. cit.*, note 48, p. 56.
77. Laundy, *op. cit.*, note 41, p. 40.
78. Maingot, *op. cit.*, note 75, p. 14.
79. For an example see *Manitoba Legislative Debates*, 8 February 1984, starting at p. 5889, see *Beauchesne's* 5th ed., *op. cit.*, note 32, citation 80, pp. 24–5.
80. *Manitoba Legislative Debates*, 1 August 1983, p. 4739, in fact the opposition asked no questions during the 2:00 p.m. sitting 30 July 1983, nor during either question period on 1 August 1983.
81. Laundy, *op. cit.*, note 41, p. 116.

82. 'Angry Tories stage protest', *Winnipeg Free Press*, 22 June 1982, p. 4; *House of Commons Debates*, 21 June 1982, pp. 18708–11.
83. See *Journals of the House of Commons*, 3 April 1924, p. 121; 19 March 1946, p. 193.
84. *Ibid.*, 20 July 1939, p. 361; 13 April 1932, p. 151.
85. *Ibid.*, 22 January 1929, p. 83.
86. *Ibid.*, 9 April 1952, p. 189; 27 March 1957, p. 150; 5 June 1957, p. 222; 5 December 1962, p. 51.
87. 'Speaker of House "only a human in a golden prison"', *Vancouver Sun*, 9 April 1981, p. A7; Bruce Ward, 'Why the bells can't save Jeanne Sauve', *Toronto Star*, 13 March 1982, p. B1; 'Hostility to Sauve growing in Commons', *Winnipeg Free Press*, 26 June 1982, p. 64.
88. See *Manitoba Legislative Debates*, 29 June 1983, p. 4041, esp. Larry Desjardins, p. 4043: 'no rules at all'; *Canadian Parliamentary Review*, vol. 6, no. 2, Summer 1983, p. 43, vol. 6, no. 1, Spring 1983, p. 36.
89. Bruce Ward, 'Why the bells can't save Jeanne Sauve', *Toronto Star*, 13 March 1982, p. B1.
90. Charles Robert, 'Ringing in Reform: An account of the Canadian Bells Episode, of March 1982', *The Table*, vol. 51 (1983).
91. See p. 27, *supra*.
92. See pp. 2–4, *supra*.
93. See p. 6, *supra*.
94. Redlich, *op. cit.*, note 20, p. 150.

VIII. THE INTRODUCTION OF HIS ROYAL HIGHNESS, THE DUKE OF YORK

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On the morning of his wedding in July 1986 to Miss Sarah Ferguson, it was announced that Her Majesty the Queen had conferred the title of Duke of York on His Royal Highness, the Prince Andrew. Since 1474 when Edward IV granted the title to his son Richard, one of the young Princes murdered in the Tower of London, the title has been conferred traditionally on the second son of the Sovereign. The last holder of the Dukedom was the second son of King George V, who subsequently became King George VI, father of the present Queen.

The title of Duke of York gives the holder the right to sit in the House of Lords. So on Wednesday 11th February 1987, Prince Andrew was ceremonially introduced to the House. It was a very colourful occasion with a great sense of theatre. Although Introductions of new members of the House are commonplace, it is rare for a Royal Duke to have to go through the ceremony. Moreover the presence of television cameras in the House of Lords now gives a huge audience outside the Chamber a chance to view and enjoy part of the ceremonial procedures of the House. The last 'royal' introduction was that of the Prince of Wales (*The Table*, Vol XXXIX, p. 48), before the coming of television cameras to the House.

The Chamber was crowded at 2.30 pm when the Lord Chancellor took his seat on the Woolsack. Prayers had already been read at a meeting of the House for judicial business that morning. This had the advantage of allowing visitors to gain access to the crowded Galleries well before the House sat, rather than in a rush after prayers. Among the watchers were the Duchess of York and other members of the Royal Family, who were seated in a Gallery exactly opposite the Despatch Box where the Duke's Patent of Creation would be read and where he would take the Oath of Allegiance.

As soon as the Lord Chancellor was seated, Black Rod appeared at the Bar of the House and bowed. He then left the Chamber to conduct the Duke and his supporters into the House of Lords. The Procession entered the House in the following order:

The Gentleman Usher of the Black Rod
AIR CHIEF MARSHAL SIR JOHN GINGELL

Garter Principal King of Arms
SIR COLIN COLE
bearing His Royal Highness's Patent of Creation

The Earl Marshal
THE DUKE OF NORFOLK

The Lord Great Chamberlain
THE MARQUESS OF CHOLMONDELEY

H.R.H. THE DUKE OF KENT

HIS ROYAL HIGHNESS THE DUKE OF YORK
carrying his Writ of Summons

H.R.H. THE DUKE OF GLOUCESTER

The Duke's two supporters were his cousins, the Duke of Kent and the Duke of Gloucester. All three wore the scarlet and ermine robes appropriate to the rank of Duke.

The Procession advanced up the temporal (Opposition) side of the House, bowing to the Cloth of Estate behind the Throne. The Duke presented his Writ of Summons to the Lord Chancellor, while Garter King of Arms presented the Patent of Creation. These were handed to the Reading Clerk, and the Duke of York and his two supporters then returned to the Table of the House where the Reading Clerk read aloud both the Patent and the Writ of Summons. The first was a lengthy document, because Prince Andrew had been created not just Duke of York but also Earl of Inverness and Baron Killyleagh. The Patent covered these titles as well as the Dukedom. When the two documents had been read, the Duke of York took the Oath and signed the Roll. He was then conducted by his supporters to a Chair which had been placed on the left hand side of the Throne. Here he took his place in the House. The Duke then rose three times, doffing his hat on each occasion to the Lord Chancellor, who was standing by the Woolsack facing the Chair. The Lord Chancellor acknowledged the Duke's salutes by doffing his hat in return. Finally the Duke came down the steps of the Throne and shook hands with the Lord Chancellor. The procession then reformed in the order it had entered the Chamber and the Duke of York was conducted from the House. He and his two supporters later re-entered the Chamber, without their robes, and took their places on the Cross Benches from where they listened to the early proceedings of the House.

The different parts of the Chamber in which new members of the

House of Lords take their seats and salute the Lord Chancellor by rising and doffing their hats are regulated by an Act of Parliament of Henry VIII entitled 'An Act for placing of the Lords.' Barons are introduced at the bottom end of the Barons' Bench, the back bench on the temporal side of the House; Viscounts at the top end of the Barons' Bench; Earls at the bottom of the Earls' Bench (i.e. the Opposition front bench) and Marquesses and Dukes at the top end of the Earls Bench. Similarly Bishops and Archbishops are introduced on the other side of the Chamber, the spiritual side. However a special place is set aside for the sons of the Sovereign, notwithstanding that as Dukes they would normally be introduced at the top end of the Earls' Bench.

In the five hundred years since Richard, the second son of Edward IV was created Duke of York, the Journals of the House of Lords record only five occasions when Dukes of York have been introduced; 'assigned a seat' might be a more accurate way of describing the occasion. There have not been many Dukes of York during this period for a number of reasons. Henry VIII had only one son, Mary and Elizabeth I had none and Victoria apparently disliked the title, associating it perhaps with the somewhat undistinguished past holders. She was eventually persuaded to confer the title, not on her second son, but on the Prince of Wales' second son, the future King George V.

It is a feature worth recording that the second son has often succeeded to the monarchy, e.g. Henry VIII, Charles I,* James II, George V, George VI, so on each occasion bringing the title of Duke of York back into the Crown.

From time to time the position of Royal Dukes in the House of Lords clearly created some uncertainty among their Lordships as to where they should be placed and the Committee for Privileges were instructed to consider the matter on occasion. Yet the place adopted for the introductions of all Dukes of York, including that of Prince Andrew, is based on what Charles II wished for his brother, the future King James II. The Lords Journal of 30 May 1660 includes the following entries:

> The Earl of *Manchefter* acquainted the Houſe, 'That the Duke of *Yorke* and the Duke of *Glouceſter* commanded him to return Thanks to this Houſe as Members, and that Places may be provided for them.'
>
> Hereupon the Houſe named theſe Lords following, to attend His Majeſty, and acquaint Him, 'That, there being no Precedent that ſhews where their proper Places are, they deſire His Majeſty will pleaſe to conſult with what Perſons He pleaſes herein, and then to

*Never created Duke of York, holding instead a number of Scottish titles.

determine the Place Himſelf.' And afterwards their Lordſhips are to acquaint the Duke of *Yorke* and the Duke of *Gloceſter* with His Majeſty's Anſwer:

1 Comes *Northumb.* 2 Comes *Dorſett.*
4 Comes *Berks.*
3 Comes *Bridgwater.* 1 Ds. *Pagett.*
2 Ds. *Robertes.*

To go preſently.

The Earl of *Northumb.* reported, 'That the Lords Committees have waited on His Majeſty, concerning the Seats where the Duke of *Yorke* and the Duke of *Gloceſter* are to ſit in Parliament; and His Majeſty ſaid, "He conceived that the Seat on the Right Hand of the State, where the King of *Scotts* anciently was wont to ſit, will be of no more Uſe now, ſeeing that Title is involved in His Majeſty." And His Majeſty ſaid, "At the Parliament at *Oxford*, He Himſelf ſat in that Seat, as Prince of *Wales*: Therefore deſired that Place may be reſerved for the Prince of *Wales*; and that the Seat on the Left Hand of the State may be fitted ſpeedily for His Brothers the Duke of *Yorke* and Duke of *Gloceſter*."'

And accordingly the Houſe gave Directions to have it done.

On 22 April 1760, George II is recorded as having created his second son, Edward Augustus, Duke of York. He wished to have the advice of the Lords on where the new Duke should be placed. The Lords' Journals of 24 April 1760 contain the following entry in response to the King's request:

The Lord *Delawar* reported from the Lords Committees for Privileges, to whom it was referred to conſider of the Matter with which the Earl of *Holnerneſſe* acquainted the Houſ, by His Majeſty's Command, relating to the Place which His Royal Highneſs the Duke of *York* should occupy in this Houſe, 'That the Committee have met, and conſidered the Matter to them referred; and have alſo conſidered the Statute of the 31ſt of King *Henry* The Eighth, for placing of the Lords; and have come to the following Reſolution; *videlicet*, That it is the Opinion of this Committee, that His Royal Highneſs the Duke of *York* hath Place and Precedence in this Houſe next after his Royal Highneſs the Duke of *Cumberland*, and before the Archbiſhop of *Canterbury*, the Lord Chancellor or Lord Keeper of the Great Seal, the Lord Preſident of His Majeſty's Privy Council, the Lord Privy Seal, and all other Dukes; and that His Majeſty may direct his ſaid Royal Highneſs to be placed in a Chair, or Seat, to be prepared for him, on the Left Hand of the Cloth of Eſtate, if ſuch ſhall be His Royal Pleaſure.'

Which Report was read by the Clerk.

And the ſaid Reſolution, being read a Second Time, was agreed to by the Houſe.

This report seemed to provide a sufficient basis for the introduction of the next Duke of York, George III's second son, Frederick. There is no mention in the Journals that the matter was referred to the Committee for Privileges.

However in 1892 when Queen Victoria created her grandson, the future King George V, Duke of York she asked the House to consider his place, because he was her grandson and not her son. The Journals contain the following report from the Committee for Privileges:

> The Earl of Morley reported from the Lords Committees for Privileges, to whom it was referred to consider of the matter with which the Marquess of Salisbury acquainted the House, by Her Majesty's command relating to the place which His Royal Highness the Duke of York should occupy in this House; 'That the Committee had met, and considered the matter to them referred; and had also considered the entries in the Journals of this House of the 16th and 17th of June 1890, in the matter of the Recommendation from Her Majesty the Queen, relating to Her Majesty's grandson His Royal Highness the Duke of Clarence and Avondale's place in this House; and had come to the following Resolution; viz.
>
> 'Resolved, That it is the opinion of this Committee that His Royal Highness the Duke of York has place and precedence in this House next after His Royal Highness the Duke of Connaught and Strathearn, and before His Royal Highness the Duke of Cambridge, the Archbishop of Canterbury, the Lord Chancellor or Lord Keeper of the Great Seal, the Archbishop of York, the Lord President of Her Majesty's Privy Council, the Lord Privy Seal, and all other Dukes: and that Her Majesty may direct His said Royal Highness to be placed in a chair or seat to be prepared for him, on the left-hand of the Cloth of Estate, if such shall be Her Royal pleasure.'
>
> Which Report, being read by the Clerk, was agreed to by the House.
>
> '*Resolved* and *Adjudged* by the Lords Spiritual and Temporal, in Parliament assembled, That His Royal Highness the Duke of York has place and precedence in this House next after His Royal Highness the Duke of Connaught and Strathearn, and before His Royal Highness the Duke of Albany, His Royal Highness the Duke of Cambridge, the Archbishop of Canterbury, the Lord Chancellor or Lord Keeper of the Great Seal, the Archbishop of York, the Lord President of Her Majesty's Privy Council, the Lord Privy Seal, and all other Dukes; and that Her Majesty may direct His said Royal Highness to be placed in a chair or seat to be prepared for him, on

the left-hand of the Cloth of Estate, if such shall be Her Royal pleasure.'

The introduction as Duke of York of George V's second son did not give rise to any reference to the Committee for Privileges, nor did it in the case of Prince Andrew's recent Introduction.

IX. PARLIAMENTARY PRIVILEGE

AN EVALUATION OF THE 'REASONS FOR JUDGMENT' IN R -V- REX FREDERICK JACKSON, KEITH GODFREY HARRIS, HOWARD HILTON AND MORRES GEORGE, 1987, IN THE LIGHT OF TWO OTHER JUDGMENTS

BY M. J. ANDERSON

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In the Criminal Division of the New South Wales Supreme Court, on Friday, 27 February, 1987, Mr Justice Carruthers published the reasons for his findings in *R -v- Jackson et al.* Mr Jackson and his co-accused were indicted upon the charge of conspiring together between 1 October, 1982 and 1 August, 1983, for money to be given to Mr Jackson in his official capacity (as Minister for Corrective Services), in order that he should be corrupted into 'showing favour to certain persons in violation of his official capacity.'

The Crown sought to have admitted as evidence against Mr Jackson several pages of *Hansard* recording a speech made by Mr Jackson to the Legislative Assembly. The Crown desired to use *Hansard* as evidence of a consciousness of guilt on the part of Mr Jackson. It is important to understand that Mr Jackson, the former Minister for Corrective Services, was not being charged and tried because of what he had said in Parliament. The issue in this case was whether the Crown could use *Hansard* as evidence, to prove a conspiracy. Thus the question arose as to whether Article 9 of the Bill of Rights (1 Will. and Mary, sess. 2, c.2, 1688) prohibits the discussion in a court of law of the proceedings of the Parliament.

In the modern vernacular, that well quoted Article declares:

> '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'.[1]

Unlike the Federal Parliament of Australia and most other State Parliaments, the New South Wales Parliament has yet explicitly to enact its codes of Parliamentary Privilege. Instead, the privileges of the New South Wales Parliament are scattered throughout the Common Law, implied by necessity (*Armstrong -v- Budd* (1969) 71 SR (SNW) 386) and conferred by limited legislation (for example, the New South Wales Imperial Acts Application Act, 1969, No. 30 and the Parliamentary Evidence Act, 1901, No. 43.[2] Hence, because of the lack of statute law affecting Parliamentary Privilege in New South Wales, the law of precedence takes on even greater importance.

In *R -v- Jackson et al*, the Crown Prosecutor argued that Article 9 of the Bill of Rights simply meant that no member of Parliament could be prosecuted for what he said in Parliament. Owing to the judgment of the Court of Appeal in *Mundey -v- Askin*, (1982) 2 NSWLR 369, His Honour believed that the mere proof of what was said in Parliament, as recorded in *Hansard*, would be admissible. The difficulty arose, however, owing to how the Crown wished to use *Hansard* (that is, as proof of a consciousness of guilt on the part of Jackson).

Two important judgments had preceded this case: one was delivered by Mr Justice Cantor, the other by Mr Justice Hunt. Mr Justice Cantor presided over the pre-trial proceedings of *R -v- Lionel Keith Murphy*, publishing his 'Reasons for Judgement' on 5 June, 1985.

Mr Murphy was a former Federal Member of Parliament, having held a couple of ministerial portfolios, including that of Attorney-General and at the time of prosecution, was one of the seven judges comprising the High Court of Australia (the country's supreme court).

During proceedings, Mr Simos, Q.C. was granted leave to appear as 'amicus curiae' on behalf of the President of the Senate (the upper house of Parliament of the Commonwealth of Australia). Mr Simos submitted that Cantor J. should, of his own motion, disallow any question that might be asked in breach of Parliamentary Privilege: that is, Mr Simos urged the widest possible construction of Article 9 of the Bill of Rights, 1688.

Cantor J. rejected the wide reading of Article 9, opting instead for a narrower view, namely that:

> '. . . the words "impeached or questioned" carry with them the concept of having an adverse effect upon the freedom of speech or upon debates in parliament or upon proceedings in parliament.'[3]

that is,

> '. . . that the revelation in a Court of Law of what was said in a House of Parliament does not necessarily impeach or question what was said in Parliament. This occurs whether the revelation occurs by the introduction into evidence of a copy of Hansard or by a question put to a witness in cross-examination.'[4]

Cantor J. saw the wide reading of Article 9 suggested by Mr Simos, as crippled with a critical flaw. The judge reflected upon the language of Article 9, especially the final clause 'or place out of Parliament'. From his direct consideration and examination of the history and language of the Bill of Rights, with particular reference to Article 9, the learned judge concluded that the wide construction proffered by Mr Simos would necessarily embrace as a breach of the Article –

> '. . . any critical comment or discussion outside Parliament of what took place in Parliament.'[5]

Thus for Cantor J. the wide interpretation of Article 9 was unacceptable, because newspaper editorials and social gatherings involving political discussion, for example, had been going on and continued to go on daily. Since the House decided to take no action in respect of these continued breaches of Article 9, a wide construction therefore was not able to be entertained.

Thus, on another question that arose – whether witnesses before a parliamentary committee could be called to the stand in *R -v- Murphy*, Cantor J. held that such appearances would not constitute a breach of parliamentary privilege, because they would not necessarily be contrary to the Bill of Rights, 1688. In order for a breach of Article 9 to be constituted, there would have to be –

'. . . some adverse effect flowing from the cross-examination . . .'[6]

This issue of whether witnesses who appeared before Senate committees could be called to appear in criminal trials, in order to be cross-examined on their statements to such committees, emerged again during proceedings before Mr Justice Hunt in the Supreme Court of New South Wales on 17 March, 1986. The 'Reasons for Judgment' were published on 8 April, 1986.

Counsel, instructed by and acting on behalf of the President of the Senate, argued that such witnesses in the trial of *R -v- Murphy* (1986) 5 NSWLR 18 could not –

'. . . without breach of parliamentary privilege be cross-examined in relation to the evidence they had given before two Senate Select Committees or in relation to any statement they had given to such a committee.'[7]

The 'amicus curiae' submitted that:

'. . . by reason of Article 9, whatever is said in parliament (which includes what is said to a parliamentary committee) may not be commented upon, used to draw inferences or conclusions, analysed or made the basis of cross-examination or submission and no comparison may be made between what is said by someone inside parliament and what is said by him out of it.'[8]

Mr Justice Hunt rejected these submissions. He also held that since the party against whom the evidence was tendered was a person entitled to the benefit of the privilege and who had not objected to the evidence upon that ground, that person should not therefore anticipate that the trial judge would readily intervene of his own motion. Hunt J. supported the earlier determinations of Cantor J. who had stated that a trial judge had a duty (as did counsel) not to countenance any evidence seeking admission into the trial, which was clearly a breach of Parliamentary Privilege. Hunt J. added to this:

'. . . whether or not a duty to intervene arises in any particular case will obviously depend upon how readily apparent is the risk of such a breach at the time . . .'[9]

There was no question as to whether the proceedings of a Senate Select Committee were included within the Bill of Rights phrase 'debates or proceedings in parliament', because s.49 of the Constitution of the Commonwealth of Australia (63 and 64 Vict. c.12) declares:

'the powers, privileges and immunities of the Senate and of the House of Representatives and of the members and the committees of each House, shall be such as are declared by the Parliament and until declared shall be those of the Commons House of Parliament of the United Kingdom and of its members and committees, at the establishment of the Commonwealth'.

Thus, parliamentary committees and their proceedings were covered by the protection afforded by the Bill of Rights, 1688.

However, Hunt J. stated in his judgment that 'amici curiae' had misinterpreted what was meant by the phrase 'impeached or questioned' in Article 9:

'It is, in my view, quite wrong to assert as the applicants do assert, that *any* challenge, *any* questioning, *any* discrediting, or *any* disparagement of what is said in parliament or any attack upon it amounts to a breach of parliamentary privilege if it takes place in a court or similar tribunal, although conceding that such conduct does not amount to a breach if it takes place elsewhere.'[10]

From this position, Hunt J. construed that Article 9 had the narrow effect of guarding members of parliament and witnesses before parliamentary committees from legal challenge by way of Court (or similar proceedings) simply because they had exercised their rights of freedom of speech. Hunt J. contended that this stand was supported by and consistent with the 'relevant mischief which the Bill of Rights was enacted to remedy'[11]: that is, the use of the courts by King James II to visit legal consequences upon members of parliament simply for what they had said and done in parliament. The learned judge then proceeded to quote the context of Article 9.

Thus, Hunt J. held that in curial proceedings (civil and criminal actions) what has been said and done in the course of parliamentary proceedings may not be the subject of the action, but may be used as evidence of an offence committed elsewhere, or –

'. . . as evidence of a state of mind on the part of the member as at some other time and place or by way of admission by him as to conduct on his part at some other time and place.'[12]

Hunt J. referred to the case *Gipps -v- McElhone* (1881) 2 NSWLR

18 at 23, 25 (Full Court), where it was held (obiter) that evidence of what a member had said in parliament could be used to establish the motivation by malice of the member's actions at another place and time. This evidence was ruled admissible, despite its being absolutely privileged. Even though the Bill of Rights 1688 applies to the New South Wales Parliament, (owing to s.6 of the Imperial Acts Application Act, 1969) there was no mention of Article 9 in the judgment.

So in April 1986, Hunt J. explicitly dissented from the judgments in the cases of *Church of Scientology of California -v- Johnson-Smith* (1972) 1 Q.B. 522, *R -v- Secretary of State for Trade and others, ex-parte Anderson Strathclyde plc*, (1983) 2 All ER 233, *R -v- Wainscot Corporation* (1899) 1 WALR 77 and *Comalco Ltd. -v- Australian Broadcasting Corporation* (1983) 50 ACTR 1.

Instead Hunt J. provided four major rulings on Parliamentary Privilege, the thrust of which stated that witnesses and accused in curial litigation could be cross-examined on their statements in parliament or parliamentary proceedings and that a jury could be asked to evaluate any inconsistency that might arise between that said and done in Parliament and that said and done outside of parliament (provided, of course that what had transpired in parliament was not the cause of the action).

In the light of this legal climate, one can now embark upon an analysis of Mr Justice Carruthers' judgment in *R -v- Jackson, et al.*

On the thirteenth day of the trial, in the absence of a jury, the Crown Prosecutor informed the judge that he proposed to tender as evidence against Jackson (a former Minister for Corrective Services) several pages from *Hansard*, one page being a question without notice to Jackson and his reply to that question, regarding his relationship with Harris, one of his co-accused. A couple of other pages from *Hansard* recorded a speech made by Jackson to the House, after his resignation as a Minister of the Crown.

The Crown Prosecutor submitted that the *Hansard* evidence was admissible because it related to other issues in the trial and was 'by reference to the other evidence in the trial, patiently untrue'.[13] It was also suggested by the Crown that if the *Hansard* evidence were to be admitted then the jury would be satisfied to the 'requisite standard' that:

> '. . . Jackson had deliberately told lies in the House relating to material issues in the case and that his motive was a realisation of guilt and a fear of the truth'.[14]

That is, the Crown Prosecutor sought to use *Hansard* as a means of corroboration.

Both counsel for Jackson and counsel appearing as 'amici curiae' for the Speaker of the Legislative Assembly of New South Wales objected

to the tendering and admission of such evidence, on the ground that it would breach Parliamentary Privilege.

Mr Justice Carruthers rejected the approach made by the Crown Prosecutor.

Carruthers J. returned to the judgment of Brown J. in *Church of Scientology -v- Johnson-Smith* (1972) 1 QB 522. Brown J. held that an examination of the proceedings of parliament was not limited to the exclusion of a cause of an action but was to be extended so as to exclude its use to support a cause of action – that is, such evidence could not be used as either the 'causa sine qua non' or the 'causa causans'.

Carruthers J. also acknowledged his general support for the decision of Dunn, L.J., in *R -v- Secretary of State for Trade and Ors. ex parte Anderson Strathclyde plc.* (1983) 2 All ER 233. Dunn, L.J. had concluded that there could be no distinction between using a report in *Hansard* to support a cause of action arising out of Parliament and for using *Hansard* to support a ground for relief in a course of litigation over something which had transpired out of Parliament, for –

> 'In both cases the court would have to do more than take note of the fact that a certain statement was made in the House on a certain date. [They would have to be considered] with a view to determining what was the true meaning of them and what were the proper inferences to be drawn from them.'[15]

Hence the conflict with Article 9 of the Bill of Rights.

Carruthers J. distinguished the case of *Mundey -v- Askin* (1982) 2 NSWLR, 369 (actually held in 1975) from the present case, by considering the intentions of the Crown Prosecutor.

In *Mundey's* case (a defamation action) a *Hansard* report was tendered to prove as a fact that something was said in parliament. There was no debate or examination of the circumstances in which the parliamentary dialogue had taken place, or the motives of the participants.

However, in the Jackson trial, the Crown Prosecutor sought to go beyond the bounds of proving what was said in the House. He desired to establish that Jackson had misled the House with lies. The substance of these lies, it was argued, was related to matters which were material issues in the trial of Mr Jackson and his alleged fellow conspirators. According to the Crown Prosecutor, these lies of Jackson were motivated by a realisation of guilt and a fear of the truth.

Hence, Carruthers J. deduced that if *Hansard* were admitted in evidence for this purpose it would constitute a breach of the ambit of Article 9 of the Bill of Rights, for examination of the *Hansard* would necessarily have involved an inquiry into the motives and intentions of Jackson while before the House.

Thus, the Court would have been guilty of impeaching and questioning the debates and proceedings in parliament.

Carruthers J. therefore resorted to English and American precedents which demanded a wide reading of Article 9; without a wide construction, its purpose could not be effected. The interests of parliament as a whole are paramount to those of the individual. Hence, Carruthers J. endorsed a statement by Gibbs, A.C.J. in *Sankey -v- Whitlam* (1978) 142 CLR 1 at 35:

> '. . . a member of Parliament should be able to speak in Parliament with impunity and without any fear of the consequences.'

Thus with 'unfeigned respect', Carruthers J., (a judge junior to Hunt J.) rejected Hunt's J. narrow construction of Article 9 of the Bill of Rights. For Carruthers J. the mischief that Article 9 sought to cure was not just the protection of the exercise of the freedom of speech and debates or proceedings in parliament from impeachment or questioning in a court or place out of parliament, but included the protection of *Hansard* and a Member of Parliament's immunity from prosecution by assertion from the Crown that lies told in the House were:

> '. . . eloquent of his guilt of a criminal offence the foundation of which was not something done or said in the Parliament.'[16]

Carruthers J., thus upheld the Privileges of the Parliament of New South Wales. However, his judgment delivered on 27 February, 1987, was preceded by a statement from the President of the Senate on 4 June 1986 concerning Parliamentary Privilege. In an unprecedented step the President initiated legislation – the Parliamentary Privileges Bill, 1986. Such action was taken by him in direct response to the judgments of Cantor J. and Hunt J. Both the President and the Senate had felt these judgments imposed a serious threat upon the freedoms of Parliament as conferred by Article 9 of the Bill of Rights, 1688. The Bill supports a two-fold purpose: firstly, to provide for principal changes in the law recommended by the Joint Select Committee on Parliamentary Privilege (Final Report, October 1984); and secondly, to avoid the consequences of the interpretation of Article 9 of the Bill of Rights, 1688, as offered by the judgments of Mr Justice Cantor and Mr Justice Hunt. At the time of writing of this article, the proposed Bill has been passed in the Senate and the second reading debate adjourned in the House of Representatives.

Although the New South Wales Joint Select Committee upon Parliamentary Privilege published its findings and recommendations in September 1985, no legislation has yet been proposed.

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1. *Sources of English Legal History*, Evans, Michael and Jack, R. Ian (eds.) Butterworths, Sydney, 1983, p. 354.
2. For elaboration refer to article vi 'The Joint Select Committee on Parliamentary Privilege (New South Wales)', Cooksley, G. H., *The Table*, Vol. LIV, 1986, Houses of Parliament, London.

3. p. 6. To date this case is unreported. Therefore all page references refer to the typed judgment distributed by the Supreme Court of New South Wales, as appeared in *Parliamentary Privilege. Evidence of Parliamentary Proceedings in Courts. Documents presented to the Senate*, October 1986.
4. *Id.*
5. *Op. cit.*, p. 5.
6. *Op. cit.*, p. 6.
7. Refer to the precis of the case in the headnote, para. E.
8. *Ibid.*, para. F.
9. *R -v- Murphy* (1986) 5 NSWLR 18 at 40.
10. *Ibid.* at 30.
11. *Id.*
12. *Ibid.* at 34.
13. p. 2. At the time of writing *R -v- Jackson et al* (1987) had not been reported. Therefore all page references refer to the judgment supplied by the Supreme Court of New South Wales.
14. *Id.*
15. *Ibid.* at 7.
16. *Ibid.* at 10.

X. CONSTITUTIONAL REFORM IN NEW ZEALAND

BY D. G. MCGEE

Clerk of the House of Representatives, New Zealand

In recent years Canada has taken steps to 'patriate' her constitution and last year's volume of *The Table* records the severance of most of the remaining constitutional links between Australia and the United Kingdom. In 1986 New Zealand enacted its own version of constitutional reform with the passing of the Constitution Act 1986 which came into force on 1 January 1987.

There was no question of the New Zealand constitution being patriated in the Canadian sense. For one thing, New Zealand does not have a written constitution in the sense of a fundamental law which is subject to special rules for its amendment. (From this point of view, the title of the legislation – Constitution Act – is somewhat misleading.)

Secondly, the body of law which deals with the rules by which New Zealand is governed (its constitutional law) has been under New Zealand's control since 1947, when the New Zealand Parliament assumed full power to amend the Imperial legislation that had granted it self-government in 1852.

The Constitution Act 1986 was the result of a study carried out by a committee of senior officials in 1984–85. The Act gathers together in one piece of legislation all of the important legislative provisions touching on the government of New Zealand. It also makes a number of significant amendments to these provisions.

Insofar as the reform exercise had one cause, it resulted from a rare occurrence in New Zealand – a constitutional crisis.

In July 1984 the National party Government was defeated at a snap general election. The incoming Labour party Government believed that an immediate devaluation of the dollar was necessary and asked the outgoing Government (which was still legally in office) to effect this. The defeated Prime Minister did not agree that a devaluation was necessary or desirable and disputed that he was obliged to carry it out on behalf of his successor.

One solution to this would have been for the National Government to have resigned immediately (as in the United Kingdom for instance) and for the new Labour Ministers, or at least some of them, to have been sworn in to office. However, this course did not appear possible because of the then state of the law which required that no person could be appointed as a Minister unless 'at the time of appointment' that person was a Member of Parliament. Under New Zealand's elec-

toral system generous provision is made for absentee voting, with the consequence that although, with few exceptions, the result of the election is known on polling day, the final result in each electorate is not declared and the writs are not returned until 10 or 12 days later. Not until then does a successful candidate become a Member of Parliament and therefore eligible to be appointed as a Minister.

The 1984 impasse was resolved by the Prime Minister accepting that during this interregnum the outgoing Government's conduct was subject to certain constitutional conventions and that these involved it acting on the advice of the incoming Government on a matter of economic significance, like devaluation, that could not be delayed until the incoming Government was in a position to take office. He therefore devalued the dollar in accordance with the wishes of the Labour party.

However, these events had revealed that the rules for the transference of power between different Governments at least required review, for a leisurely succession to office of a new Government might, in certain circumstances, be undesirable. When setting up the Officials' Committee to study this matter, Cabinet also gave it a brief to consider a general reorganisation of constitutional provisions with a view to the enactment of one New Zealand Act which would bring together the most important constitutional provisions in existing legislation.

The Officials' Committee's report was published in February 1986 and annexed to the report was a draft bill to implement its recommendations. A Constitution Bill was subsequently introduced by the Minister of Justice and this Bill passed through all its stages with very little debate either in the House or in the community at large.

With the enactment of the Constitution Act, the previous Imperial legislation (the New Zealand Constitution Act 1852) is repealed, with the result that the legislative provisions containing the rules for the government of New Zealand are now wholly contained in New Zealand legislation. In this sense, the New Zealand 'constitution' has been patriated.

Salient features of the new Act

1 The Sovereign

For the first time, legislation expressly provides that the Sovereign in right of New Zealand is the head of State of New Zealand. The former requirement that on the demise of the Crown members of Parliament must swear an Oath of Allegiance to the new Sovereign, is abolished.

2 Appointment of Ministers

The problem alluded to above has been overcome by allowing a person who was a candidate for election at the preceding general elec-

tion to be appointed as a Minister of the Crown with the proviso that unless that person becomes a member of Parliament within 40 days of the appointment, he or she vacates office.

In the circumstances of 1984 it would have been possible for the leader of the Labour party to have been appointed Prime Minister on the day of the election and some 10 days before he was formally declared elected as a member of Parliament. It is not intended that in the ordinary case there should be undue haste in changing Governments. The 10 or 12 days followed for a changeover is seen as being a dignified and efficient means for the transfer of power. However, the new provision does ensure that, in an emergency, a new Government is in a position to take office straight after the election.

3 Parliament of New Zealand

When self-government was conferred on New Zealand, the power to make laws was vested in a General Assembly of New Zealand consisting of the Governor-General, the Legislative Council and the House of Representatives.

The Legislative Council was abolished in 1951 and the Sovereign did not appear to be a constituent part of the General Assembly although, under legislation first passed in 1953, the Sovereign could exercise any of the statutory powers of the Governor-General.

The new Act alters the situation in a number of ways. It creates a Parliament of New Zealand in place of the General Assembly. It is this body which has full power to make laws. The Parliament of New Zealand consists of the Sovereign in right of New Zealand and the House of Representatives.

The Act provides that a Bill which has been passed by the House of Representatives shall become law when assented to by the Sovereign or the Governor-General. The provision omits a reference contained in the previous law to the withholding of the Royal Assent.

This was done over the objections of a minority of the Officials' Committee and occasioned the only dissenting speeches on the Bill's provisions during its passage through the House. It does not *appear* to have altered the constitutional position that the Sovereign or the Governor-General, acting on advice, may withhold assent.

The previous law contained no time requirements for the General Assembly to meet following a general election. In practice, a meeting had to be held before 30 June following the election in order for supply to be obtained. The new Act requires Parliament to meet not later than six weeks after the day fixed for the return of the writs for the general election. In practice this means that it must meet within two months of the holding of the election.

It is still the Crown which, by proclamation, appoints the actual day for Parliament to meet, but provision is made for Parliament to be

summoned, prorogued, or dissolved by a Proclamation which becomes effective on being publicly read by some person authorised to do so by the Governor-General in the presence of the Clerk of the House of Representatives and two other persons. This form of proceeding is not intended to replace the normal mode whereby a Proclamation becomes effective on being published in the Government gazette, but it is intended to provide a speedy alternative means of summoning, proroguing or dissolving Parliament if necessary. Finally, it is made clear that Parliament can, if necessary, be summoned to meet on a day earlier than that to which it stands prorogued.

4 House of Representatives

There has over the past few years been some academic debate about whether the House of Representatives was a continuing body with a fluctuating membership or whether it went out of existence on the dissolution of the General Assembly.

In a court case some years ago (*Ualesi v. Ministry of Transport* [1980] 1 NZLR 575) a person convicted on a drinking driving charge argued on appeal that the breathalyser device used to test him had not been approved by the Minister of Transport as required by law, because the Minister who had approved it had not been validly appointed as Minister. He had not been validly appointed, it was said, since at the time of his purported appointment as Minister he was not a member of Parliament as the House did not exist at that time and no one can be a member of a non-existent body. The time at which the House was said to come into existence was variously argued to be the date of the return of the writs, the date the General Assembly was summoned to meet, and the date on which it actually did meet. The judge in fact held that the House never went out of existence and that the Minister had been validly appointed. Despite his ingenious argument, the defendant was disqualified from driving. The new Act puts the question beyond doubt by providing that the House shall be regarded as always in existence, notwithstanding the dissolution of Parliament.

There are new provisions dealing with the term of office of the Speaker and members of Parliament. To clear up doubt, it is now expressly provided that a successful candidate legally becomes a member of Parliament on the day after the return of the writ for the election and holds office until the close of polling day at the next election. (This was enacted by way of an amendment to the Electoral Act as part of the constitutional reform.) It is also expressly provided that the Speaker holds office until the close of polling day at the next election instead of ceasing to hold office on dissolution.

5 Judiciary

As befits a Constitution Act, a section is reserved for the judiciary. Two constitutional provisions dealing with the removal of judges and the non-reduction of judges' salaries are included. The power of suspending a judge of the High Court is removed and the law on removing a High Court judge is clarified to provide that the only manner in which a judge can be removed is by the Sovereign or Governor-General following an address from the House of Representatives on the grounds of misbehaviour or incapacity.

XI. THE CHANNEL TUNNEL BILL IN THE HOUSE OF COMMONS

BY L. C. LAURENCE SMYTH

Senior Clerk, House of Commons, United Kingdom

The History

The proposal to build a fixed link between Britain and France has a long history, dating back to Napoleonic times, if not earlier. The most recent attempt to build the tunnel was abandoned by the British Government in January 1975. A Treaty between the British and French Governments, signed in November 1973, had been followed by the passage of the Channel Tunnel (Initial Finance) Act 1973, providing for Treasury guarantees for loans connected with the project. The Bill to authorise the construction of the Tunnel was introduced into the House of Commons in November 1973 and managed to get as far as its Report stage, despite the two general elections in 1974, before the project was abandoned.

The Transport Committee

The present proposal has its origin in a British Rail initiative early in 1979 to submit a feasibility study to the Department of Transport for the construction of a single track railway tunnel under the English Channel for the conveyance of passenger and freight trains between Great Britain and the European mainland.

The departmentally related select committees were established in 1979, following the approval of the 1977–78 Procedure Committee Report.[1] The Members of most of the new select committees were nominated on 26 November 1979. At its first public meeting on 23 January 1980, the Transport Committee took evidence from the Minister of Transport and officials on the organisation and responsibilities of the Department of Transport.[2] The Minister told the Committee that no decision had been taken on the Channel tunnel, and that he would welcome an investigation of the subject by the Select Committee, although he added, 'far be it from me to suggest what the Select Committee should look at'.[3]

The Transport Committee resolved on Tuesday 25 March 1980 to inquire into the Channel Link.[4] A week later, the Committee made a Special Report to the House asking for the power to appoint at least one sub-committee.[5] The Committee drew attention to its difficulty in carrying out its promised inquiries into the annual public expenditure White Paper and into an important White Paper on roads policy as well

as an inquiry into the prospect of fixed Channel link which the Committee regarded 'as a matter of urgency'.[6] The Transport Committee was not alone in its criticisms of the limitations of the new departmentally-related select committees, but to date there has been no extension of the power to appoint sub-committees beyond the four allowed in the Standing Order (one each to the Treasury and Civil Service, Home Affairs and Foreign Affairs Committees and a 'joint sub-committee' on nationalised industries, which has never met).

The Committee took oral evidence in public on 16 occasions between May and November 1980, and reported in February 1981.[7] The Committee reviewed the history of the previous tunnel project, and the projected growth of non-Channel traffic, and concluded that 'we are in favour of facilitating the construction of a fixed Channel link'.[8] The Committee identified three main options: a tunnel, a submerged tube, a bridge. The Committee considered a fourth 'do-nothing' option but concluded 'although it should not be the function of Parliament to give *subsidised* support to a new form of Channel crossing which would undermine the profitability of existing modes, it is equally not the role of Parliament to prevent the development of new modes which would fairly compete with existing operators, even if some existing operation were to suffer in consequence.'[9] The bridge and submerged tube options were considered by the Committee to rely too heavily on unproven technology to be realistic possibilities in the near future. 'If it is considered desirable to proceed with the choice of a fixed link option and to undertake its construction within the reasonably near future and with reasonable certainty about the construction time and cost involved, that option must inevitably take the form of some kind of bored railway tunnel'.[10] The rail-only option was regarded by the Committee as the least damaging to environmental interests and to the competing cross-Channel operators since some freight and passengers would be attracted away from road vehicles to the trains, with all vehicular traffic continuing to use the ferries. The Committee rejected the possibility of a road link through a tunnel on practical grounds.[22] Nonetheless, the Committee thought that it would be unwise to rule out the provision of a vehicle-carrying facility at a later date and suggested that an enlarged tunnel should be built to allow for a subsequent introduction of such a service. The Committee endorsed the Government's reluctance to commit public money to the project, concluding that it was 'right that the burden of financing a Channel link should fall overwhelmingly on the private sector'.[12] The Committee called for a full debate in the House on a Government White Paper containing both a reply to the Committee's Report and the Government's own firm proposals.[13]

The Committee took evidence from the Secretary of State for Transport on Wednesday 17 February 1982, who presented an interim reply to the Committee's Report.[14] The chief developments had been the

agreement between the British Prime Minister and French President at a September 1981 summit meeting to establish a joint study group and the completion of a report on the proposals for a fixed Channel Link by Sir Alec Cairncross KCMG, a former Head of the Government Economic Service, who had chaired the Advisory Group responsible for studying the abortive project of 1974. The Committee published the full Cairncross Report with the Minutes of Evidence of the meeting on 17th February 1987. Sir Alec's conclusion was that 'there is no overwhelming case for a fixed link' and that the margin of advantage in having a fixed link would be rather low. He pointed to the considerable extra traffic possible in a twin-tunnel system for a relatively small additional construction cost.[15]

In the first three years since the Channel Tunnel project had been revived, the scheme most likely to succeed had grown from a single tunnel only large enough to take standard trains, to a pair of tunnels each large enough to accommodate vehicle-carrying services from one terminal just outside one end of the Tunnel to the other. During this period, the conservation interests had been muted and the focus of attention had been mainly on the alternatives to a rail-only link, although the existing cross-Channel services had begun to develop the case for a 'do-nothing' option. The major constraints were the decision of the British Government not to commit public money to the scheme and the delicacy of reaching agreement with the French Government. In addition, some observers detected a reluctance in senior Government circles to endorse a rail-only solution while any possibility of a 'drive-through' link remained. Parliament's involvement had been chiefly through the select committee system, which had allowed the Transport Committee to pick up a hint from the Minister and conduct an inquiry which helped to clarify the issues and narrow the options.

The Choice

The Report of the Joint Study Group of British and French officials, which was published in June 1982, concluded that the balance of advantage lay with twin bored rail tunnels with a vehicle shuttle, constructed, if necessary, in phases. The Secretary of State for Transport and his French opposite number accepted an offer from a group of bankers to examine the conditions necessary for a fixed link to be financed by the private sector. The Franco-British Channel Link Financing Group reported in May 1984. The bankers concluded that a twin-bored rail tunnel with a vehicle shuttle service was the only scheme likely to attract adequate private financing. The Government remained firm in its position 'that any project would have to be financed entirely without the assistance of public funds and without commercial guarantees by the Government.'[16]

The British and French Governments agreed on 14th November 1984

to set up a working group of officials to prepare guidelines for potential promoters to submit schemes for a choice to be made by the two Governments. The Invitation to Promoters, which was published on 2nd April 1985, laid down the financial framework within which Promoters would have to operate. Of the nine schemes submitted before the deadline on 31st October 1985, four were found to comply with the terms of the Invitation to Promoters. The Government announced its intention of making a decision by January 1986, and the Transport Committee accordingly took evidence on two successive days in November and made a Report on 2nd December 1985.[17]

By the autumn of 1986, the operators of cross-channel ferry services based in Dover had formed a company (Flexilink) to argue the case against a fixed link on economic grounds. The Transport Committee took evidence from Flexilink, but did not address directly the question of whether a fixed link was justified. The Committee's Report reflected some disagreement within the Committee: 'It is not a subject on which there is unanimity among those submitting evidence, nor among Members of the Committee, indeed some Members see no economic or social necessity for such a link. However, as we accept there appears to be *Government momentum* in favour of a fixed link, we have concentrated much of our analysis on a consideration of which project might most readily meet the criteria we consider important if a decision in favour of the fixed link is finally taken.'[18] The 'Government momentum' discerned by the Committee was critically dependent on the ability of the private sector to raise the money for construction on the financial markets and to run the operation at a profit.

The schemes considered by the Committee were a bridge (Eurobridge), a combined road/rail tunnel scheme (Channel Expressway), twin bored rail tunnels with a vehicle-carrying shuttle service (Channel Tunnel Group) and a combined bridge/tunnel scheme involving the construction of the 'islands' in the Channel at either end of a tunnel, each linked by a bridge to the nearest mainland (EuroRoute). One of the schemes, Channel Expressway, was proposed by British Ferries Ltd, one of the ferry operators, whose Chairman argued 'the Governments are going to award a concession and therefore it is irrelevant whether or not there is a case for the fixed link.'[19] The Committee reviewed the criteria according to which the choice should be made, and recommended that 'if the Governments decided to go ahead with a fixed channel link, their choice would lie with the Channel Tunnel Group. Only if the Governments consider a fixed road link to be indispensable should the choice fall on EuroRoute.'[20]

The decision in favour of the Channel Tunnel Group scheme was predictable, given the Government's insistence on a scheme that was practicable and profitable. The practicability consisted in the construction of twin-bored railway tunnels; the profitability arose from the

addition of a vehicle-carrying shuttle train facility. The shuttle exacerbated the environmental impact of the Tunnel by increasing the size of the terminal itself and increasing the flow of road vehicles to the shuttle terminal, while reducing the probability of freight being attracted to rail. More significantly for its competitors, a shuttle facility would be in direct competition with the existing ferry services.

The Transport Committee's Report had looked ahead to the parliamentary procedures to be followed in authorising the construction of a fixed link. The Committee recommended that a substantive debate should be held before the signing of a Treaty between the UK and France.[21] The Committee noted that the necessary legislation would be introduced in the form of a hybrid bill. Although introduced as a public bill by the Government, there would be an opportunity for organisations and individuals to present petitions to the House against the provisions in the Bill, and for Petitioners to have their cases heard by a select committee to which the Bill would be committed after Second Reading. In a general statement of hybrid bill procedure, the Transport Committee pointed out that 'the hybrid bill procedure in effect allows little discretion to the committee on the bill. Much depends upon the attitude of the promoter of the bill and his willingness not to challenge the *locus standi* of the petitioners.'[22] The Committee reported the statement of the Government Counsel at the outset of the 1974 select committee stage that 'the Secretary of State has decided to take no formal objection to the *locus* of any of the Petitioners.'[23] The Transport Committee recommended 'that this precedent be followed, tha' the fullest possible latitude again be allowed to petitioners and that a those whose petitions conform to the basic requirement of relevanc be allowed to be heard.'[24] It is perhaps surprising that the Committe invoked such a 'precedent'; the circumstances surrounding each hybrid Bill are different and each select committee on a hybrid bill has been faced with different problems. As it turned out the 1986 Select Committee on the Channel Tunnel Bill was faced with a number of problems that were not 'precedented' by the experience of the Select Committee on the 1974 Bill. Nor was the 'precedent' well founded in the actual case of the 1974 Select Committee. Government Counsel did in fact later in the proceedings object to certain Petitioners being heard on matters that were, in the Government's view, part of the principle of the Bill, and also argued that two associations which were among a number of organisations presenting a joint Petition should only be heard 'upon such of the allegations in the petition concerning them to the extent, if at all, that they can satisfy the Select Committee that their rights and interests may be affected and that their objections, as expressed in the Petition, are not directed to matters affecting the principle of the Bill.'[25] In argument, Government Counsel submitted that 'those two societies cannot show that their rights and interests may

be affected in a manner different from that in which the interests of members of the general public are affected.'[26] The Select Committee resolved that the organisations had no *locus standi* before the Committee.[27] The 'basic requirement of relevancy' proposed by the Transport Committee was not apparently intended to conflict with the well-established rule that the decision of the House on Second Reading should be regarded as endorsing the principle of the Bill.

The Government arranged a full day's debate on a Motion for the Adjournment on Monday 9th December 1985.[28] In opening the debate, the Secretary of State for Transport explained that no decision had yet been taken on the choice of a fixed link scheme, or whether a fixed link should be built at all. His opening speech was largely devoted to the procedure to be followed by the Bill, and the rejection of a public local inquiry. Under the Town and Country Planning Acts and the Highways Acts, public inquiries have become widely used procedures in the United Kingdom. The essence of the public inquiry system is that a salaried inspector collects all the evidence and reports to the Secretary of State, who may exercise his statutory powers to accept, reject or vary the inspector's recommendation. The Secretary of State pointed out that in the case of the Channel link, a public inquiry would be in addition to, rather than instead of, a hybrid bill, since the Secretary of State had no statutory power to authorise many of the necessary works and concessions which were needed for rail installations. The Secretary of State for Transport made clear his discontent with the existing planning system: 'Delay has become a weapon used under our planning procedures to frustrate development. I have to tell the House that a lengthy public inquiry would sound the death bell for the link.'[29] The Opposition front-bench spokesman argued that a full public inquiry was essential in order to reach a reasoned decision on a project of such magnitude as the fixed link. The House divided on the Adjournment Motion, with a small number of Government backbenchers joining the Opposition in the Aye lobby. The Motion was defeated by 277 to 181.

The joint decision of the United Kingdom and French governments was announced in Lille on Monday 20th January 1986, by the British Prime Minister and the French President, to support the Channel Tunnel Group's proposal for twin railway tunnels with a shuttle service. In his statement to the House of Commons on the same day, the Secretary of State for Transport announced that the Channel Tunnel Group had undertaken to produce proposals by the year 2000 for the construction of a drive-through link. The clear favourite had emerged the winner. There remained a good deal of hostility to the project, however, chiefly on the grounds of the Tunnel's effect on competing cross-Channel services, and its impact on the environment in Kent. The Secretary of State encouraged the view that the hybrid bill procedure

could accommodate these objections: 'I shall encourage the Select Committee to be as wide as possible in accepting petitioners'[30] . . . 'I join the hon Gentleman in hoping that the Select Committee on the hybrid Bill will be prepared to travel and hear evidence in the affected areas of Kent'[31] . . . 'The procedures of the hybrid bill Committee will allow almost anyone who is affected to make representations, not just to the Committee in this House, but to the Committee in another place.'[32]

The Government's White Paper[33] setting out the grounds for choosing the Channel Tunnel Group scheme was approved after a half-day's debate on Monday 10th February 1986. The White Paper contained a pledge that 'the Government, as sponsor of the Bill, will not seek to oppose the right of anyone to appear before the Committees on a petition to secure protection, either for their personal interests, or for the proper interests of any organisation or group which they may have been appointed to represent.'[34] In winding up the debate, the Minister of State, Transport announced his intention to produce a layman's guide to the procedure applying to a hybrid bill and the opportunities available for consultation and objection.[35] A formal Treaty between the United Kingdom and France was signed by the French President and the British Prime Minister in a ceremony at Canterbury Cathedral on Wednesday 12th February 1986. The Treaty provided for the Governments to permit the construction and operation of a Channel fixed link by private Concessionaires, subject to ratification after the necessary legislation had been passed in both countries. The formal Concession Agreement between the British Secretary of State for Transport and the French Minister for Urban Affairs, Housing and Transport on the one part and the Channel Tunnel Group Limited and France-Manche S A of the other part, was made on 14th March 1986.[36]

The Bill and the Standing Orders

The Channel Tunnel Bill was given its formal First Reading on 17th April 1986. On the following day the customary Order of the House was made by book entry[37] that 'the Examiners of Petitions for Private Bills do examine the Channel Tunnel Bill with respect to the applicability thereto of the Standing Orders relative to Private Business'. Such a book entry is made in respect of any bill which the Clerk of Public Bills considers to be *prima facie* hybrid when it is first introduced. The Examiners are appointed by both Mr Speaker (in respect of the House of Commons) and by the House of Lords and are usually the Clerks of Private Bills from each House. The Standing Orders referred to are chiefly concerned with the manner in which information relating to a Bill is laid before Parliament and drawn to the attention of those affected. The compliance with Standing Orders is the responsibility of the Government Agent, who is appointed from among the list of solici-

tors on Roll 'A' of parliamentary agents eligible to promote private bills. The Examiners reported on 28th April 1986 that the Standing Orders had not been complied with. Each applicable Standing Order dealing with the deposit of plans, advertisements in newspapers and letters to affected landowners etc. requires the notices to be carried out by particular dates in November and December. Thus each year almost all private bills are published at the same time. In respect of the Channel Tunnel Bill, the Government had done everything that was required by the Standing Orders, but had inevitably failed to do it at the required time, since all the requisite deposits and notices had been carried out in April at the same time as, or shortly after, the Bill's First Reading.[38]

It is, of course, a principle that the Examiner, as an officer of the House, having discovered the fact that Standing Orders have not been complied with, the decision about whether to allow a Bill to proceed nonetheless is taken not by an officer but by a Committee of Members. The Examiner's Report was accordingly referred pursuant to private business Standing Order 104 to the Standing Orders Committee on 28th April 1986.

It may be supposed that opponents of the Bill hoped for a change of Government in the next general election which was widely expected to be called in the course of 1987, perhaps as early as May. Others, including rebel Government backbenchers, might have relied on the financial markets failing to support the Tunnel scheme even if the Bill were passed. In either view, delay, as so often in parliamentary conflicts, was the first resort of the Bill's opponents.

Dover Harbour Board and Sealink UK Ltd, as potential competitors of the Tunnel, both deposited petitions against dispensing with the Standing Orders on April 1986. These petitioners had not sought (by memorial) to appear at the Examiners' proceedings. Accordingly, pursuant to private business Standing Order 107A, they could not appear before the Standing Orders Committee. However at the meeting of the Standing Orders Committee on Tuesday 6th May, which was the earliest reasonable date for its meeting following the Examiners' Report, the Committee passed a Motion ordering its Chairman, the Chairman of Ways and Means, to give notice of a Motion in the House referring the two Petitions to the Committee.[39] This Motion was duly carried without debate at the time for unopposed private business on the following day, Wednesday 7th May. Rather than meeting in the week following that decision, as might have been expected, the Standing Orders Committee did not meet again until Tuesday 20th May 1986, when it heard the arguments put forward by the Government Agent for dispensing with the Standing Orders and by another Agent on Roll 'A' acting on behalf of the two Petitioners. The Petitioners argued that their interests would be unfairly affected unless, first, a period of at least eight weeks was allowed from the date of the Bill's Second Reading for

the depositing of Petitions; secondly a further pause of at least three months should ensue before the meeting of the Select Committee; and thirdly, the Concessionaires (Channel Tunnel Group) should be required to justify the proposals in the Bill, instead of the principle being decided by the House on Second Reading with the onus of proof on the Select Committee being on Petitioners to justify their proposed amendments.[40]

The composition of the Standing Orders Committee does not reflect the relative party strengths in the House as a whole; its Chairman is the Chairman of Ways and Means, and the other Members are the two Deputy Chairmen of Ways and Means and four backbench Members from each side of the House. After the Committee's deliberations, the Chairman of Ways and Means announced that he considered it would be wrong and invidious for the responsibility of deciding the issue to be devolved upon any one individual as would have been the case had he been called upon to exercise his casting vote. The Committee had accordingly agreed to a pre-emptive resolution, 'That, in the event of an equality of votes being cast for and against dispensing with the Standing Orders, the Chairman do make a Special Report to the House that the Committee declines to make a recommendation as to whether the Standing Orders ought to be decided by the House.'[41] The Committee did indeed split equally, with both Deputy Chairmen and three of the four Government back benchers voting to dispense with the Standing Orders, and all four of the Opposition back benchers with the remaining Government backbencher voting against. Accordingly, the Standing Orders Committee declined to carry out its usual function, and the matter was left to the House. Given the Government majority in the House, the eventual decision could not be in doubt, but the indecision of the Standing Orders Committee resulted in further delay to the Bill and the need for an additional debate on the floor of the House before the Second Reading debate. It remains to be seen whether the failure of the Standing Orders Committee to take a decision was an aberration, or whether it reflects the inadequacy of the present procedure to deal with highly-charged political issues. If it is a good idea to reserve the power to dispense with Standing Orders to Members rather than officers, then by the same token, it might be considered generally desirable for such decisions to be taken by an independent Committee rather than by a whipped majority on the floor of the House.

Furthermore, an independent Committee might be expected to decide any question on principles of equity, and not on their attitude to the contents of the Bill. An adverse decision by the Standing Orders Committee could of course have been overturned by a Government Motion in the House, though no doubt such a course of action would have been severely criticised. A favourable decision for the Bill to

proceed, by however slim a majority in the Committee, would not have been open to further review by the House unless the Government chose deliberately to disrupt the progress of its own Bill. In a political sense, therefore, the actions of the Standing Orders Committee may be understood, as giving the minority point of view a chance of expression on the floor of the House; but it remains hard to see any *procedural* objection to dispensing with the Standing Orders.

The Motion to dispense with the Standing Orders, in order to enable the Bill to proceed to a Second Reading, was discussed in a late night debate on Tuesday 3rd June 1986, under a Business of the House Order calling for the Question to be put at 1 am. The crucial argument about dispensing with Standing Orders was about how long should be allowed after Second Reading for the deposit of Petitions. That decision could be taken by the House only in the context of the decision of the House following Second Reading, to commit the Bill to a Select Committee to which any Petitions deposited by a certain date should stand referred. The Government used the necessity of a Motion to dispense with the Standing Orders to give the House an opportunity to discuss the deadline for Petitions. Although the issues were clearly linked, it is difficult to provide a logical account of the effect of the Motion proposed by the Government on 3rd June, which purported to bind the House not to restrict the opportunities for the Government's opponents further than the Government itself proposed.

The Motion, which was agreed to on division by 283 to 87, read as follows:

> 'That in the case of the Channel Tunnel Bill the Standing Orders relating to Private Business so far as not complied with in the respect mentioned in the Report of the Examiners of Petitions for Private Bills relating to that Bill [28th April], be dispensed with and the Bill be permitted to proceed;
>
> That in the event of the Bill being read a second time, the earliest date which, in any motion for the committal of the Bill to a Select Committee, may be specified as the date by which a Petition against the Bill must be presented in order to stand referred shall be 17th June.'

Since this Motion, if agreed to, could not bind the House in respect of the committal, and since the notice of Government's proposed Motion of the committal of the Bill had already been published in the Order Paper, giving 17th June as the proposed deadline, it is hard indeed to attach any significance to the second part of the Motion, except as an indication of the Government's good faith.

The Second Reading and committal

In the meantime, the Government had published a leaflet entitled 'Channel Tunnel – how to make your voice heard', and had placed advertisements in newspapers drawing attention to this free advice. The leaflet attempted to explain in simple terms the parliamentary procedure applicable to private bills, and including a 'Specimen Petition'. It is hard to assess the effect of this leaflet. In moving the Second Reading of the Bill on Thursday 5th June 1986, the Secretary of State for Transport told the House that more than 20,000 copies of the leaflet had been distributed. A superficial examination of the Petitions actually deposited against the Bill, however, shows that the overwhelming majority of Petitions were compiled on photocopies of typewritten proformas based exactly on the 'Specimen Petition' in the leaflet, with each Petitioner filling in only his name address and brief reasons for opposition to the Bill. It appears that the leaflet was used as a guide by people aiming to recruit large numbers of Petitioners, rather than by individuals seeking out for themselves ways to protect their personal interests against the proposals in the Bill.

The Minister opened the Second Reading debate by giving the Queen's Consent, placing her prerogative and interest at the disposal of Parliament for the purposes of the Bill.[42] Such consent is only given on Second Reading when the royal interests form the main or a very important part of a bill.[43] Since one of the central purposes of the Channel Tunnel Bill was to implement the Treaty with France, the Queen's Consent was required. A reasoned Amendment proposed by the Opposition criticised the Government for failing to ensure the maximum United Kingdom content of employment and materials during the construction of the Tunnel, failing to develop plans fully to equip British Rail or to diversify economic benefit in accordance with regional economic policy, and not considering the creation of a Channel Office of Fair Trading to ensure that freedom of choice would be maintained for cross Channel custom for freight and passenger travel. The Opposition amendment was defeated by 317 to 146, and the Second Reading was then carried by 309 to 44. The Tellers for the Noes on the latter Division were both Government backbenchers representing Kent constituencies, and the Noes included five other Conservative Members and one SDP Member, with the others being from the Labour party, although the official Opposition as a whole abstained.

The Second Reading was followed immediately by a series of very lengthy debates on the committal of the Bill to a Select Committee. The proceedings were so prolonged that the House continued sitting until after half-past nine on the next morning which is the time for Prayers on a Friday. That day's sitting therefore failed to take place. The Friday was a Private Members' Motions day, and the Member who had drawn first place in the ballot had tabled a Motion which was

critical of the conduct of the Prime Minister. It was widely reported that the debate on the committal of the Bill had been prolonged deliberately in order to prevent the Prime Minister being attacked. The Leader of the House some days later moved a Motion providing that another day should be set aside for Private Members' Motions, but a fresh ballot was held.

The committal Motion was treated by the Speaker as a series of separate propositions, to some of which amendments had been selected. The Speaker asked for each paragraph to be debated in turn, with amendments being moved formally at the end of each debate before the House moved on to the next paragraph. The first paragraph proposed 'That the Bill be committed to a Select Committee of Nine Members to be nominated by the Committee of Selection'. The debate centred on the appropriate number of Members and the qualifications for Membership to which the Committee of Selection should have regard. With the present composition of the House, a Committee of nine Members would comprise five from the Government, three from the Official Opposition and one from the smaller parties. On previous hybrid bill committal Motions, it had always been the practice to nominate a select committee partly by the Committee on Selection and partly by a Motion on the floor of the House.[44] It was argued in debate that allowing the Committee of Selection to nominate all the Members would ensure a greater degree of impartiality. While this view is correct in so far as the Committee of Selection is formally independent, it is to some extent based on a misconception. When the Committee of Selection appoints Members to a Committee on an opposed private bill, it has regard to the private business Standing Orders which require each member serving such a committee to declare that he has no personal or constituency interest in the Bill. Those standing orders do not apply to public bills, however. The first paragraph having been agreed to, the House moved on to consider the referral of Petitions to the Committee. The Government's Motion provided for the referral of all petitions deposited before 17th June, as had been foreshadowed in the earlier debate on dispensing with Standing Orders.

The possibility of extending the deadline for individual petitioners had been canvassed in the earlier debate, and amendments had been tabled to provide that where a Petitioner was a single individual, any Petition deposited not later than 27th June should be referred to the Select Committee. The intention behind the amendments was explained by a former senior Minister now on the Government backbenches, and the amendments were accepted by the Ministers and duly made to the motion. An interesting feature of the 'two-tier' deadline was that it provided for the Select Committee to be allowed to begin hearing Petitions before the deadline for Petitions from individuals had passed. The form of the extension had the perhaps unintended consequence of

inflating the number of Petitions eventually deposited, as Petitioners who wished to petition jointly, for example a husband and wife petitioning in respect of the same property, had to be advised to deposit two separate Petitions. Similarly, several hundred Petitions expressed the concern of individual members of the National Union of Seamen in identical terms. Amendments to extend the deadline into July were defeated by large majorities, and the House passed on to consider the powers of the Select Committee.

The Government proposed that the Select Committee should have power to sit notwithstanding the adjournment of the House, to adjourn from place to place within the United Kingdom, and to report from day to day the Minutes of Evidence taken before it. The latter power is the formal authority usually given to Select Committees on hybrid bills, which provides for the Minutes of Evidence to be published in printed form, so that they are readily available to Members of the House. In the case of the 1986 Channel Tunnel Bill, the Minutes of Evidence for each day were printed overnight, to be available generally the following day; usually, typed transcripts only are available to parties appearing before a Committee on an opposed Bill and to Members who notify the Private Bill Office in advance that they wish to receive a daily transcript.

The power to sit 'notwithstanding the adjournment of the House' was to enable the Select Committee to sit during the summer recess (usually from the beginning of August to mid October) in the same way as most other select committees. It is an opportunity of which many select committees take advantage only rarely. The power to adjourn from place to place, also usually given to select committees, empowered the Committee to hold its sittings in Kent, or to visit and inspect the site of the works proposed in the Bill, but this power could be exercised only within the United Kingdom, thereby preventing the Select Committee from carrying out a visit to see the French end of the scheme. Neither of these powers is usually given to select committees on hybrid bills, although the power to adjourn from place to place is frequently used by the departmentally-related (or 'scrutiny') select committees.

An amendment was selected for debate which would have given the Select Committee power 'to send for persons, papers and records'. Such a power, if given to the Committee, would have fundamentally changed the nature of the Select Committee proceedings. Instead of proceeding in the usual way by hearing Petitioners' cases against the Bill and replies from the Promoters and possibly from Petitioners against such alterations being made to the Bill, the Select Committee would have thereby been given power to initiate its own inquiries into the Bill. That could potentially have broadened the Select Committee's inquiry into every aspect of the Bill, rather than only those parts which

a Petitioner could allege directly affected his personal interests. In the event, the amendment was not moved, and the Government's proposal for powers of the Select Committee was agreed to, as was the proposed quorum of three Members, which is customary for select committees of that size.

Having thus completed the debate on the committal of the Bill, the House moved on to consider the Money Resolution. Although the Government had repeatedly stressed that the construction and operation of the Tunnel itself would be privately financed, the Money Resolution was required to authorise the construction of roads in the area affected by the Tunnel, to cover certain incidental expenses and to provide for the interim control or mothballing of the scheme if the Concessionaries went into liquidation.

The Select Committee

At its first meeting after the Bill had been committed, the Committee of Selection nominated eight Members to serve on the Select Committee, five from the Government side of the House and three from the Official Opposition. No member from the other parties was nominated, and a further Member from the Official Opposition was nominated in the following week. Although the Government backbenchers nominated by the Committee of Selection had no apparent connection with the tunnel project, the Members nominated from the Official Opposition included a front-bench spokesman on transport, who was sponsored by the National Union of Railwaymen and known to be in favour of a rail link across the Channel,[45] another Member sponsored by the Transport and General Workers' Union, which included in its membership employees of the Dover Harbour Board, who were generally opposed to the threat posed by the tunnel to jobs connected with the ferry services, and a Member whose constituency was within one of the London boroughs marginally affected by subsidiary works in the Bill. These choices were perfectly in order for a select committee on a public bill, since none of the Members concerned stood to gain any pecuniary benefit from voting in the committee. Since the purpose of the select committee was to consider amendments to the Bill to protect the rights and interests of Petitioners, it was to that extent of no significance what attitude Members of the Select Committee were known to have taken towards the principle of the Bill.

At its first meeting held in private on 19 June[46], the Member of the Select Committee with the longest service in the House, who was a former Government Minister, was called to the Chair. By the deadline for Petitions (apart from those from single individuals) on 17th June, some 310 Petitions had been deposited. The usual practice of the House is for all Petitioners to be required to enter an Appearance at the first

public meeting of the Committee; that is, that any Petitioner who does not appear either in person or by an authorised representative on that day is not entitled to be heard. In the committal motion, the House had relaxed that requirement in respect of the Petitions from single individuals; the Committee decided that in view of the unprecedented number of Petitions already received, no Petitioners should be required to enter an Appearance in advance of his case actually being heard by the Committee. The implication of this decision by the Committee was that each Petitioner should be notified of the date when he was expected to appear. The administrative burden of drawing up a programme for hearing Petitions fell principally on the Government Agent. In conjunction with the Clerk to the Select Committee, arrangements were made to notify each Petitioner or his nominated representative in advance of his Appearance. Since the Select Committee could not determine in advance of a case how long should be allocated to each Petitioner, a great deal of informal negotiation and guesswork had to take place behind the scenes to provide the Select Committee with a continuous stream of Petitioners coming before it.

The Select Committee also decided at its first meeting to visit the site of the proposed works in Kent on Tuesday 1st July. The Select Committee's visit was private, attended only by officials from the Department of Transport and Kent County Council. This was a departure from the usual practice in the case of opposed private bill committees, when leave is given by the House for Committees to visit on condition that Petitioners may also be represented, in order to point out their particular concerns. Given the very large number of Petitioners, it would clearly not have been possible for them all to have been represented, and it would have been invidious for the Select Committee to have selected a small number.

Although Kent County Council had petitioned against the Bill, as the roads authority it was responsible for carrying out some of the works authorised under the Bill about which the responsible official could give the Committee factual information.

The Select Committee also decided to hear Petitions in Kent during the summer recess. The days chosen were in September after the end of the school holidays, which Members usually hope to spend with their families, before the annual party conferences, which Members usually feel a duty to attend.

The Committee authorised the daily publication of evidence, as mentioned earlier, and took another unusual step in passing a Motion inviting Counsel to appear without wigs or gowns. Barristers appearing before Parliament do so in the formal dress adopted in the law courts and although the Committee's decision was based on the warm summer weather, the result of having lawyers appearing in ordinary suits (or even shirtsleeves when the temperature was at its highest) made some

contribution towards proceedings being less intimidating for Petitioners appearing without the benefit of counsel.

At the first public meeting of the Select Committee on 24th June[47] one of the agents registered on Roll 'B' asked the Select Committee to reverse the usual order of proceedings, by requiring the Government to present its evidence for the Bill before hearing Petitioners' cases. The Roll 'B' register of parliamentary agents is open to anyone engaged in opposing a Bill, provided that a simple certificate of respectability signed by a Member of Parliament, a justice of the peace, a solicitor[48] or a barrister is deposited with a letter of authorisation signed by the Petitioner, and that the agent signs an undertaking to abide by the rules and practice of Parliament.[49] Members of Parliament may not act as agents for Petitioners, except for the purpose of depositing Petitions formally in the Private Bill Office, although they may appear in person on their own Petitions in respect of their private interests; petitioners may appear in person without registering as an agent. The Select Committee decided not to reverse the onus of proof, which in select committees on hybrid bills lies on the Petitioners.

The Select Committee nevertheless invited the Government to open the proceedings by giving a full factual statement of the proposals in the Bill. The first petitioner to appear was the Kent County Council. In accordance with usual practice, the counsel for the Petitioner made a lengthy speech, taking each item raised in the Petition in turn. On many subjects, negotiations were proceeding between the local authorities in Kent and the Government in the forum of the Consultative Committee chaired by the Minister of State for Transport. As a result of these discussions, a number of points had been settled by way of written assurances, which were read on to the record.

At the beginning of the next day's sitting the Chairman made a statement calling for the customary opening speeches to be dispensed with.[50] In future, counsel should simply list those matters in the Petition which had been resolved and outline those that had not, before calling witnesses. Counsel and witnesses were also asked not to read aloud passages contained in documents formally submitted in evidence to the Select Committee. It was agreed, however, that counsel should be allowed to make a short speech summarising the points made in evidence after concluding the examination of witnesses.

Another departure from the usual procedure of hearing petitions was the special position of the concessionaries (now called Eurotunnel) who appeared as Petitioners against alterations. Petitioners against alterations are heard only on points on which the promoters are not themselves disposed to resist petitions. In this case, many of the Petitioners' claims were directed more against Eurotunnel rather than the Government. Although the Government were the Promoters of the Bill, the actual costs of compensation, or of carrying out additional works would

fall on Eurotunnel, whose counsel was therefore allowed to cross-examine witnesses and to reply to Petitioners' concluding speeches.

The witnesses called by Petitioners were led through their evidence by way of answers to questions put by their counsel or agent, followed by cross-examination by the Government and Eurotunnel counsel, with then an opportunity for re-examination by the Petitioner's counsel or agent. Members of the Select Committee intervened from time to time to ask their own questions, but generally the Members were listening to the arguments being deployed before them.

After hearing the Kent County Council, the Select Committee heard from other local authorities affected by the proposed works in Kent. The chief matters raised included consultation with local authorities, economic assistance for affected authorities, compensation, planning, the disposal of surplus spoil generated from the excavation of the Tunnel, and the location of the international passenger station. Many of those matters were settled by negotiation outside the Select Committee, most notably a comprehensive re-writing of the Bill provisions relating to planning control, which was produced by the Government as a result of those negotiations.[51]

The concerns of voluntary groups about the impact of the Tunnel works on the environment were supported by two statutory agencies, the Countryside Commission and the Nature Conservancy Council. It was perhaps at first sight surprising that these publicly-funded bodies should petition against a Bill promoted by the Government, but since the passing of the Wildlife and Countryside Act 1981, the Countryside Commission and the Nature Conservancy Council have enjoyed a greater degree of independence in exercising their statutory duties. One of the major concerns of the Countryside Commission and the voluntary groups was the powers contained in the Bill for the construction of a new road from Folkestone near the Tunnel terminal towards Dover. It was argued that the Government had sufficient powers under the Highways Acts to construct such a road, although it would be subject to the usual public inquiry procedure. This view was supported by a minority of the Select Committee, but the majority of the Select Committee was persuaded by the Government's argument for the urgency of the road improvements and the importance of the road building to ameliorating the economic impact of the Tunnel on the existing businesses in the East Kent ports.[52]

The Petition of the ferry operators raised the problem of the extent to which Petitions should be heard against the principle of the Bill. It had been decided by the Select Committee on Hybrid Bills (Procedure in Committee)[53] that the principle of the Bill should be regarded as decided by the House on Second Reading. The ferry operators were themselves not able to Petition for the Bill to be rejected by the Select Committee, but they could use the proceedings to give publicity to the

case against the Tunnel, and to ask for restrictions to be placed on Eurotunnel to protect their own interests. The Select Committee allowed the ferry operators considerable latitude to make their case, but by a majority decided not to allow evidence to be given on the economic viability of the Tunnel.[54]

The Select Committee had originally begun sitting on Tuesdays, Wednesdays and Thursdays from 10.30 am to 5 pm with a short adjournment for lunch; after the first six days, the Select Committee usually continued sitting until 7 pm. Although the House rose for the summer on 25 July the Select Committee sat on a further three days in the first week of the summer recess. By the end of July, the Select Committee had heard most of the Petitions of the local authorities, environmental groups and ferry operators, and all of the most important issues, except those relating to the works in London, had been canvassed in evidence before the Select Committee. Only a relatively small number of Petitions, however, had been heard; by the time the deadline for Petitions from single individuals had passed on 27 June, a total of 4,845 Petitions had been deposited.

The Select Committee decided to devote its sittings in Kent to hearing Petitions from single individuals. An analysis and grouping of the Petitions was carried out so that the programme for the sittings in Kent would have a certain structure and cohesion in taking each issue in turn. The first four days of sittings were held at a seaside hotel in Hythe, with conditions at Westminster reproduced as far as possible, including the presence of uniformed House of Commons doorkeepers who had never before been on duty at a select committee away from Westminster.[53] The time allocated for each group was not directly related to the number of Petitions to be heard, but rather to the importance and relevance of the issues to be covered. For example, more time proportionately was allocated to residents from the area where compulsory purchase powers were proposed under the Bill than to residents of North East Kent whose main complaint was the effect of the Tunnel on the economy of their area. Two of the days in Kent were taken up with sittings in Dover's historic Maison Dieu or Town Hall, where the great majority of Petitions from the employees of the ferry companies were to be heard.

Despite some initial misunderstandings, which were widely reported in the press, the sittings in Kent were remarkably successful. This was due mainly to the fact that the great majority of the Petitions had been deposited by a half-dozen or so Roll 'B' parliamentary agents, who continued to act as spokesman for their clients. For most groups of Petitions, a number of individual Petitioners were heard in person, followed by the agents giving a general account of the problems faced by the Petitioners whom they represented.[56] It did not prove necessary for the Select Committee to impose a time limit on the presentation of

Petitioners' cases, although repetition and irrelevance were discouraged from the Chair. The sittings in Kent succeeded in disposing of a large number of Petitions, while giving Members the opportunity to study the local problems at first hand. It would not be surprising if there were pressure in the future for such sittings to be regarded as a precedent, but it is not easy for Members to hold such a series of sittings away from Westminster except during a recess, and it may not be desirable to separate hearing individual Petitioners from the main body of examination and cross-examination of witnesses at Westminster.

One of the issues that particularly concerned the local planning authority for the proposed terminal was the layout of the road linking the terminal with the main road network. It was originally proposed by Eurotunnel that the road should leave the terminal in the direction of London (the north-east egress). This route had a number of disadvantages, including cutting off the small village from Newington completely and destroying part of an ancient area of woodland, but the most pressing argument against was that traffic would thereby be actively discouraged from turning back towards the coastal ports of Folkestone and Dover. After much discussion before the Select Committee and in the Minister's Consultative Committee, alternative proposals were drawn up, and revised plans were deposited in the Private Bill Office on 31 July. Following the precedent of the Park Lane Improvements Bill 1958, the deposits and advertisements required by private business Standing Orders in respect of a proposed Additional Provision were carried out. This was necessary to safeguard the interests of potential Petitioners who might be adversely affected by the revised proposals rather than by the original proposals in the Bill. The Examiners were not required to examine whether the Standing Orders had been complied with, however, until the Bill had been amended; and in the event the proposed Additional Provision was not accepted by the Select Committee.[57] In order to empower the Select Committee to consider the Additional Provision, the House had passed an Instruction on 17th July which provided for the Select Committee to consider any Petitions against the proposed Additional Provision deposited not later than 26th September.

Apart from the Additional Provision, the Select Committee had a number of other issues outstanding to consider when it reconvened at Westminster in the week before the House resumed after the summer recess in October, including the Government replies to evidence given by the local authorities, environmental concerns and the ferry operators. The last six days of sittings were devoted to hearing Petitioners who objected to the proposed works in London, in particular the choice of Waterloo railway station as the terminus for cross-channel passenger trains. By Thursday 30th October, after 34 days of evidence over some 200 hours of Committee sittings, the Select Committee had completed

hearing Petitions against the Bill. By contrast, the 1974 Select Committee on the Channel Tunnel Bill sat for only 12 days; only 12 Petitions were deposited for consideration by that Select Committee. In 1974, many groups and organisations opposed to the proposals in the Bill had chosen to Petition and be represented jointly.

As had been indicated by Ministers before the proceedings began, the Government did not challenge the *locus standi* of any Petitioner. In its Special Report, the Select Committee commented: 'We heard a great many cases either about matters outside our jurisdiction or put forward by people who were not specially and directly affected by the proposals in the Bill in the way envisaged by Standing Orders. So on the one hand, we were limited in our powers to help Petitioners, but on the other there was virtually no limit to the requests that were made . . . If the Government decides to introduce Hybrid Bills on other subjects, we recommend that the requirements of *locus standi* should be made absolutely clear in any general invitation to potential Petitioners.'[58] Partly as a result of the pressures from Petitioners who were concerned about issues such as regional development, the threat of rabies being spread by infected animals from the Continent, and the safety of the passengers on the proposed shuttle trains, the Chairman of the Select Committee had indicated that the Select Committee would be making a Special Report to the House drawing attention to such issues which were more suited to debate in Standing Committee than to quasi-judicial decisions based on hearing evidence put forward by Petitioners.

Whatever the merits of such a Select Committee making a Special Report, the announcement of the Select Committee's intention to do so resulted in one of the Petitioners claiming three forms of redress: assurances from the Promoters, amendments to the Bill, and recommendations by the Select Committee in its Special Report.[59] In some ways, this was a disturbing development, since the scope of the Bill and the appropriateness of amendments based on Petitions could be defined, whereas the possible contents of a Special Report cannot. There were two issues in particular, however, on which the Select Committee expressed its opinion although neither was strictly a matter for Petitioners, namely safety and economic assistance.

In the week after the public sittings had concluded, the Select Committee considered a comprehensive draft Special Report, and reached conclusions on a number of contested issues, in a few cases by a majority. In the case of the proposed Additional Provision, the altered access arrangements were defeated by the Chairman's casting vote.[60] The draft Special Report covered all the main issues raised before the Select Committee and a number of the most important written assurances were appended to it. The Select Committee had decided the most important issues at its meeting on Tuesday 4th November, but it had

already been clear for some time that the Committee's task would not be completed before the end of the Session, due on Friday 7th November. The Select Committee had accordingly formally drawn the attention of the House to this by entering a short Special Report in the Votes and Proceedings of the House for Wednesday 29th October. The Government thereupon tabled a Motion providing for the suspension of proceedings of the Bill and its commital to a Committee of the same Members in the next Session of Parliament. It has become a common practice for private bills to continue to make progress over more than one Session, provided that the Chairman of Ways and Means agrees to table a Motion which is then agreed to by the House. Public bills, however, have only been carried over into a new Session in cases where the bills are hybrid. The suspension Motion was debated and passed on the evening of Tuesday 4th November.

The Select Committee met in public to announce its most important decisions on the following day, Wednesday 5th November. Select Committees do not usually announce their decisions in advance of publishing a Report in full to the House, but it is common practice for opposed private bill committees. The advantages of proceeding in this way are two-fold: the Petitioners and Promoters are enabled to ask for clarification or to point out difficulties of which the Committee may not have been aware, and the Committee can extract concessions or require amendments to be drafted by the Promoters to meet the Committee's requirements. The most important change required by the Select Committee was the tabling of a new Clause before the Select Committee which the Government had indicated would be brought forward at a later stage of the Bill's proceedings. The Clause was to make explicit in the Bill the absolute prohibition contained in the Treaty of any public subsidy or financial guarantee to the Concession aim. The ferry operators attached particular importance to such a Clause, in order to protect their interests in fair competition. The assurances required by the Select Committee were given at its final public meeting the following day, and the Bill was reported, without Amendment, to the House.

Under the terms of the suspension Motion agreed to by the House, an identical Bill was brought in on Thursday 13th November, on the day after the Queen's Speech opening the new Session, and committed to a Select Committee composed of the same Members.

The Select Committee met on Tuesday 18th November and agreed the text of the Special Report. The Government Agent, an official from the Department of Transport and one of the Parliamentary Counsel attended part of the meeting to explain the Government's draft Clause on no government funds or guarantees for the Tunnel system. The Select Committee then formally agreed all the amendments to the Bill and ordered the Bill to be reported, with Amendments, and the Special Report to be made to the House. Under the terms of the suspension

Motion, the Bill was automatically re-committed to a Standing Committee.

The Standing Committee was nominated by the Committee of Selection on Wednesday 19th November. The 18 Members (11 from the Government, 6 from the official Opposition and 1 from the smaller parties) included 3 of the Members who had served on the Select Committee, all from the Official Opposition. The Standing Committee began sitting on 2nd December, considering the Bill clause by clause. The Standing Committee began by sitting on Tuesday and Thursday mornings only, but from 16th December afternoon sittings on those days were also added. The Standing Committee often sat late into the night. Most of the debates were on amendments proposed by two of the Members of the Standing Committee, one of whom was a Government back-bencher, representing a North East Kent constituency, and the other an Opposition backbencher who had recently won a by-election in London and had served on the Select Committee. The Government had produced a number of drafting amendments to the Bill during the Select Committee proceedings, which had been made to the Bill by the Select Committee, so the proportion of Government amendments proposed to the Bill in Standing Committee was perhaps rather less than is often the case. The official Opposition spokesman tabled very few amendments, and voted with the Government to defeat some of the amendments proposed by the two leading opponents of the Bill on the Standing Committee. After a rather more lengthy Standing Committee stage than could perhaps have been expected, the Bill was reported with Amendments on Thursday 22nd January. Amendments to incorporate the alternative access arrangements within the proposed Additional Provision were resisted by the Government Minister, who drew attention to the importance under hybrid bill procedure of protecting the interests of Petitioners.[61] The proposed Amendment under discussion was withdrawn, on the understanding that the Government was sympathetic to further consideration being given in due course by the House of Lords Select Committee to alternative road access provisions.

The report stage and third reading took place on Tuesday 3rd February. After a series of debates on consideration and a short debate on Third Reading, the Bill was passed in the early hours of the morning on Wednesday 4th February.

1. First Report from the Select Committee on Procedure, 1977–78, HC 588 (three volumes).
2. HC (1979–80) 381. Minutes of Evidence taken before the House of Commons Transport Committee, 23 January 1980.
3. ibid., Q25.
4. Minutes of Proceedings of the Transport Committee, Session 1979–80, HC 838.
5. First Special Report from the Transport Committee, Session 1979–80, HC 544.
6. ibid., para 5.
7. Second Report from the Transport Committee, 1980–81, *The Channel Link*, HC 155 (three volumes).
8. ibid., para 35.
9. ibid., para 49.

10. ibid., para 57.
11. ibid., para 110.
12. ibid., para 156.
13. ibid., para 161.
14. Minutes of Evidence taken before the House of Commons Transport Committee, 17 May 1981, HC (1981–82) 207.
15. ibid., p. 88.
16. Department of Transport, Press Notice 235, 22 May 1984.
17. First Report from the Transport Committee, 1885–86, *Channel Link* HC 50 (two volumes).
18. ibid., para 14 (italics added). The proceedings of the Committee (ibid., p. xxxix) show that a cross-party minority on the Committee was not in favour of a fixed link but was voted down.
19. ibid., O136.
20. ibid., para 131. This crucial recommendation was carried only on the Chairman's casting vote, defeating a recommendation in favour of EuroRoute.
21. ibid., para 131.
22. ibid., para 27.
23. Special Report from the Select Committee on the Channel Tunnel Bill, Session 1974, HC195 page 12; quoted at First Report from the Transport Committee, Session 1985–86, *Channel Link*, HC50 (two volumes) para 27.
24. ibid., para 27.
25. Special Report from the Select Committee on the Channel Tunnel Bill, Session 1974, HC 195, page 126.
26. ibid., page 127.
27. ibid., page xvii.
28. The Transport Committee had brought forward its consideration of the Chairman's draft Report by two days, and the text of the Report was published within 72 hours in order to be available before the debate.
29. House of Commons Official Report, vol. 88, col. 641.
30. ibid., vol. 90, col. 21.
31. ibid., col. 22.
32. ibid., col. 25.
33. *The Channel Fixed Link*, Cmnd 9735.
34. ibid., para. 62.
35. House of Commons, Official Report, vol. 91, col. 727.
36. Cmnd. 9769.
37. i.e. entered upon the Journal of the House by the Clerks at the Table.
38. The abolition of the Greater London Council on 1st April 1986 led to some uncertainty about the residual ownership of certain land affected by proposed works in the London area, but duplicate notices had covered even these possibilities of non-compliance.
39. Special Report from the Standing Orders Committee, *Channel Tunnel Bill (Non-compliance with Standing Orders)*, Session 1985–86 HC 418, page iv.
40. ibid., page xxvi.
41. ibid., page xxxi.
42. HC Deb., vol. 98, col. 1101.
43. May, p. 631.
44. This practice was reverted to in the next Session in the case of the Norfolk and Suffolk Broads Bill, 1st December 1987.
45. Mr Peter Snape MP had also served on the Select Committee on the Channel Tunnel Bill in 1974.
46. Special Report from the Select Committee on the Channel Tunnel Bill, 1986–87, HC 34, p. cxix.
47. Select Committee on the Channel Tunnel Bill, Minutes of Evidence, Vol. I, 1985–86, HC 476-I, pp. 1–38.
48. Solicitors are not required to deposit a certificate of respectability.
49. The Roll A list is confined to certain partners in seven firms (two of which are amalgamated) who are authorised to act for the Promoters of Bills.
50. HC 476-I, page 39.
51. HC (1986–87) 34, chapter 2.
52. ibid., chapter 3 and page clvi.
53. HC (1947–48) 191, approved by the House 14 February 1949.
54. HC (1986–87) 34, p. cxxvii.
55. Doorkeepers are in attendance when the Scottish Grand Committee (a Standing Committee comprising the Scottish Members) meets in Edinburgh.
56. Several hundred Petitioners, many of whom had had their Petitions deposited by a Member of Parliament, did not choose to attend or to be represented at the Committee's sittings.
57. HC (1986–87) 34, paras. 113 to 121.
58. Special Report from Select Committee on the Channel Tunnel Bill, 1986–87, HC 34, paragraph 17.
59. Minutes of Evidence taken before the Select Committee on the Channel Tunnel Bill, 1985–86, HC 476-IV, page 1497.
60. HC (1986–87) 34, page clvii.
61. House of Commons Official Report, Standing Committee A, *Channel Tunnel Bill*, col. 559.

XII. CHANGING THE RULES OF THE GAME IN THE CANADIAN HOUSE OF COMMONS

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I Background

Procedural reform has been a major preoccupation of the Canadian House of Commons in recent years – ever since the 'bells episode' in the last Parliament, when House business was paralysed for more than two weeks. Soon after that impasse of March 1982 was resolved, the House agreed to set up a Special Committee on Standing Orders and Procedure to update the practices, and indirectly, to stimulate better co-operation among the political parties. While some progress was made and new rules were drawn up to enliven debates, fix a parliamentary calendar and adjust the hours of daily sitting, most of the special committee's reports suggesting more radical changes were not adopted, or even debated, by the House.

As it turned out, the will to reform had not died. In November 1984, the new Conservative government of Prime Minister Mulroney announced in its Speech from the Throne that another special committee would be established with a specific mandate to recommend ways to enhance the role of private Members. Within eight months, the Special Committee on Reform of the House of Commons, chaired by veteran MP, the Hon. James McGrath, presented three reports. The first, tabled December 14, 1984, recapitulated most of the proposals which had originally been suggested by the previous special committee and recommended their adoption. The second report, delivered to the House the following spring, touched some aspects of reform but dealt principally with administrative matters and Members' accommodation. The third and final report suggested another series of major changes to House procedures and practices; recommendations were made affecting committees, emergency debates, private Members' business and the disciplinary powers of the Chair. Underlying many of these recommendations was the determination of the committee to fulfill its mandate to make the work of private Members more important and meaningful. The real success of the committee, however, depended largely on the willingness of the Government to go along with these proposed reforms and implement them.

The extent of the Government's support for reform became evident in its response to the committee's first report given to the House April 18, 1985 by the President of the Privy Council and Government House

Leader, the Hon. Ray Hnatyshyn. At that time he stated that it was 'the Government's intention to support the adoption of most of the proposals . . . for a trial period of one year . . .'[1] What this really meant became clearer towards the end of June, when the Government presented a motion to amend the Standing Orders. Among the numerous changes made, two of the most important concerned the election of the Speaker by secret ballot and the establishment of *ad hoc* legislative committees to study bills. The House adopted the motion unanimously after a short debate.

In October, 1985, the Government made a detailed response to the second and third reports of the committee. With respect to the second report, the Government response was favourable though somewhat less specific, since it believed that many of the report's suggestions required consultation with the other political parties. The tone of the Government's answer to the third report, however, was more affirmative. It endorsed many of the specific recommendations which the special committee had made. By mid-December, 1985, just before the House adjourned for the Christmas holidays, the Government gave notice in the House of a motion to make further revisions to the standing orders based largely on the special committee's findings. This announcement followed by some weeks a special evening debate on the general objectives of parliamentary reform. More than 25 Members participated, and while contributions ranged over a wide field, three major themes were clearly brought out in the debate: confidence, party discipline and Private Members' Business. Basically, the Members expressed a desire for more independence and responsibility. The practice of regarding every vote on a government bill as a matter of confidence was, in the words of one Member, 'the number one barrier to a private Member speaking out on behalf of his constituents'.[2] Another participant in the debate urged that Members 'not disagree just for the sake of establishing party lines . . .'[3]

The Government's December motion, re-submitted February 6, 1986, with some revisions, was debated for three days before being adopted with amendments. The new standing orders will remain in effect until the end of 1986. That so much was achieved in such a short time is due in some measure, at least, to the fact that many members now on the Government side are all too familiar, after years in opposition, with the frustrations of being backbenchers. Speaking in favour of the reform proposal, the Prime Minister expressed the hope that these changes would in some degree re-establish the role and authority of the elected Members of Parliament. Support for reform was not lacking from the two opposition parties, though they noted some reservations about the likely success of these reforms. Some were somewhat skeptical that these changes would in the end actually enable Members to be more vigorous and effective in their work. Others commended

the general flexibility shown by the Government in drafting the new standing orders and urged them to remain open to any suggestions for changes during the experimental period. At the close of the debate, the amended motion of the Government was adopted by the House without division.

II The new Standing Orders – a review

Speaker

The position of the Speaker has been affected in two significant ways by the new standing orders. The first concerns the process of election and is in direct response to the expressed desire of Members to participate more fully in the affairs of the House; and perhaps as well to a feeling that in this particular matter the political parties, as such, should have no role. Under the terms of this Standing Order, the election of the Speaker will now take place by secret ballot. Members will write the name of a candidate on a slip of paper and deposit it in a ballot box. The Clerk of the House will tally the results and indicate to the Member presiding over the election the name of the candidate who has received the majority of the votes cast. In the event that no Member receives a majority, another ballot will be taken to choose among Members already proposed, except that the candidate or candidates (in case of a tie for last place) who received the fewest votes will no longer be eligible for consideration. This process will be repeated until a Member has received a majority of the votes cast. Not all Members will be eligible for the Speakership. Those who have been appointed to the Cabinet, Party Leaders and any Members who make known their wish not to be considered for the office will be excluded from the vote. In addition, the tally of the votes cast will be known only to the Clerk, who is forbidden to divulge the number of the ballots cast for any candidate.

The new changes also augment considerably the disciplinary authority of the Speaker. Under Standing Order 16 the Speaker is empowered to name any Member and to order the Member's withdrawal from the Chamber for the balance of the sitting day, for disregarding the authority of the Chair. Under the previous practice, when the Speaker named someone it was necessary for a Member, usually the Government House Leader, to move a motion for suspension. While this motion was neither debatable nor amendable, it did require a vote, usually resulting in a recorded division. All too often, naming was deliberately provoked for its dramatic effect, or even as a dilatory tactic, and had very little to do with disregarding the authority of the Chair. By doing away with the need for a motion, naming should become a much less dramatic event, less time consuming and, it is hoped, less frequent.

Another aspect of the Speaker's functions is the responsibility to

select motions in amendment at the report stage of bills. Guidelines to assist the Speaker in this task have now been incorporated into the Standing Orders in the form of a Note. According to its terms, the Speaker 'will not normally select for consideration . . . any motion previously ruled out of order in committee and will normally only select motions which were not or could not be presented in committee.' Moreover, the note goes on to state that 'a motion, previously defeated in committee, will only be selected if the Speaker judges it to be of such exceptional significance as to warrant a further consideration at the report stage.'[4]

Committees

The committee system, of course, has long been a focus of reform efforts. Often, it was seen as an effective method of reducing the workload of the House by redistributing it. This happened in 1968 when the supply process was revamped by referring Estimates to standing committees for study rather than having them considered by a Committee of the Whole. Committees have indeed been the workhorses of legislation and inquiry, but their tasks have now been reorganised and rationalised – not only because this needed to be done, but also in the hope that it would stimulate the efforts of Members to examine legislation or government policies more effectively.

The standing committees have been substantially reorganised. There are still a fair number of them – 25 plus 3 joint (Senate and House), – but most now correspond more closely than before to existing government departments. Moreover, their membership has been reduced. Most standing committees have 7 or 11 members, rather than 20 or 30 as before. Moreover, Parliamentary Secretaries are no longer entitled to sit on committees related to the department of their Minister. The investigative powers of these standing committees have been significantly enlarged. This increase continues the expansion of powers made in 1982 when committees were allowed to study the annual reports of departments or agencies, once tabled in the House, without requiring a particular order of reference. Now, they are authorised by the standing orders to study all matters concerning the departments to which they correspond. Such matters include applicable statute law, program and policy objectives, all expenditure plans, and any other topic relating to the department which the committee thinks fit.

To coordinate the budgetary requirements of the committees, a liaison committee has been established. It is composed of the chairman of each standing committee plus the Member who is either the chairman or vice-chairman of a joint committee. Its function is to distribute the block of funds allocated by the Board of Internal Economy to support the activity of committees, subject to the ratification of the Board. In

addition, committees are now empowered to retain all necessary staff without seeking the permission of the House.

The method of substituting the membership on standing committees has also been changed. It remains possible to replace members of a committee temporarily, but no permanent changes can be made without the adoption of a motion to that effect by the House. These temporary substitutions must be made from a list of five members submitted by each original permanent selected committee member within five days of the committee's organisational meeting.

Most of these changes relating to standing committees were made in February 1986, but there was a significant change made in June 1985 as well when standing committees became essentially committees of enquiry – no longer having the task of studying legislation. This work is now performed by legislative committees which are struck within a fixed period of time after a bill has received first reading. These legislative committees exist only so long as they have an item of legislation before them. They cease to exist the moment they report a bill back to the House.

The chairmen of legislative committees are chosen from a panel of chairmen. This panel, consisting of 10 or more members, is established by the Speaker at the beginning of a session with additional members appointed from time to time as necessary – and it is the Speaker who appoints the chairman of a legislative committee once the report of the Striking Committee listing its membership has been presented and adopted. One change made in February 1986 respecting legislative committees is to reduce the size of their membership by eliminating the minimum requirement of 20 as stipulated in the June 1985 Standing Orders.

Routine Proceedings

In keeping with the reforms inaugurated in 1982, the House made changes to rationalise further the schedule of House sittings. For the past three years or so, the House has discontinued the practice of evening sittings in favour of a morning sitting beginning at 11 o'clock (every day except Wednesday).[5] When this change was originally put into effect, Routine Proceedings retained its place after Question Period in the afternoon part of the sitting, usually beginning around three o'clock. Since February 1986, however, items under Routine Proceedings are dealt with at the beginning of the day immediately after Prayers (on Monday, Tuesday and Thursday).

The list of items which comprise Routine Proceedings has been expanded to include the presentation of reports from interparliamentary delegations and also petitions. The first change provides recognition for the role of Members as representatives of the House in conferences and meetings abroad. The second item, presenting petitions, is certainly

not new, but was gradually assimilated into Routine Proceedings in the last decade or so, as Members fully exercised their time-honoured right to present petitions. Now, that fact is recognised explicitly. Additional changes were made with respect to petitions to make their presentation more meaningful. Members are now under an obligation to have petitions certified procedurally correct as to form and content by the Clerk of Petitions before presenting them in the House. As well, the Government is obliged to respond to every petition referred to it within 45 days.

Another item of Routine Proceedings to receive the attention of the reform committee was Statements by Ministers. During this Parliament, there has been a significant increase in the number of times Ministers have addressed the House for the purpose of announcing a Government policy or initiative. Several years ago, the Lefebvre Committee had noted that the practice of Ministers making statements in Parliament had fallen into disuse. The reason for this, it suggested, was the amount of time used for the mini-question period following the statement of the Minister and replies of the opposition party spokesmen.[6] All of this time was subtracted from government business. To remedy this problem, the standing order changes of June 1985 eliminated the time allotted for questions altogether and provided for an extension of government business corresponding to the time taken up by the statement and responses. In February 1986, the standing orders were further amended to permit the time lost to government business to be made up primarily by extending the sitting through the lunch hour so as to keep the disruption of the House schedule at the end of the day, particularly for private Members' business, to a minimum.

At the conclusion of the Daily Routine of Business it is customary for the Chair to recognise the Parliamentary Secretary to the President of the Privy Council for the purpose of stating what questions on the *Order Paper* have been answered that day. Before the standing orders were changed, there was no limit to the number of questions a Member could place on the *Order Paper*. Each Member is now limited to a maximum of 4 written questions at any one time and the Government is bound to provide an answer within 45 days, if requested to do so by the Member submitting the question.

Once Routine Proceedings have been concluded, the House turns to Government business until 1:00 o'clock when the House rises for lunch. When the sitting resumes at 2:00 o'clock, there is a 15 minute period for statements by Members. This practice was introduced in 1982 to replace old Standing Order 43 which required Members to seek unanimous consent to waive notice for motions proposed under the guise of urgent and pressing necessity. When first introduced these statements were allotted 1½ minutes each, but in February 1986 the time was reduced to 1 minute. The obvious intent of the change was to permit

more Members to be recognised during the warm-up to Question Period, undoubtedly the most closely observed event in a parliamentary day.

Divisions

Certainly one of the significant changes made to House practices concerns voting procedures, and particularly time limits on the division bells. In the last Parliament, the issue proved to be very sensitive, and despite considerable effort on the part of the members of the Lefebvre Committee, no recommendations were submitted on how to deal with recorded divisions. For its part, the McGrath Committee proposed to limit the bells to 15 minutes, but this recommendation was part of a proposal to institute an electronic voting procedure which has yet to be adopted. Nonetheless, the House accepted in February 1986 a standing order which limits bell-ringing to a maximum of 30 minutes. Under this procedure, the 30-minute limit applies to all recorded divisions for non-scheduled votes. However, at any time within the 30 minutes for divisions on debatable motions, the Government or Official Opposition Whip may request a postponement of the vote to no later than the next sitting day (to Monday if the request is made on a Thursday). When the vote is then called at the end of that sitting day, no later than 6:00 o'clock, the bells ring for not more than 15 minutes, the same time limit which is applied to all scheduled votes. This change expands the practice of deferring recorded votes called on Fridays which was first adopted in 1982. It allows the different sides of the House time to muster their Members or make a protest without unduly obstructing the business of the House. Once a vote is deferred, the House will resume the sitting by taking up another item of business. Also, by delaying the division to the end of the day, the time-consuming process of taking a recorded vote will not impinge as much on the time of the House.

Emergency Debates

As a consequence of another of the February 1986 reforms, it is possible that the House will be holding more emergency debates: but they will not be like some of the marathon debates of the past. Under the new standing orders, the emergency debate will still start at 8:00 o'clock (3:00 o'clock on Friday), but will conclude no later than midnight and, therefore, will not usually take up the time reserved for Government Business.

Supply

Some modifications have also been made to the business of supply. The six votable supply motions permitted during the year are no longer explicitly described in the standing orders as non-confidence motions.

but rather as motions 'that shall come to a vote'.[7] The issue of confidence votes has long been a matter of some concern. The two recent special reform committees both recommended that motions of non-confidence 'should not be prescribed in the rules but should be explicitly so worded in the text of the motion itself by the Member presenting such a motion'.[8] This step seems to be in keeping with a developing tendency in the House to loosen the reins of party discipline. Be that as it may, to require that motions of confidence be written in explicit terms should relieve the Chair of demands to interpret the meaning or possible consequences of motions.

Another change recently implemented regarding supply stipulates that 'on the last allotted day in the period ending June 30, the House shall consider any motion or motions to concur in the Main Estimates . . .'.[9] This new standing order seeks to satisfy, at least in some measure, the demands of Members for an opportunity to debate the estimates themselves before they are actually voted. For years, the estimates were considered in the standing committees and then voted by the House at the tag-end of the last day allotted in a supply period without being debated by the full membership of the House. Now there will be an opportunity to debate the Main Estimates in the House.

In addition, the Leader of the Opposition is now entitled to extend the time available to one standing committee for studying the estimates of a department or agency by an additional ten sitting days, by proposing a motion to that effect within a specified time before May 31. This concession to the Leader of the Opposition is one way in which the Standing Orders recognise the political dimension of the House and the important role played by the Leader of the Official Opposition.

Private Members' Business

A major issue raised by the Reform Committee was the role of private Members and how their responsibilities in the House and in committees could be enhanced and made more effective. Various proposals have been adopted which will make the role of the Member more meaningful. The participation of Members has been promoted through petitions, written questions and even emergency debates. More important though, are the changes which have been made respecting private Members' Business.

This new system should see more private Members' bills passing beyond second reading to receive committee study and then consideration at report stage and third reading. It is even probable that several legislative initiatives or resolutions will be adopted by the House during the course of a session. This has come about because a time-allocation system has been built into the Standing Orders for private Members' business.

At the outset of a session, and from time to time thereafter as

necessary, a draw will be arranged to establish an order of precedence for up to twenty items of private Members' business. Of these 20, not more than six may be designated 'votable' by the new Standing Committee on Private Members' Business and debated in turn for a maximum of 5 hours by which time the item, unless previously disposed of, will be put to a vote. Legislative items adopted at second reading will be studied by a committee and when reported back to the House will be debated for a fixed period covering both report stage and third reading. Another change to private Members' business allows up to 20 Members to support an item, either a bill or a motion, as seconders. Finally, the debate on private Members' business has been enlivened by reducing the time for individual speeches from 20 minutes to 10.

Delegated Legislation and Order-in-Council Appointments

The new standing orders also create a process of review by Members of delegated legislation and all non-judicial Order-in-Council appointments. The review of delegated legislation is initiated by a report submitted by the Standing Joint Committee on Regulations and Other Statutory Instruments recommending the rescinding of a statutory instrument. One report of this sort can be presented per sitting and it will be deemed adopted if no action is taken within 15 sitting days. The recommendation to rescind can be rejected, or adopted formally, by debating the motion for concurrence in the report. These reports can only be called for debate by a Minister. The debate lasts up to 1 hour and takes place on Wednesday at 1:00 o'clock. Members are permitted only 10 minutes to speak to the motion. If a recorded division is required, it is deferred until no later than 6:00 o'clock.

The review of non-judicial Order-in-Council appointments resembles somewhat the review of government appointments performed by committees of the U.S. Senate. Under this new system, standing committees have 30 sitting days to review the nomination or appointment of a candidate by Order-in-Council once the Minister has tabled the appropriate document and designated the committee that is to study it. The committee is entitled to call the nominee or appointee to appear before it for a period of up to 10 sitting days. The purpose of the committee's inquiry, as explained in the Standing Orders, is to examine the qualifications and competence of the candidate. While the committee may report its findings to the House, its role is purely advisory; the government is not bound by the committee's conclusions.

Registry of Travel

One final change to the standing orders now obliges Members to register with the Clerk of the House all visits made outside of Canada in their capacity as Members when any costs of their trip are borne by an outside association or group.

Conclusion

These changes to the Standing Orders remain in effect until the end of 1986. It is too soon to know what changes, if any, will be made between now and then, or whether these standing orders will be adopted permanently. Nonetheless, they offer concrete evidence that the House is still serious about trying to make Parliament a more meaningful and effective place. In working out new practices, in trying to overcome the frustrations that sometimes burden Members, and to reduce the tension between Government and opposition, there is an underlying conviction that the House of Commons must continue to fulfill its role as the Grand Inquest of the Nation.

1. *Debates*. April 18, 1985, p. 3868.
2. *Debates*. December 4, 1985, p. 9163.
3. Ibid., p. 9167
4. *Permanent and Provisional Standing Orders of the House of Commons, February 24, 1986*, S.O. 114(10) Note, p. 95.
5. Emergency debates are scheduled for the evening and extended sittings up to 10 o'clock p.m. are possible for the final ten sitting days of June.
6. Special Committee on Standing Orders and Procedure. *Tenth Report* (29 September 1983) para. 7.
7. *Permanent and Provisional Standing Orders* . . . op. cit., S.O. 82(9), p. 61.
8. First Report of the Special Committee on Reform of the House, December 20, 1984, para. 40.
9. *Permanent and Provisional Standing Orders* . . . op. cit. S.O. 82(11), p. 62.

XIII. THE SERJEANT COMPLAINS ABOUT THE CLERKS: A SEVENTEENTH CENTURY DISPUTE

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Among the Mss. in Cambridge University Library, in a volume of miscellaneous ecclesiastical, legal and historical papers of the seventeenth century, is a single sheet in an early seventeenth century hand entitled *Touching the office of the Serjeant at Arms attending the House of Commons*.[1] The text is printed below. The date and indeed the purpose of the text are uncertain. The Library has no record of the accession of the volume and the Ms. itself yields few hard facts. The contents do not purport to be a complete account of the Serjeant's duties[2] but rather record one of the earliest inter-departmental rows in the service of the House. In addition, the Ms. complements what little other material exists to indicate that clerks were first regularly assigned to select committees some time in the first third of the seventeenth century.

The Ms. is a complaint by a Serjeant at Arms that a committee clerk has been improperly exercising responsibilities which belong to the Serjeant by summoning persons whose attendance is required by a committee, using the Serjeant's name but without his authority or knowledge. There are two clues to the dating of the incident. One is the mention of a 'Committee for Examinations': the other is the taking of bonds 'for the sake of the State.' On that basis, there are three possible dates for the text.

The first is 1628, in the context of an election squabble in Cornwall. Soon after Parliament opened, in March 1628, the House appointed a Committee of Privileges in the usual way. Although that committee normally looked into disputed elections, the Cornish case was evidently out of the ordinary and three separate committees were appointed to consider it, one after the other. The issues were political rather than legal or procedural. Following the election, the sheriffs had returned two Members distinctly more sympathetic to Parliament than the King. Some royalists, however, had banded together in what they argued was a traditional assembly of the county, and made a second return to the Clerk of the Crown of two gentlemen doubtless considered more reliable. One of the reasons for believing that these proceedings may be linked with the Ms. is that, next to the relevant sheet in the volume, there is an information against Sir John Eliot in Star Chamber of almost

exactly the same period: and Eliot was one of the Cornish Members engaged in the election dispute.

A further connection is that, when one of the committees sent for the delinquents, peculiar difficulty seems to have arisen over securing their attendance. Edward Grimston, Serjeant since 1610, evidently baulked at the journey involved in attaching the persons of the Cornishmen. Though he received 20s. for every summons, and his messengers were paid by the mile,[4] he preferred to offer to take bail for the offenders' appearance at Westminster. The House demurred, and ordered the Serjeant to proceed on the warrant in the usual way. Grimston still seems to have taken no action, because a month later he had to be instructed again to send for the witnesses. It does not seem impossible to suppose that, at some point in this saga, the committee or the clerk became impatient, and acted directly to secure the presence of the Cornishmen. A further consideration is that the second of the committees which the House appointed – which actually secured the appearance of the culprits – was specifically set up '*for examination* of the complaint against the gentlemen of Cornwall.'[5]

The Ms. itself may be one of the petitions which the Serjeant laid before the House, which were referred to the third in the series of committees.[6] The Journal summarises these petitions as 'concerning his [the Serjeant's] fees of the Cornish gentlemen.' The text which is reproduced below has none of the formal phraseology of a petition to the House, nor does it mention money. On the other hand, its intention is exactly that of a petition, and – whatever the context – it is unthinkable that the Serjeant was concerned solely with the affront to his dignity: he must have been aware before any other considerations of the pecuniary loss which the clerk was causing him.

If, however, the connection with Eliot, the title of the committee, and the existence of a petition from the Serjeant are considered insufficiently conclusive to date the Ms. to 1628, there are alternatives. The first is the select committee appointed on 28 October 1642,[7] to 'take examinations of all prisoners and suspected persons . . . to receive information and complaints of plundering and pillaging by soldiers . . . to discharge people that bring up the prisoners . . . and commit the prisoners . . . to the custody of the Serjeant until they can inform the House.'[8] This body was commonly known as the Committee for Examinations; and though there are no other detailed connections between it and the text of the Ms., the general circumstances seem to indicate that the 1642 option is on balance perhaps more likely than that of 1628.

The key lies in the political events which form the background to the setting up of the committee. In August 1642, it became quite clear that Charles I had effectively declared war on his Parliament.[9] No one was entirely sure, however, what the consequences were. As a result, wary

negotiations continued in parallel with military activity throughout September. On 23 October, the King's thrust at London was parried but not broken at the battle of Edge Hill. Between Edge Hill and mid-November, when a further engagement at Turnham Green represented what Gardiner called the Valmy of the English civil war, the House of Commons found itself grappling with a situation of appalling fluidity in legal, military and financial terms. In effect, Members faced for the first time the need to turn themselves into an executive. Administrative action had to be taken which normally would have needed the King's approval or that of the bureaucracy: sympathetic county gentry had to be supported in order to deny territory to Prince Rupert and to raise troops loyal to Parliament: and money had to be got in, by very nearly untried voluntary means or doubtfully legal taxation, to support all the other activities. A body such as the Committee for Examinations, in a central position to oversee internal security at a time of doubt and fluidity, was bound to break new ground. It must have needed speedy practical action at its own hand on a scale hitherto unknown, in preference to reliance on the traditional means of securing occasional witnesses. In any case, how did Members know that they could trust John Hunt, the new Serjeant at Arms? It is often argued that the appointment of Rushworth as the first Clerk Assistant in 1640 sprang from Members' conviction that they could not trust the Clerk of the House.

The 1628 and 1642 possibilities take account of the Serjeant's reference to the Committee for Examinations. It is also conceivable that the appropriate date may lie between 1642 and 1645, because the Long Parliament's Committee of that name was not dissolved until July 1645.[10] What such a dating will not do, however, is explain the phrase 'for the sake of the State', which jars if applied to any date before the proclamation of the Republic in 1649. There is an Examinations Committee in 1651, but there are grave problems in connecting the Ms. with it. In the first place, it was a Committee of the Council of State and not of the House. Though the membership of the Council and the House overlapped, the days when it was hard to distinguish truly parliamentary from semi-parliamentary committees were past. Moreover, the moving spirit on the Committee was Lord President Bradshaw, who was not a Member of Parliament. The Committee had its own Secretary (Capt George Bishop) and Clerk (Tracy Pauncefote) neither of whom seems to have had a parliamentary connection. The Committee also had its own Serjeant or could call on the Council's Serjeant. It is hard to see why a House of Commons Serjeant at Arms should make a fuss about the exercise of executive functions by such a body.[11] On balance, a date between 1642 and 1645 seems more likely than either 1628 or 1651, though some doubt must remain.

The most interesting institutional reference in the Ms., the signific-

ance of which is nearly independent of whether it should be dated 1628, 1642 or 1651, is the mention of the committee clerk. It is not entirely clear when clerks were first appointed to serve particular select committees. It may be significant that, while in 1604 the House ordered that the Clerk of the House should give a list of the membership of a committee to one of its Members[12] – something which is unlikely to have been necessary if the committee had a clerk – only two years later the House ordered the Clerk of the House to attend a committee on a bill.[13] The growing appreciation of the need for committee staff is found in *Observations, Rules and Orders*, a procedural text which seems to date from the first decades of the seventeenth century.[14] In a reference which is undated, but is presumably later than 1606, it is stated that it is the duty of the Clerk of the House 'to have necessary and knowing clerks to attend committees for performing the business of the House.' Though these appointments must have for long been occasional, and no question of an establishment can have arisen until some time later, the expectation that some committees at least would have clerks must have been well established by the mid-1640's, when a number of clerks' names are known.[15] It is to be hoped that, with a little more research, those whose names come to be closely connected with executive committees of the House in the later 1640's and of the administration in the next decade – Darnall, Dallison, Jessop and others – may also be found in the pre-crisis service of Parliament.[16] What would be more natural than that the House should turn, when experienced and reliable lawyers and administrators were wanted, to those whose legal and parliamentary expertise were already familiar?

In the following text, the spelling and punctuation have been modernised.

TOUCHING THE OFFICE OF SERJEANT AT ARMS ATTENDING THE HOUSE OF COMMONS

The Serjeant at Arms attending the House of Commons is the special and only officer to whose duty it belongs, by himself or his Deputy particularly appointed (for whom he is responsible) to execute all orders, precepts and warrants directed unto him by the House or by any committee of the House for summoning, conventing, bringing in safe custody or apprehending any person or persons to answer any offence or other matter before the House or any committee thereof. And until the offender be heard, [it is the Serjeant's duty] to keep him in safe custody till the pleasure of the House be known. And in case the offender be found bailable, and so ordered to be bailed, then [it is the Serjeant's responsibility] to take bonds in his name for the sake of

the State, according to the order. And in case the party be ordered to be committed, [it is for the Serjeant] then to keep him in safe custody till further order.

In all which cases, and others of the like sort, the Serjeant at Arms is the only officer that is responsible to the House, either for the escape, imprisonment or discharge of the offender. And this being the principal part of his office, he is sworn by oath to perform the same accordingly.

[It is, however, the case] that contrary to this, the clerk of the Committee for Examinations upon several warrants and orders made by that Committee and directed to the Serjeant at Arms [in order] to summon or bring some offenders do employ several persons as deputies to the Serjeant, who have no lawful deputation from him, and for whom he cannot answer, who after they have attached the prisoner never bring him to the Serjeant who ought to take notice of it; and so send him to the Committee but do dispose of the prisoner as they see good, never acquainting the Serjeant therewith, and so the prisoner oftentimes escapes or otherwise is disposed of without the Serjeant's privity.

At divers times when the prisoner is convented before that Committee, there are bonds taken of the prisoner for his appearance in the name of the Serjeant but without his privity, and the bonds [are] never delivered unto him nor [is] any entry made thereof for the satisfaction of the House whereby the offender and the offence remain unknown to the Serjeant, and he knoweth not whether the condition of the bond be broken or kept, nor how to charge the offender upon breach of the bond, nor what becomes of the prisoner now off the bonds.

In all which cases and the like, the Serjeant according to the order of the Committee and the duty of his place is to execute the order either by himself or by such [person] for whom he will answer. And to that purpose, [he] keeps his clerk and other servants to attend the Committee and to receive the orders and warrant directed to the Serjeant, to see that they be executed and to make and enter bonds where bonds or bail is ordered to be taken, and to keep a register thereof, to the end an account may be made when the House or the Committee shall require the same.

This being a matter of great consequence and so nearly concerning the service of the House and the particular duty and interest of the Serjeant at Arms attending the same House, he desires the same to be rectified accordingly and [asks that] deputations which have been made without the Serjeant's authority may be called in.

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1. The text is to be found in Ms. Mm 6.57, f.125. I am grateful to Cambridge University Library for permission to reproduce it here.
2. See P. F. Thorne, *Serjeant for the Commons*, House of Commons Library Document, No. 13 (1986).
4. CJ (1547–1628) 428, 14 May 1610.
5. *ibid.*, 873, 20 March 1628; 893, 8 May 1628; 894, 9 May 1628.

6. *ibid.*, 915, 20 June 1628; and 917, 23 June 1628.
7. CJ (1640–1642) 825, 28 October 1642.
8. For further proceedings of the committee, see *ibid.*, 828, 30 October 1642; 830, 1 November 1642; 851, 15 November 1642; 929, 16 January 1643; and 939, 23 January 1643.
9. See D. Pennington, 'The Making of the War, 1640–42' in ed. D. Pennington & K. Thomas, *Puritans & Revolutionaries* (1978), pp. 161–185.
10. CJ (1644–46) 607.
11. G. E. Aylmer, *The State's Servants*, 1973, pp. 14–15, 231.
12. CJ (1547–1628) 150, 22 March 1604.
13. *ibid.*, 289, 25 March 1606.
14. An edition of *Observations, Rules and Orders* is in course of preparation.
15. See, for example, ed. Mrs M. E. V. Green, *Calendar of the proceedings of the Committee for Compounding*, pp. 777, 784 (1889).
16. Aylmer, op. cit.

XIV. PAYMENT OF MEMBERS – ANSWERS TO THE QUESTIONNAIRE

The Questionnaire for volume LV of the Table asked –

Payment of Members: how is the pay of Members of your House determined; how often is it reviewed and increased; how does it compare with public service salaries in general; what salaries (if any) are paid to your Speaker, deputy Speakers, Leader of the Opposition and Whips; what travelling expenses etc. are paid to Members; what other payments are made? Please give details of any investigations and reports into Members' pay and related matters since about 1975.

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

Since 1973, pursuant to the *Remuneration Tribunals Act* 1973, the Remuneration Tribunal has at intervals of not more than one year made reports and determinations of the remuneration, allowances and entitlements of those offices which are within its jurisdiction. This includes Ministers, office-holders of the Parliament, Senators and Members of the House of Representatives.

The basic salary, effective from 1 July 1986, of a Member is A$45,543 (the Tribunal had determined a figure of A$49,727 but this was reduced by legislation). In addition to this Members also receive an electorate allowance, ranging from A$17,329 to A$25,127 depending on the geographical size of the electorate, plus a travel allowance of between A$89 and A$115 per overnight stay away from their base. Members also receive certain entitlements in respect of travel within Australia, or overseas after a qualifying period, and office facilities such as telephone and postage services.

In relation to public service salaries the basic salary of a Member is at present below the first of the six levels of the Senior Executive Service (SES), that being A$48,867 plus A$815 expenses of office allowance. The Senior Executive Service is the division of officers immediately below Secretaries of departments. In 1984 the Tribunal suggested that a Member's salary should be in a range of salary between a level 1 and level 2 officer of the then Second Division (now SES).

Members who are also office holders of the Parliament receive an additional salary and expenses of office allowance, as determined by the Remuneration Tribunal.

AUSTRALIA: SENATE

Determination of salaries of senators

The salaries of Senators and Members are determined by a Remuneration Tribunal which was established by the *Remuneration Tribunals Act 1973* to determine the salaries and allowances of Members of Parliament, judges, certain statutory officers and senior public servants. The Tribunal, consisting of a judge and two other members, invites submissions from interested parties and also takes into account wage principles established by the Australia Conciliation and Arbitration Commission.

Determinations of the Tribunal are subject to disallowance by either House of the Parliament, and have been frequently altered by statute, usually to reduce increases granted by the Tribunal.

Frequency of salary review

Salaries are reviewed annually by the Tribunal. Since 1982 the Government has requested the Tribunal to exercise restraint in the granting of salary increases. The Tribunal has done so, with the result that in the two years since 1 July 1984 the salary level of Senators, Members and Ministers has fallen some 11.7% below what it would otherwise have been, if the wage principles had been observed. Increases received have been limited to national wage decisions applied equally to all groups in the community.

The *Remunerations and Allowances Alteration Act 1986* reduced increases of salary and allowances granted by the Tribunal during the first half of 1986.

Salaries of Senators

Table: Senators' salaries and allowances*

Office	Basic salary	Electoral Allowance	Salary of office	Expenses
Senator	45 543	17 329	–	–
President of the Senate	45 543	17 329	26 261	9 901
Leader of the Government in the Senate	45 543	17 329	29 835	12 068
Leader of the Opposition in the Senate	45 543	17 329	15 024	9 901
Leader of the Democrats	45 543	17 329	7 986	9 901
Whips	45 543	17 329	6 211	2 041

Source: Remuneration Tribunal Determinations
*details correct as at 1.3.1987

Additional allowances and entitlements

In addition to salaries and allowances set out in the table above, Senators have the following entitlements:

Accommodation and subsistence allowance to Senators engaged in parliamentary duties –

$100 per day in Canberra
$115 per day in state capital cities
$89 per day in country areas

Transport –

Unlimited first class air, rail and coach travel at government expense for a Senator engaged in parliamentary duties.

Limited first class travel at government expense for a Senator's nominee, usually a spouse.

Limited travel at government expense for the children of a Senator.

Entitlement to government cars in Canberra and between their homes and local airport.

Gold Passes granting an entitlement to air travel within Australia for life to Senators who have served for twenty years or the life of seven parliaments. This privilege extends to the spouses of such Senators.

Air and vehicle charter allowance from $4,735 (for most) to $20,694 per annum for Senators on electoral duties in their states or the Northern Territory.

Office facilities –

Use of a Federal Member's Authority Card for entitlement, at government expense, to make trunk telephone calls and send phonograms within Australia.

Letter rate postage for 900 letters quarterly.

Electorate business postage at government expense to a maximum equivalent of the cost of 4,500 letters per quarter.

Bulk postage rates for mail exceeding the above entitlement.

Overseas travel –

After three years of parliamentary service a Senator is entitled, for the purposes of study, to one round-the-world first class air fare plus accommodation and hire-car charges. Subsequently, this entitlement accrues once only in the life of each Parliament.

Comparison of parliamentary and public service salaries

The base salary of a Senator is close to that paid to officers at the lowest level of the Senior Executive Service of the Australian Public Service.

Investigations and reports into pay of Senators and Members

Since the establishment of the Remuneration Tribunal in 1974 no other investigations or reports on parliamentary salaries have been made.

AUSTRALIA: NEW SOUTH WALES

Members' salaries and allowances are determined by the Parliamentary Remuneration Tribunal under section 5B(2) of the Parliamentary Remuneration Tribunal Act, 1975. There is no nexus between members' and public servants' salaries and objective comparison is therefore inappropriate. Members' salaries have moved over recent years in accordance with National Wage variations. The Tribunal is required to report annually.

All members receive a base salary. Ministers and recognised office holders receive an additional 'salary of office' and 'Expense Allowance'. Electoral allowances are also paid to all members which vary generally in accordance with the geographic size of the electorate. Members representing country electorates receive a Special Expenses Allowance for overnight accommodation away from Parliament House.

Unlimited rail travel is provided to members over all government railways in Australia (and New Zealand by reciprocal arrangement). First class air travel intrastate, interstate and between electorates and Sydney is provided but is limited in terms of the number of journeys undertaken. These entitlements are determined by the Premier upon the recommendations of the Parliamentary Remuneration Tribunal under section 6 of the Act. Travel undertaken by Ministers relevant to their portfolio responsibilities is provided by the department concerned. Overseas travel is not available to members as a standardised entitlement, however, limited overseas travel is conducted under the auspices of the Commonwealth Parliamentary Association.

Other payments made to members, or on their behalf, include postage stamp allowance, printing allowance, electorate office rental, equipment and staff, taxi travel, charter transport, telephone expenses and accident insurance cover. Certain allowances are payable to the Chairmen and Members of Joint, Statutory and Select Committees.

Since 1975 there have been many investigations and reports into members' salaries, entitlements and allowances but these are generally for the Premier's benefit and are not public documents.

AUSTRALIA: NORTHERN TERRITORY

The *Northern Territory (Self-Government) Act 1978* which established the Northern Territory as a body politic provides, at s.54, that provision

may be made by enactment to confer on the Remuneration Tribunal established by the *Remuneration Tribunals Act 1973* (Commonwealth) the function of inquiring into and reporting on a determining remuneration and allowances to be made and other entitlements to be granted to persons in respect of their services as members of the Legislative Assembly, members of the Executive Council and Ministers of the Territory.

This provision does not limit the power to make other provisions by enactment for and in relation to remuneration, allowances and other entitlements.

Prior to the granting of self-government the Commonwealth Remuneration Tribunal undertook regular reviews of the salaries, allowances and entitlements of Members of the Legislative Assembly at the request of the responsible Commonwealth Minister, and any determinations made by the Tribunal were subject to disapproval in the Commonwealth Parliament.

In 1978 the Northern Territory Assembly passed the *Legislative Assembly (Remuneration, Allowances and Entitlements) Act* which provided for the Administrator of the Northern Territory to request the Commonwealth Tribunal to report on or make a determination on remuneration, allowances and other entitlements to be paid to members of the Legislative Assembly, members of the Executive Council, or Ministers of the Territory.

Determinations and reports under this Act were required to be tabled in the Legislative Assembly.

On 1 June 1981 the *Remuneration Tribunal Act* (Northern Territory) commenced. This Act repealed the *Legislative Assembly (Remuneration, Allowances and Entitlements) Act* and established a (Northern Territory) Remuneration Tribunal which had similar terms of reference and powers to the Commonwealth Tribunal.

The Act also provides that the Reports and Determinations of the Northern Territory Tribunal shall be tabled in the Legislative Assembly within 6 sitting days next following the receipt of the report or determination by the Administrator.

The Legislative Assembly may, within 10 sitting days disapprove of a determination or a report, or any part of a determination or report.

CURRENT REMUNERATION OF MEMBERS

MEMBERS' SALARIES

Remuneration Tribunal Determination No.3 of 1984 set a Member's basic salary at $44,000. Subsequently a resolution of the Legislative Assembly reduced this salary to $41,720. The *Remuneration Tribunal Determination Amendment Act 1985*, prohibited the Tribunal from determining the basic salary payable to a Member of the Legislative Assembly. When a National Wage Case award of the Full Bench is

made under the *Conciliation and Arbitration Act 1904* of the Commonwealth, the Administrator shall make a determination varying the rate of basic salary of Members of the Legislative Assembly from the same date as that fixed by the award of the Full Bench.

Following the National Wage Case of 24 June 1986, the current basic salary of a Member is $44,301 (as at 1 May 1987).

At the time of writing the method of fixing National Wage awards is under review and, as a consequence, the provisions of the amending Act linking the basic salary of Members to the National Wage Case awards are also currently under review.

ADDITIONAL SALARIES

On 11 June 1986 the Northern Territory Legislative Assembly passed a resolution disapproving of that part of Remuneration Tribunal Determination No. 1 of 1986 which related to additional salaries and special allowances for office-holders. Paragraph 11.0 of that Determination, as amended by the Assembly, states that the rates of additional salary and special expenses of office allowances shall be adjusted in accordance with National Wage Case Decisions made by the Australian Conciliation and Arbitration Commission after the date of this Determination (14 February 1986).

Following the National Wage Case of 24 June 1986, the current additional salaries and special allowances are:

ADDITIONAL SALARY AND SPECIAL EXPENSES OF OFFICE ALLOWANCE
(*resulting from the 2.3% National Wage Case Decision effective 10 July 1986*)

OFFICE	*Rate per Annum Of Additional Salary*	*Rate per Annum of Special Expenses of Office Allowance*
Chief Minister	$47,672	$10,025
Deputy Chief Minister	$31,815	$ 7,059
Speaker	$23,938	$ 5,627
Minister	$23,938	$ 5,627
Leader of Opposition	$23,938	$ 5,627
Chairman of Committees	$ 7,979	
Deputy Leader of Opposition	$ 7,979	
Government Whip	$ 4,297	
Opposition Whip	$ 4,297	

(Note: as at 1/5/87 $A1 = £.43 stg; £1 stg = $A2.3)

ALLOWANCES AND OTHER ENTITLEMENTS

At the time of writing the allowances and other entitlements paid to Members of the Legislative Assembly, Members of the Executive Council and Ministers of the Territory are under review.

Accordingly, the provisions of the Determination No.1 of 1986, subject to the above disapproval, are still applicable.

COMPARISON WITH SENIOR PUBLIC SERVANTS

At the time of writing the basic salary of a Member is $A44301 together with an electorate allowance of between $7200 and $A14,000 per annum.

The salary payable to permanent heads of Northern Territory government departments varies according to the terms of individual employment contracts.

Annual salaries of permanent heads are generally within the range of $A60,000–$A70,000.

AUSTRALIA: QUEENSLAND

Section 11 of the Constitution Acts Amendment Act 1896–1984 provides –

(1) The annual rate of salary payable to a member of the Legislative Assembly and, in the case of a member to whom additional salary is payable, the annual rate of additional salary payable to him shall be varied from time to time in the same manner and to the same extent as the rate of salary payable in accordance with the Public Service Award in respect of the classification I17 within the Public Service of Queensland is from time to time varied, each variation of such last-mentioned rate of salary, where it is not a percentage variation, being calculated on an annual basis for the purposes of this section.

(2) Each variation in the annual rate of salary or additional salary required by subsection (1) to be made shall become effective on and from the date on and from which the variation in the rate of salary by reference to which it is required to be made becomes or has become effective.

The present salaries paid to Ministers and Members are as shown in table opposite.

Travelling Expenses

Members are paid a daily travelling allowance whilst absent from their Electorates on Parliamentary business.

Members are entitled also to an annual expenditure to permit travel by air, rail, hire car, bus or charter flight.

	Per Annum $
Premier	93,712
Deputy Premier	80,450
Ministers	73,885
Speaker	61,841
Chairman of Committees	51,738
Leader of the Opposition	63,839
Deputy Leader of the Opposition	51,131
Government Whip	50,603
Opposition Whip	50,603
Deputy Government Whip	47,956
Leader of Other Party (comprising not less than 10 Members)	47,956
Member	45,177

Other Allowances

Members are paid Electorate, Postage and Printing Allowances.

Investigations and Reports

There have been no investigations and reports into Members' pay and related matters since 1975.

AUSTRALIA: TASMANIA

Prior to 1973, the salary of Members of the Tasmanian Parliament was determined triennially, by an independent tribunal. Every increase in Members' salaries however, no matter how justified, raised a storm of public protest.

In 1973 the Parliament passed the Parliamentary Salaries and Allowances Act, which provided for a basic rate of pay for all Members to be calculated annually. That basic rate was set as the 'interstate average' of the rates payable to ordinary 'back-bench' members of the Lower Houses of New South Wales, Victoria, Queensland, Western Australia and South Australia. Calculation of the 'interstate average' was the responsibility of a 'salaries committee' comprising the Government Statistician, the Clerk of the Legislative Council and the Clerk of the House of Assembly. Their determination was required to be ratified by the Auditor-General and published in the Government Gazette.

In 1982 an amendment to the Act effectively 'froze' parliamentarians' salaries as at July of that year. In June 1983 a further amendment to the Act had the effect of removing New South Wales and Victoria from the states upon which the calculation was based, and also continued

the 'salary freeze' until January 1984. From then until 1st July 1984 the salaries became the average of those payable to ordinary back-bench members of the Legislative Assemblies of Western Australia, South Australia and Queensland.

A further amendment to the Act provided that as from 1 July 1984 the 'averaging' provisions were abandoned, and the Members' basic salary at that time would be adjusted in accordance with awards or amending awards affecting all, or substantially all employees of the Tasmanian State Service. Thus Members' salaries are now effectively tied to those of public servants.

In November 1986 the Reduction of Salaries (Members of Parliament and Judges) Act was passed, effectively reducing the salaries of Members and Judges, as follows –

For those having a notional remuneration exceeding $30,000 a year but less than $40,000 by 3 per cent.

For those having a notional remuneration exceeding $40,000 per year but not exceeding $50,000, 4 per cent.

For those having a notional remuneration exceeding $50,000 per year, 5 per cent.

In addition to the basic salary, Ministers of the Crown and office-bearers receive allowances, as a percentage of the basic salary, as follows –

Particulars	Additional salary payable as proportion of basic salary (a)	Particulars	Additional salary payable as proportion of basic salary (a)
Cabinet –		House of Assembly –	
Premier	125	Speaker	33.1/3
Deputy Premier	85	Chairman of Committees	20
Ministerial office	70	Leader of the Opposition	70
Secretary to Cabinet	30	Deputy Leader of the Opposition	17
Legislative Council –		Government Whip	6
President	33.1/3	Opposition Whip	6
Leader of the Government	70		
Chairman of Committees	20		
Deputy Leader of the Government	11		

Electorate allowances are also calculated as a percentage of the basic salary. They are –

Electoral division	Proportion of basic salary payable	Electoral division	Proportion of basic salary payable
Legislative Council –		Legislative Council – continued	
Buckingham	13	Queenborough	11
Cornwall	12	Russell	26
Derwent	18½	South Esk	26
Gordon	26	Tamar	18½
Hobart	11	West Devon	17
Huon	18½	Westmorland	14
Launceston	12	House of Assembly –	
Macquarie	20	Bass	26
Meander	22	Braddon	30
Mersey	17	Denison	15
Monmouth	24	Franklin	21
Newdegate	11	Wilmot	35
Pembroke	13		

Travelling allowances are related to rates payable to permanent Heads of State Government Departments.

AUSTRALIA: VICTORIA

Date From: 3 February 1987

PART I – *BASIC SALARY, ADDITIONAL SALARY AND EXPENSE ALLOWANCE*

Source: *Parliamentary Salaries & Superannuation Act 1968 (as amended)*

A. Basic Salary

Section 3 of the *Parliamentary Salaries & Superannuation Act 1968* (as amended in 1975) provides the following interpretation.

> 'Basic Salary' means the amount of the annual allowance by way of salary from time to time payable to Members of the House of Representatives under the law of the Commonwealth less $500.

At present, the basic salary is therefore determined as follows:

Salary payable to Members of the House of Representatives	$45,543
Less	$ 500
Basic salary payable to all Members of Victorian Parliament	$45,043

B. Additional Salary and Expense Allowance

Section 6 of the Act provides for an additional salary and, in some cases, expense allowance (expressed as percentages of the basic salary) to be paid to those Members who hold designated offices.

TABLE

OFFICE	*ADDITIONAL SALARY*	$ Per Annum	*EXPENSE ALLCE*	$ Per Annum
Premier	100%	45,043	42%	18,918
Deputy Premier	85%	38,287	21%	9,459
Any other responsible Minister of Crown	75%	33,782	18%	8,108
Leader of the Opposition	75%	33,782	18%	8,108
President	75%	33,782	11%	4,955
Speaker	75%	33,782	11%	4,955
Chairman of Committees in the Council	32%	14,414	4%	1,802
Chairman of Committees in the Assembly	32%	14,414	4%	1,802
Deputy Leader of the Opposition	32%	14,414	6%	2,703
Leader of the Opposition in the Council	32%	14,414	6%	2,703
Leader of the Third Party in the Assembly	32%	14,414	6%	2,703
Parliamentary Secretary of the Cabinet	32%	14,414	6%	2,703
Government Whip in the Assembly	18%	8,108	–	
Deputy Leader of the Opposition in the Council	18%	8,108	–	
Leader in the Council of the Third Party if at least four Members of the Third Party are Members in the Council	18%	8,108	–	
Deputy Leader of the Third Party	14%	6,306	–	
Government Whip in the Council, and an Opposition Whip or the Whip of the Third Party in the Council or the Assembly	11%	4,955	–	

Secretary to the Party forming the Govt., the Opposition or the Third Party	4%	1,802
Chairman of Select Committee (Parliamentary Committees Act No. 7727)	5%	2,252

PART II – *OTHER ALLOWANCES*

Source: *Parliamentary Allowances Regulations 1981 (Statutory Rule No: 283/1981) (as amended)*

C. Residential Allowances

The prescribed residential allowance payable to members if the home base of the member is outside a radius of 80 kilometres from the Melbourne Post Office and a second residence is maintained by the Member in Melbourne shall be –

(a) at the rate of $15,077 per annum for the Premier.
(b) at the rate of $13,192 per annum for the Deputy Premier.
(c) at the rate of $11,307 per annum for a Minister of the Crown or Office Holder; or
(d) at the rate of $7,538 per annum for a Member.

The formula from the 1st July each year is as follows R × A/B where –

R is the rate currently being paid.

A is the Melbourne housing group index number in respect of the quarter ending on the preceding 30 June.

B is the Melbourne housing group index number in respect of the quarter ending June 1984.

D. Travelling Allowances shall be payable to –

(a) The Premier, Deputy Premier, a Minister of the Crown, Office Holder or Member –
  (i) when required to stay overnight outside the electorate; or
  (ii) where required to be absent from the home base for period in excess of six hours –

  occasioned by sittings of the House of Parliament or attendance at official government, parliamentary or vice-regal functions; and
(b) the Premier, Deputy Premier, a Minister of the Crown or Office Holder or Member who is for the time being Deputy Leader of the Third Party or Leader of the Third Party in the Council when required to stay overnight in Melbourne or away from the home base occasioned by official business as Premier, Deputy Premier, Minister of the Crown or Office Holder, or Member who is for

the time being Deputy Leader of the Third Party or Leader of the Third Party in the Council provided that any Member with a home base in Melbourne who otherwise qualifies for payment of a travelling allowance for official business shall not be eligible for payment of such allowance when the official business is performed in Melbourne.

The prescribed travelling allowances payable shall be in addition to any allowance under paragraph (b), (as above).

(a) At Rate B* for each overnight stay in Melbourne –
  (i) to the Premier, Deputy Premier, a Minister of the Crown, Office Holder or Member if the home base is beyond a radius of 80 kilometres from the Melbourne Post Office and does not receive a residential allowance under Regulation 4; and
  (ii) to the Premier, Deputy Premier, a Minister of the Crown, Office Holder or Member if the home base is outside a radius of 28 kilometres but not beyond a radius of 80 kilometres from the Melbourne Post Office.

(b) At one-third of Rate C* to a Member other than the Premier, Deputy Premier, a Minister of the Crown or Office Holder absent from the home base or second residence, including a home base or second residence situated in Melbourne, for not less than six hours in attendance in Melbourne at sittings of the relevant House of Parliament, or official government, parliamentary or vice-regal functions.

(c) An allowance equal to the value of any expenses actually and reasonably incurred by a Member if the home base of the Members is situated in Melbourne in travelling by taxi from the Parliament House to the home base where a sitting of the House of Parliament has extended beyond 11.00 p.m.

(d) At one-third of the appropriate overnight rate for an overnight stay in a capital city or elsewhere within Australia other than Melbourne to which the Premier, Deputy Premier, a Minister of the Crown, Office Holder or Member has an entitlement under these Regulations –
  (i) when absent from home base for not less than six hours but not occasioning an overnight stay; or
  (ii) where the absence from home base does not involve a second or subsequent overnight stay, in addition to the overnight rate when the absence exceeds by six hours a period of 24 hours.

(e) For each overnight stay within Australia other than in Melbourne –
  (i) to the Premier or a Minister of the Crown acting as Premier at the rate of one and three-quarter times Rate A* in a

capital city and one and three-quarter times Rate B* elsewhere;

(ii) to a Minister of the Crown (other than the Premier or a Minister of the Crown acting as Premier) or an Officer Holder at the rate of one and one-half times Rate A* in a capital city and one and one-half times Rate B* elsewhere; or

(iii) to a Member at Rate A* in a capital city and at Rate B elsewhere.

(f) An allowance equal to the value of the added cost of double room over single room accommodation for an overnight stay within Australia when, with the approval of the Premier, a Minister of the Crown or Office Holder is accompanied by the spouse at government expense.

(g) At rate B* for each overnight stay over 150 kilometres from home base, and within a member's own electorate, up to a maximum of 20 such overnight stays in each financial year.

(h) The Premier has approved an allocation of up to 5 return rail trips to Melbourne per year for spouses or nominated partner of Members whose home base is over 28 km. from the Melbourne GPO. This allowance is to enable Members' spouses or partner to attend official Government, Parliamentary or Vice-Regal functions in Melbourne.

E. Electorate Allowances

To each Minister and Member, according to the area of the elec torate, as follows:

Electorate represented	*Rate of allowance Per Annum*
Less than 500 square kilometres	$13,878 per annum
More than 500 square kilometres and less than 5000 square kilometres.	$15,600 per annum
5000 square kilometres or more	$20,107 per annum

F. Charter transport allowance

Which covers any mode of transport, but used exclusively in the Member's own electorate. Maximum allowance of:

(a) $2,366 p.a. for electorate exceeding 10,000 square kilometres but less than 20,000 square kilometres.

(b) $4,735 p.a. for electorate in excess of 20,000 square kilometres in area.

G. Electorate Office Allowances

(a) an allowance equal to seventy-five per cent of the actual cost incurred by a Member for telephone calls and phonograms (other than for international calls or cables) charged to a telephone in the Members' private residence so long as the Member is not provided with a telephone extension at government expense from the electorate office to the residence; and

(b) (i) an allocation of postage stamps to the value of not more than 6000 standard articles rate postage per annum to be distributed in a manner determined by the Premier; or

(ii) where a Member has a franking machine, an annual allowance in the form of a cheque payable to Australia Post not exceeding an amount equivalent to the value of 6000 standard articles rate postage stamps and such allowance is not to be converted to stamps or cash.

*** LEGEND**

(1.9.86) Rate A = $111.25
(1.9.86) Rate B = $77.15
Rate C = Capital city Rate at 28 February 1983 being $84.36.

(Source – Public Service Determinations)

AUSTRALIA: WESTERN AUSTRALIA

The following extracts from the Preliminary Statement of the Salaries and Allowances Tribunal (12 September 1986) explain how parliamentary salaries and allowances are determined.

'The Salaries and Allowances Act 1975 requires the Salaries and Allowances Tribunal, at intervals of not more than one year to make a determination of the remuneration to be paid to the following officers:

Ministers of the Crown and the Parliamentary Secretary of Cabinet;
Officers and Members of the Parliament including additional remuneration to be paid to members of Select Committees of a House or Joint Select Committees of Houses;
Officers of the Public Service holding offices included in the Special Division of the Public Service; and
A person holding any other office of a full-time nature, created or established under a law of the State, that is prescribed, but not being an office the remuneration for which is determined by or under any industrial award or agreement made or in force under any other law of the State.

In conducting its 1986 review, the Tribunal published advertisements in both the local and national daily newspapers seeking submissions from interested parties in respect of the remuneration of Officers and Members of Parliament. In addition, it wrote to all Members of Parliament inviting submissions.

MEMBERS OF PARLIAMENT

The Tribunal received a total of 29 submissions concerning the remuneration of Members and Office Holders.

Of these, seven were from members of the public, three were from the Parliamentary Parties, 11 were from Members, five were from Office Holders and three from former Members.

BASIC SALARY

The Tribunal in its Determination of 6 July 1981 considered that a Member's basic salary should be equal to 90 per cent of the base salary applying to a Federal Parliamentarian. The implementation of this relativity was delayed until December 1983, due to economic circumstances and the provisions of the Salaries and Wages Freeze Act 1982.

In 1984 the Commonwealth Remuneration Tribunal found that to place Federal Members on a "firm and equitable base" for the future operation of the Wage Principles required an increase in their base salary of 11.7 per cent. Due to representations from the various parties, individual Members and Senators, this increase was not determined. The Tribunal advised that it would consider the restoration of the proper level of remuneration when circumstances permit.

In October 1984, having regard to the Commonwealth's action and the economic climate, our Tribunal determined an increase of 5.7 per cent. By severing the nexus the basic salary of WA Parliamentarians became 95.12 per cent of that of their Federal counterparts.

Western Australia was the only State where an increase outside of the National Wage Case decisions was applied to Parliamentarians in 1984.

The Commonwealth Remuneration Tribunal, in its 1986 Review found that despite the call for restraint in Public spending, there was a pressing need to remove the anomaly that existed, and determined that the 11.7 per cent increase be granted to Federal Members. The Federal Government however, has announced that this will be rejected by the Parliament.

This Tribunal again considers, as it has done in every Determination since 1981 that the 90 per cent relativity with a Federal Member's basic salary is appropriate. However, the decision of the Federal Government is frustrating to our attempt to restore the relativity.

In keeping with our practice of adhering whenever possible to the Wage Fixation Principles, we now determine that the 2.3 per cent National Wage Case decision of 9 July 1986 shall be granted to Parliamentarians basic salary, with effect from 1 July 1986.

ADDITIONAL SALARIES OF MINISTERS OF THE CROWN, OFFICERS OF PARLIAMENT AND THE PARLIAMENTARY SECRETARY OF THE CABINET

The 2.3 per cent National Wage Case decision will be passed on to the additional salaries of all Ministers and officers contained in Parts II and III of the first schedule, effective from 1 July 1986.

Upon examination, three positions have demonstrated an increase in responsibility to such a degree that warrants an increase in additional salary. These positions are the Leader of the Opposition in the Legislative Council, the Deputy Leader of the Opposition in the Legislative Assembly and the Parliamentary Secretary of Cabinet. Over the years, these positions have received an additional salary of 35 per cent of that given to Ministers. The Tribunal is satisfied that the level of responsibility and work should now be remunerated at 55 per cent of the Ministerial salary. This will align them more closely with their counterparts in the other States and Commonwealth.

LEADER OF THE THIRD PARTY

In the past provision has been made for the payment of an additional salary to a person who not being a Minister of the Crown is the Leader in the Legislative Assembly of a party of at least seven Members in that House other than a party whose leader is the Premier or the Leader or Deputy Leader of the Opposition.

An amendment to the Salaries and Allowances Act has reduced the number of Members required in the Legislative Assembly from seven to five. This Act was proclaimed on 1 August 1986. This places the Leader of the National Party of Australia, Western Australian Division within the Tribunal's jurisdiction.

The Tribunal having assessed the situation, considers that the position equates with the Deputy Leader of the Opposition in the Legislative Assembly and the Leader of the Opposition in the Legislative Council. Accordingly the additional salary for the position has been set at 55 per cent of that paid to a Minister.

ELECTORATE ALLOWANCES

These are to be increased by 2.3 per cent with effect from 1 July 1986.

TRAVELLING ALLOWANCE

The provision of allowances for Members of Parliament who incur expense in securing overnight accommodation has been broadened to differentiate between Capital Cities and other places in Australia.

In keeping with other States, the Commonwealth and normal business practices, the Tribunal has determined that Members shall be entitled to claim reimbursement of their taxi fares necessarily incurred when travelling to and from any airport or helipad in the Metropolitan Area to Parliament House, or to the Members residence in the Metropolitan Area for the purpose of attending a sitting of Parliament, attending Party meetings or meetings of Parliamentary Committees.

TELEPHONE RENTAL AND CALLS

Under previous Determinations, Members of Parliament provided with an electorate office, received by way of an allowance, reimbursement of the full rental and 85 per cent of all charges for calls incurred by the Members at the Electorate Office. Following the Review, and having regard to the practice in other States and the Commonwealth, the Tribunal considers that the full cost of rental and all charges for calls should be met by the Government.'

AUSTRALIA: VARIOUS COMPARISONS

In November 1986 the Inquiry into Electorate Office Support provided to Members of the Victorian Parliament reported to the Cabinet. As part of their researches the Inquiry undertook a comparison between facilities provided for Members of the Victorian Parliament and those provided for Members of the Commonwealth Parliament and certain State Legislatives. Appendix 6 of the Inquiry's report is reproduced below.

BERMUDA

The Majority Report of the Select Committee of the House of Assembly on Ministerial and Parliamentary Emoluments, which wa tabled in the House on the 8 December 1978, and approved after ; debate in the House later in the month, determines the pay of Members. In this connection it should be noted that although the majority of Ministers work full time the majority of the Members of the House of Assembly and the Senate do not. The Select Committee considered that an adequate Parliamentary salary is essential to enable persons from all walks of life to stand for election to Parliament. The Select Committee recommended that the formula agreed for working out Civil Servants salaries should be used for Ministerial and Parliamentary emoluments. This recommendation was agreed to and the emoluments are reviewed every two years and the percentage increase given to Civil Servants is given to all Members of both Houses of Parliament.

The Minority Report signed by the three Opposition Members of the Select Committee recommended as follows:

(a) Salaries for full time Cabinet Ministers.
(b) Salaries for full time Shadow Cabinet Ministers.
(c) Salaries for full time back benchers.

These recommendations were not accepted by the Government at the time and the position remains unchanged.

Officers of Parliament such as the Speaker, Deputy Speaker, Leader

ELECTORATE OFFICE SUPPORT INQUIRY
COMMONWEALTH AND INTERSTATE COMPARISONS
(Refer Paragraph 4.30 of the Report)

TYPE OF SUPPORT	VICTORIA	NEW SOUTH WALES	WESTERN AUSTRALIA	SOUTH AUSTRALIA	COMMONWEALTH OF AUSTRALIA
Electorate Office	One office per member.	MLA's have choice of office in the electorate or office in Parliament House. MLC's represent the whole State, therefore they are provided with an office in Parliament House.	One office per member.	One office per member, in special circumstances, and with approval of Minister for Housing and Construction, a second office may be provided.	One office per member, either in the electorate or in Commonwealth Parliament Offices in the State capitals.
Electorate Staff	One electorate officer or the equivalent of a full time electorate officer per member.	One electorate secretary and one electorate assistant per member – the electorate assistant must be either a school or college leaver and must not have had previous regular full-time employment.	One electorate secretary per member.	One electorate secretary per member. The Premier is entitled to a full-time assistant in addition to the secretary. Some Ministers are entitled to employ an extra person as are some country members at the discretion of the	Each Senator or member may employ two full-time Electorate Officers located in the Electorate Office and one full-time Electorate officer located either in the electorate office or in Canberra.

				Minister for Housing and Construction.	
Electorate Allowance	Provided to members on a p.a. basis dependent on the size of the electorate.	Provided to members on a p.a. basis dependent on the size of the electorate.	Provided to members on a p.a. basis dependent on the size of the electorate.	Provided to members on a p.a. basis dependent on the size of the electorate.	Provided to members on a p.a. basis dependent on the size of the electorate.
Postage	Each member is entitled to 6,000 stamps p.a. or a cheque payable to Australia Post for franking machine, equivalent of 6,000 stamps.	Each member receives 700 stamps per month, Opposition Leader 2,330 per month and Leader of the National Party 930 stamps per month. No franking machines either in electorate office or at Parliament House.	MLC's – receive 4,600 stamps p.a. MLA's receive 4,000 stamps p.a.	Each member receives 300 stamps per month and a franking machine is provided at Parliament House. Members are entitled to either 500 franks per month or 300 stamps.	Stamps or stamped envelopes at Parliament House up to a maximum equivalent to the cost of 900 letters per quarter and a franking machine in electorate office, 4,500 letters per quarter. Bulk postage facilities may be used for up to 4,500 letters per quarter.
Phones	Cost of rental and all calls charged to phone in electorate office except overseas calls.	Cost of rental and all calls charged to phone in electorate office up to a specified amount dependent on the	Members are responsible for arranging the installation of the telephone and are reimbursed for costs	Reimbursed for cost of calls to a prescribed amount, any excess member meets the cost.	Private Residence: Cost of installation and rental of phone in private residence at member's expense.

	Reimbursement of 75% of calls charged to residence provided that member is not supplied with an extension from electorate office to residence at government expense.	size of the electorate. Any accounts in excess of these prescribed amounts are reimbursed to the extent of 90%. Office holders have full rental and all calls paid for a standard handset telephone in their homes. Private members have payment of rental of a standard handset telephone installed in their homes plus 90% of all calls reimbursed except overseas calls.	incurred. Member is responsible for installation of any other lines. All rental and cost of calls are reimbursed. Any number of lines in office and including extension from electorate office to home.	If extension from office to home, specified percentage of total bill reimbursed.	Answering equipment: – installation maintenance and rental – government expense; – all calls and phonograms within Australia at government expense. Phones in offices at government expense.
Other Electoral Allowances	Travelling Allowance: 20 overnight stays p.a., 150 km. away from home base but still within own electorate.	Charter transport: A number of members with large electorates are entitled to an allowance ranging from $2,800–$7,800	Unlimited travel within electorate on scheduled air services. Members receive a motor vehicle replacement subsidy	All members receive an annual travel allowance currently $4,700 from which all claims for reimbursement of travel costs are met, this includes charter	Members receive an allowance for use of charter transport within and for the service of his State, Territory or electorate based on the size of the State

Charter Allowance for electorates of 10,000 sq. km. or more.	p.a. for charter transport within and for the service of the member's electorate.	of $2,000 p.a. Electorates that are larger than average in size and provided that the office is located within the electorate, are provided with a toll free number (008).	transport. Country members receive unlimited vehicle mileage allowance above and beyond the travel allowance.	and/or electorate commencing from 10,000 sq. km. or more.

of the Opposition and Whips are paid the following salaries per annum plus their salaries as Members of Parliament:

Speaker:	BD $5,013
Deputy Speaker:	BD $3,242
Leader of the Opposition:	BD $6,683
Whips:	BD $1,671

Members of the House of Assembly are paid BD $16,710 per annum and Members of the Senate are paid BD $11,686 per annum. Ministers are paid an additional BD $16,710 per annum. (1 BD $ = 1 U.S. $.)

Travelling expenses are paid to Cabinet Ministers only. They receive BD $200 per day and first class air fares. The only other payment made to them is for telephones installed in their homes and for the cost of all official telephone calls (local and overseas.)

All Members of Parliament contribute six per cent of their Parliamentary Salaries towards their pensions which they are eligible to receive when they are sixty and have served as a Member for eight years or as an Officer of the House for three years.

BOTSWANA

Introduction

The appointment of a Commission to review the Salaries, allowances and conditions of service of Members of Parliament, Members of the House of Chiefs, Councillors, Members of Land Boards and Subordinate Land Boards was announced in the Clerk of the National Assembly Circular of 13 March 1986.

Composition of the Commission

The Honourable Mr. P. K. Balopi, Minister of Local Government and Lands was appointed Chairman, and four members of Parliament members, of the Commission.

Terms of Reference

The Commission had as its terms of reference the following:

1) To review the present salaries and conditions of service for Members of Parliament, Members of the House of Chiefs, Councillors and Members of Land Boards, having regard to:
   a) changes in the cost of living since the last Salaries review, and taking into consideration the levels of any awards that were made since then;
   b) the responsibilities and functions of the present day Member of Parliament, Members of the House of Chiefs, Councillors

and Members of Land Boards and the conditions, geographic and economic, under which such persons carry out those responsibilities and functions;

c) the need to review, and make appropriate recommendations for, all allowances and fringe benefits, and to state where these need improvement, modification, discontinuation or consolidation into the basic salary or with each other;

d) the need or otherwise, to replace the current retirement benefits (where applicable) with a pensions award for ex-Members, and to determine the mode of awarding such pensions;

e) the country's ability to sustain the proposed salary and benefits structure bearing in mind the Government's commitment to the Income Policy and the resultant effect of such proposals on the Parastatal organisations and the Private Sector.

2) To review the housing needs for Members of Parliament, Members of the House of Chiefs, Councillors and Members of Land Boards with particular reference to periods during Meetings of Parliament, Meetings of the House of Chiefs, Meetings of Parliamentary Committees, Council and Land Board Meetings.

3) To review the services given to Members by virtue of their position as Members of the said organisations having regard to:

a) the position of the Speaker, the Deputy Speaker, the Leader of the Opposition, the Chairman of the House of Chiefs and Chairmen of Local Authorities.

b) The need for efficiency and effective communication. Such services include: postal services, telephone, secretarial and transport.

4) To set dates, where applicable, for implementation of recommendations reached.

5) To submit its report on or before 15th May 1986.

The appointment of the Commission and the dates for meetings were given the widest possible publicity on Radio Botswana and written correspondence channelled through the Ministry of Local Government and Lands. Additionally, information was solicited from a selected number of embassies based in Gaborone with respect to the situation prevailing in their home countries.

Recommendations of the Commission

The following were among the principal recommendations of the Commission:

Proposal/Recommendation

The State and not the President should provide all the food and refreshments at the State House.

Gardeners Allowance for Ministers to employ gardeners should be abolished. The State should be responsible for the maintenance of gardens at official residences.

The Speaker's Allowance should be abolished.

The Duty Allowance paid to any Member who presides over meetings of the National Assembly should be raised.

The Sitting Allowance should be increased by 10%.

The Speaker of the National Assembly should draw Sitting Allowance.

The Constituency Allowance for Members to visit every part of their constituencies should be doubled, because of the high costs of petrol and vehicles.

Cabinet Ministers should receive Constituency Allowance at appropriate rates.

Ministries/Agencies that invite an MP should pay him Subsistence Allowance.

New Rates of Kilometre Allowance should be adopted.

There should not be a Car Allowance for MPs.

Raise the ceiling of Motor Vehicle Advances to MPs.

Raise Entertainment Allowance by 10 per cent.

Pay Spouses Allowance to MPs' spouses to cover travelling and subsistence costs.

Extend Spouses Allowance to Spouses of Members of the House of Chiefs.

Pay Chairman of a Parliamentary Committee a Chairman's Allowance per sitting.

Members of Parliament and Members of the House of Chiefs should when attending meetings of Parliament be housed in superior and more secure Type I flats.

Government should build a Motel/Villa for MPs and Members of the House of Chiefs when attending Parliament.

Pay Accommodation Allowance to Member of Parliament who lives in his/her own house in Gaborone during sessions of Parliament.

Increase MPs' Termination Allowance to 35 per cent.

Commission a consultancy to look into the possibility of paying pension.

Raise Insurance Cover for MPs, Members of the House of Chiefs, and Local Authorities.

Inform Members of Parliament and Members of the House of Chiefs about the existence of any Medical Aid Scheme.

Pay Secretarial Services Allowance to Members of Parliament and Cabinet Ministers.

Pay part of telephone bills for MPs. Speaker to have the power to vary the subsidy.

Increase the salary of a Member of the House of Chiefs.

Increase the salary of Chairman of the House of Chiefs.

Increase Duty Allowance for Members of the House of Chiefs, per sitting.

Raise Sitting Allowance of Members of the House of Chiefs, per sitting.

Increase Non Accountable Entertainment Allowance of Members of the House of Chiefs, per month.

Increase Chairman's Non Accountable Entertainment Allowance, per month.

Let Chairman of the House of Chiefs have access to the entertainment vote.

Extend Spouses Allowance to Spouses of Members of the House of Chiefs.

Extend Kilometre Allowance to Members of the House of Chiefs.

Increase insurance cover of Members of the House of Chiefs.

Extend Motor Vehicle Advance to Members of the House of Chiefs.

Continue to pay Termination Allowance to Sub-Chiefs and specially elected Chiefs.

Consider terminal benefits for Chiefs who may not retire.

Build villa for Members of the House of Chiefs and Members of Parliament.

Fill the Post of Secretary of the House of Chiefs.

Let Chairman of the House of Chiefs fly a car pennant on his official car during ceremonial occasions.

Provide franking for Members of the House of Chiefs during their meetings.

Pay part of the telephone bill during sittings.

The Ministry of Local Government and Lands should consider installing telephones at residences of Chiefs and Sub-Chiefs.

The Government of Botswana completed a detailed examination of the Commission's recommendations in July 1986. Many of the Commission's proposals were accepted either wholly or with modifications. But the following proposals were rejected:

Rejected Recommendations
Speaker's Allowance should be abolished.

A spouse should claim Subsistence Allowance a day during the duration of a ceremony.

Pay Accommodation Allowance to Member of Parliament who lives in his/her own house in Gaborone during sessions of Parliament.

Increase Termination Allowance to 35 per cent.

Commission a consultancy to look into the possibility of paying pensions.

Extend Motor Vehicle Advance to Members of the House of Chiefs.

Build a villa for Members of the House of Chiefs and Members of Parliament.

Let Chairman of the House of Chiefs fly a car pennant on his official car during ceremonial occasions.

Provide franking facilities for Members of the House of Chiefs during their meetings.

CANADA: HOUSE OF COMMONS

a) Members' salaries and tax-free expense allowances are reviewed and adjusted annually in accordance with the formula specified in the Senate and House of Commons Act (Section 34), that is:

'one per cent less than the lesser of
(i) the percentage that the Industrial Aggregate for the first adjustment year is of the Industrial Aggregate for the second adjustment year, and
(ii) the percentage that the Consumer Price Index for the first adjustment year is of the Consumer Price Index for the second adjustment year.'

In addition, the amounts are rounded to the closest multiple of one

hundred dollars that is lower than the amounts so calculated, as per section 34(6) of the Act.

As of January 1, 1987, salaries and allowances for the Members of the House of Commons have been adjusted by **2.35 per cent** as follows:

Sessional Indemnity	$57,400
Expense Allowance	19,100
Schedule III (23 Members)	23,500
NWT	25,200
Prime Minister	65,500
Speaker	43,800
Cabinet Ministers	43,800
Opposition Leader	43,800
Deputy Speaker	23,000
Leader – Other Parties	26,400
Opposition House Leader	21,400
Whip – Government and Opposition	11,900
Parliamentary Secretaries	9,600
Deputy Chairman – Committees of the Whole House	9,600
Assistant Deputy Chairman – Committees of the Whole House	9,600
Whip – Other Parties	6,800
Deputy Whip – Government and Opposition	6,800
House Leader – Other Parties	9,200

b) Following each general election, as required by statute, i.e. under the Senate and House of Commons Act amended in 1976, a Commission is established to examine the salaries and entitlements of Members of Parliament and Senators. The last Commission, headed by Commissioners William H. Clarke, Chairman, and Coline Campbell, was appointed following the September 4, 1984 general election and submitted its report in May 1985. The Commission provided the following comparison for executive public service salaries:

PUBLIC SERVICE SALARIES
EXECUTIVE CATEGORY – JANUARY 1985

EMPLOYEE CLASS	NO. OF EMPLOYEES	AVERAGE SALARY	SALARY RANGE
EX-1	776	60,011	53,210–62,530
Ex-2	634	64,103	58,050–68,300
Ex-3	497	69,549	63,000–74,050
EX-4	204	76,241	68,870–80,970
Ex–5	77	82,241	75,100–88,350

Two previous Commissions were appointed:

1. the Hales Commission which followed the 1979 election;
2. the McIsaac/Balcer Commission which followed the 1980 election.

Prior to the 1976 legislation requirements, a report was submitted by the 1976 Advisory Commission on Parliamentary accommodation headed by the Hon. D. C. Abbott.

c) Under the Senate and House of Commons Act, Members are entitled to **transportation in Canada** under rules established by the Board of Internal Economy of the House. These travel costs are paid from public funds.

Travel is administered by a 'travel point' system through which Members are entitled to reimbursement of transportation expenses. Each Member has **64 travel points** per 12 month period. The points are used under the following conditions:

1. A Member may choose to use all of the 64 points for return trips between the constituency and Ottawa (these trips are referred to as '***regular***' trips).
2. A Member may use 20 of the 64 points for return trips from Ottawa or the constituency to any destination in Canada (these trips are referred to as '***special***' trips.).
3. A Member may allocate 6 of the 20 points to a spouse and/or designated family members for return trips to Ottawa or to the Member's constituency from any destination in Canada, or, for trips from Ottawa or the constituency to any destination in Canada.
4. A member may allocate 9 of the 64 points to a spouse and/ or designated family members for trips between the Member's constituency and Ottawa.
5. A Member may allocate 9 of the 64 points to a spouse, and/or designated family members, and/or office staff, for trips between the Member's constituency and Ottawa.

Members are entitled to claim reimbursement for local ground transportation expenses incurred in travelling to and from train terminals. airports, bus depots, etc., by transporter, taxi, automobile, etc.

Travel costs are also paid to Members who travel on House business with parliamentary committees and associations.

Members may use some or all of their travel 'points' for travel by automobile or by bus. When travelling by automobile (including leased or rented vehicles and taxis), Members may claim 23.6*c per kilometre driven, provided the amount claimed does not exceed the cost of first-class air transportation plus the cost of local ground transportation to and from the nearest airport. Cost of ferry services, bridge, road and

tunnel tolls are reimbursed in full when receipts are provided. For bus transportation, reimbursement is made on the basis of actual costs incurred, upon presentation of receipts.

Independant of the 64 travel point system, Members are also entitled to claim reimbursement for **travel costs incurred while travelling on constituency business** within the boundaries of the province or territory in which their constituencies are located. The rate of 23.6c per kilometre applies to travel by road, air or water; actual costs for bus transportation is reimbursed upon presentation of receipts. These costs are subject to the following annual Constituency Travel Allowance ceilings (1986–1987):

Urban Constituencies	$1,260
Urban-Rural Constituencies (less than 25,000 sq.km)	3,785
Urban-Rural Constituencies (more than 25,000 sq. km)	6,310
Rural and Rural-Urban .. Constituencies .....-	6,310

Increases in the rate paid per kilometre for travel and the Constituency Travel Allowances are tied to percentage increases which are approved by the Treasury Board for travel by federal public servants. Since the Treasury Board reviews its rates twice each year (April and October), these allowances for Members are also appropriately adjusted twice a year as required.

d) The House of Commons provides each Member with a fiscal year budget (known as the '**Principal Budget**') to be used for the following purposes and according to policies prescribed by the Board of Internal Economy:

1) to pay the **salaries** of secretarial, research, administrative or support staff working for a Member in the Parliament Hill Office or Constituency Office;
2) to obtain commercial **typesetting** services for the preparation of householder mailings;
3) to purchase automatic **telephone answering** equipment for the Parliament Hill Office;
4) to obtain the temporary or intermittent services of individuals or organizations under **contract.**

As of April 1, 1986, the Principal Budget is at an annual level of $100,400.

A Member must commit at least **20%** of the Principal Budget to provide for salaries of Constituency Office employees (i.e. $20,100 for

1986–87). This leaves a maximum of **80%** of the Budget for salaries and office expenses mentioned above for the Parliament Hill Office.

e) Each Member of the House of Commons is entitled to establish one or more offices in his or her constituency. The Board of Internal Economy has authorised **an annual allowance of $11,450** for each Member to defray the costs of renting, furnishing and maintaining constituency offices.

In addition, the Board has authorised **a special allowance of $1,000** for each Parliament to assist Members in purchasing office furniture and equipment. Effective as of the beginning of the 33rd Parliament, newly elected Members are entitled to a $2,000 allowance for their first Parliament, for this purpose. Re-elected Members continue to receive $1,000 per Parliament.

The annual allowance of $11,450 is referred to as the 'Constituency Operating Allowance'; the special allowance of $1,000 is referred to as the 'Constituency Furniture and Equipment Allowance'.

f) The Board of Internal Economy has approved **budget supplements** for Members who represent constituencies that include more than 70,000 electors or are more than 8,000 square kilometres in area.

These annual budgetary supplements may only be used for the payment of expenses incurred in the constituency. Specifically, the budget supplements may be used to augment the Constituency Operating Allowance, the Constituency Travel Allowance or to hire additional constituency office staff.

Elector Supplement

Members representing constituencies with 70,000 or more electors are given an annual budgetary allocation referred to as an 'Elector' Supplement according to the following scale:

Number of Electors	Amount of Supplement
more than 110,000	$20,000
90,000–110,000	15,000
80,000– 90,000	10,000
70,000– 80,000	5,000

The figures for the 'Number of Electors' are those supplied by the Chief Electoral Officer subsequent to each election or by-election.

Geographic Supplement

Members representing constituencies with areas in excess of 8,000 square kilometres are given an annual budgetary allocation referred to as a 'Geographic' Supplement according to the following scale:

Area (Sq.Kms)	Amount of Supplement
more than 500,000	$15,000
75,000–500,000	10,000
22,000– 75,000	7,500
15,000– 22,000	6,000
8,000– 15,000	5,000

The constituency area measurements are those supplied by the Chief Electoral Officer, based on data published by Statistics Canada.

g) Whether by statute or decision of the Board of Internal Economy, Members of the House of Commons are granted the following entitlements:

Pensions

Member's contribution equals **10%** of the basic salary (mandatory) and **10%** of any 'special' salary (optional). An additional **1%** of the above is contributed for supplementary benefits payable after age 60. Contributions are required to be withdrawn by Members who resign without a pension.

A minimum of **6** years of service is needed for a monthly pension for life (based on best consecutive **6** years of earnings). Maximum pension: 75% after 15 years (5% per year of service). Supplementary benefits also available after age 60. Survivor's benefits payable to spouse and children in most cases.

Insurance

Basic life, accidental death and dismemberment, dependents' insurance, and group surgical/medical insurance (premiums paid by the House). Provincial medical through payroll deduction for Ont., Alta., and B.C. (House pays a share). Supplementary life insurance, disability insurance and additional hospital coverage available at the Member's expense.

Travel insurance of **$250,000** for Members and **$350,000** for Ministers (official business or otherwise). Spouses covered at same amounts as Members/Ministers; dependent children covered for **10%** of Members'/ Ministers' coverage. Spouses and children covered for official business travel only.

Flight insurance of **$100,000** for Members, family and staff for flights taken on any carrier where an airline ticket is issued by the House. Can be increased to **$250,000** at the Member's expense.

Personal insurance (home, auto) available through payroll deductions (Member's expense).

Removal

Reasonable removal expenses from Member's residence or constituency to Ottawa, and from Ottawa to constituency or residence in Canada, once per Parliament.

Ottawa Office

Furnished and equipped with word processor, electronic memory typewriters, electric typewriters, photocopier, television sets and T.V. converters, and other equipment as needed, e.g. calculators, dictating equipment. Stationery and office supplies are provided.

Note: Members of the Cabinet maintain an additional office within their respective departments.

Telephone

- Telephone equipment in Ottawa office (up to 4 lines).
- Long distance calls to all points in Canada and most of U.S., *using the government network*.
- Long distance calls within the Member's province.
- Other long distance calls to and from specified locations, e.g. to all federal government offices.
- Toll-free service in constituencies (optional).

Printing

Printing and photocopying; personalised stationery; bindery services; typesetting advice.

Four householders per year.

Translation

English and French translation for householders, speeches, correspondence and working documents. Translation from other languages into English or French (correspondence from constituents only).

Postal

Free mailing (franking) privileges for mail sent by and addressed to Members.

Other Services and Facilities

Free – Internal mail and messenger services; security services; galleries and tours; lounges; health services; language training; pages; minibus (Parliament Hill); gymnasium and steamroom; parking; picture framing ($400 ceiling).

At a cost – Restaurant and cafeterias; daycare; barbershop and beauty salon; tailor; tuck shops; shoeshine; masseur.

CANADA: ALBERTA

Salaries for Members are set out in the Legislative Assembly Act and are reviewed annually according to the formula set out in section 49 of the Act (see below).

The Speaker receives the same salary as a Member of Executive Council (Cabinet Minister) – $37,044 in addition to his indemnity and allowances. The Deputy Speaker receives a salary at a rate equal to 50% of the salary payable to the Speaker – $18,522.

The Leader of the Opposition receives the same salary as a Member of Executive Counsil – $37,044. Whips do not receive any additional salary.

Additional allowances, expenses, and benefits are described in sections 39 through 45, inclusive.

EXTRACTS FROM THE LEGISLATIVE ASSEMBLY ACT

Statues of Alberta, 1983, Chapter L-10.1
with amendments in force as of August 1, 1984
not including unproclaimed amendments

Consolidated September 10, 1984

Members' Allowances, Expenses and Benefits

Members indemnity and expense allowances

39(1) There shall be paid to each Member
(a) an indemnity allowance at the rate of $24 310 a year, and
(b) an expense allowance at the rate of $7150 a year.

(2) The expense allowance referred to in subsection (1) is provided to each Member to pay for expenses of that Member incident to the discharge of his duties as a Member.

(3) The allowances under this section shall be paid in monthly amounts of not more than 1/12 of the rate of the yearly allowance.

(4) For the purpose of computing the amount of an allowance payable under this section, the Member is deemed
(a) to have been a Member from the polling day of the election in which he was a candidate, and
(b) when the Legislature is dissolved, to remain a Member until
(i) the day preceding the polling day of the general election following the dissolution, or
(ii) the date of the Member's death,
whichever occurs first.

Deductions from allowances

40 Deductions shall be made at the rate of $75 a day from the indemnity allowance and at the rate of $25 a day from the expense allowance of a Member for each day in excess of 10 sitting days during a session on

which the Member did not either take his seat in the Assembly or a meeting of a committee of the Assembly otherwise than by reason of

(a) illness or injury,

(b) bereavement, or

(c) public or official business.

Allowance for temporary residence in Edmonton

41(1) Subject to subsections (2) and (3), where it is reasonably necessary for a Member to live in a temporary residence in or near Edmonton for the purpose of carrying out his duties as a Member, the Member may claim and be paid in allowance at the rate of $75 a day for

(a) each day of a sitting of the Assembly during which he was a Member and maintained that residence, and

(b) each day on which he was in or near Edmonton on public or official business and maintained that residence.

(i) during a period of adjournment of more than 8 days during a session of the Assembly, or

(ii) during a period when the Assembly was not in session.

(2) . . .

(3) . . .

Allowances and expenses for committee work

42(1) During intervals between sessions of the Assembly or while it is adjourned for more than 8 days, a Member who serves on a committee appointed by resolution of the Assembly is entitled to be paid in respect of that service . . .

Adjustment

Adjustment of allowances, salaries and deductions

49(1) If in December of a calendar year, the average of the All-items Consumer Price Indexes for Edmonton and Calgary for that year published by Statistics Canada is at least 5% more than that average in December of the immediately preceding year for that year, the allowances, salaries and deductions provided for in sections 39, 40, 46 and 47 shall be increased by 5%, effective January 1 of the year following the year in which the increase occurs.

(2) If in December of a calendar year, the average of the All-items Consumer Price Indexes for Edmonton and Calgary for that year published by Statistics Canada is at least 5% less than that average in December of the immediately preceding year for that year, the allowances, salaries, expenses and deductions provided for in sections 39, 40, 46 and 47 shall be decreased by 5%, effective January 1 of the year following the year in which the decrease occurs.

(3) If the percentage increase or decrease for the calendar year referred to in subsection (1) or (2) is less than 5%, it shall be carried over and added to the percentage increases or decreases in every following year until the cumulative total in December of a year reaches at least 5%

and, in that case, subsection (1) or (2), as the case may be, applies to that year.

CANADA: ONTARIO

The average Civil Service salary, as of January 1987, is $30,609. This average does not include civil servants holding executive positions.

The basic salary of a Member, as legislated in Section 60 of the Legislative Assembly Act (enclosed), is $37,576 per annum. Members also receive an expense allowance of $12,616 per annum.

In May 1973, the Ontario Commission on the Legislature, in its First Report, set out recommendations pertaining to indemnities and allowances of Members. It recommended that private Members functioning as paid officers of the House receive increased salaries. These officers included: the Speaker, the Deputy Speaker, the Deputy Chairman, the Chairmen of the Standing and Select Committees, party Whips, and leaders of the parties.

Four methods were suggested that could be used in the continuing review of indemnities, salaries and allowances. They are:

1. a tie-in with the cost of living index.
2. indexing tied to percentage increases achieved in collective bargaining.
3. linking increases of Members to awards given provincial civil servants in certain executive categories, or
4. some form of commission similar to the Ontario Commission on the Legislature could be given the task of making a finite recommendation after each general election.

In the 1973 Report, the Commission concluded that it was not in a position to make a recommendation in favour of any of these methods.

In their 1975 Report the Commission concluded that it was not in a position to make a recommendation in favour of any of these methods.

In their 1975 Report the Commission once again examined the question of Members' salaries and reiterated its previous hesitation in recommending one of the four methods. It did advise the next Government to determine with dispatch a mechanism to deal with Members' salaries.

Finally, in December 1978, the Commission on Election Finances (formerly The Commission on Election Contributions and Expenses) was given the responsibility of making such recommendations as it considered appropriate with regard to the indemnities and allowances of Members of the Assembly and in respect of the salaries and allowances of Party leaders, Cabinet Ministers and Parliamentary Assistants.

These powers are given to the Commission in Section 72 of the Legislative Assembly Act (enclosed).

In the last few years, the recommendations made by the Commission called for salary increases that were in line with Government Restraint Programs. Generally, the recommendations made by the Commission are adopted by the House.

CANADA: QUEBEC

A committee of the National Assembly formed in April 1987 is reviewing the whole matter of MNA's salary and allowances. Its report should be tabled in the fall of 1987 and then the members of the Office of the National Assembly will decide which recommendations they wish to implement.

CANADA: SASKATCHEWAN

As provided in *The Legislative Assembly and Executive Council Act*, the indemnity and allowances paid to Members of the Legislative Assembly are to be adjusted each January 1 in accordance with the Canadian Industrial Composite Index (C.I.C.I.). The last adjustment under this index was January 1, 1986. Since then Statistics Canada has discontinued the C.I.C.I. and the Legislative Assembly is now considering a new index to be used. At present, the level of all indemnities and allowances to Members has been frozen.

CANADA: YUKON

The pay of Members of the Yukon Legislative Assembly is provided for within the Legislative Assembly Act. Amendments to the pay provisions are introduced, in general, following the receipt of recommendations from the Standing Committee on Rules, Elections and Privileges. It is reviewed on an irregular basis – the last increase dates back to April 1, 1984 and the Assembly, as of February 9, 1987, has just referred the matter to the S.C.R.E.P. to review for the first time since that date. Comparisons with the public service salaries are difficult but at a guess Members' pay is slightly lower than that provided for 'comparable positions' in the civil service. Salaries* on a per annum basis are as follows: (1) Speaker – $6,678; (2) Deputy Speaker – $3,339; (3) Leader of the Official Opposition – $2,783; and (4) Leaders of other opposition parties – $1,113. Whips are not paid an additional salary.

As to travel expenses, Members from electoral districts outside of

Whitehorse, the capital city, are reimbursed for all travelling and living expenses incurred when the Legislature is in session or when a committee is sitting. Those same Members are also provided with 24 return trips to Whitehorse and $4,400 in living expenses to cover periods when the Legislature is not in session.

*These do not include the indemnity ($22,854) and tax free expense allowance ($11,427) payable to every Member of the Assembly.

HONG KONG

1. Members of the Legislative Council, except those who are civil servants, receive an allowance which is revised regularly, usually on an annual basis, with reference to price indices relating to secretarial salaries and entertainment and travelling. They also receive a monthly stipend which is also revised annually by reference to the Pay Trend Survey conducted for the purpose of revising Civil Service salaries.

2. The President of the Legislative Council is the Governor of Hong Kong. He does not receive any special allowance in respect of his duties in the Legislative Council.

3. No travelling expenses or other payments are made to Members of the Council.

INDIA: LOK SABHA AND RAJHA SABHA

How is pay of Members of your House determined

Under Article 106 of the Constitution of India Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law. Parliament enacted The Salary, Allowances and Pension of Members of Parliament Act 1954. The salary of Members is governed by the Act as amended from time to time.

How often is it reviewed and increased

There is no fixed period after which the salary of Members is reviewed and increased. A Parliamentary Committee on Salary and Allowances of Members of Parliament makes recommendations to the Government from time to time based on suggestions received from Members of Parliament. The Government reviews these recommendations and initiates legislation whereby the salary, allowances etc. payable to MPs are increased.

Salaries, etc. of M.Ps. have been revised three times during the period 1975–1987.

How does it compare with public service salaries in general

While determining the salary of Members of Parliament all the relevant factors such as the state of the general economy of the State and the general salary structure of the country and also the salaries etc. of public servants are taken into consideration.

As such, no precise comparison of the salary paid to Members of Parliament can be made with public service salaries in terms of the quantum of salary. However the salary is generally comparable to that of middle level Officers in the public service, though Members of Parliament are, in addition, entitled to various other perks such as rent free accommodation, a free telephone facility, travel and daily allowances, etc.

What salaries (if any) are paid to your Speaker, Deputy Speaker

Salaries etc. of the Officers of Parliament are given below:

Salary	The Chairman of Rajya Sabha is entitled to a salary Ω Rs. 7500 p.m. The Deputy Chairman, Rajya Sabha; Speaker and Deputy Speaker of Lok Sabha are entitled to a salary Ω Rs. 1000 p.m.
Constituency Allowance	Each officer of Parliament other than the Chairman of the Council of States is entitled to a Constituency Allowance Ω Rs. 1250 p.m.
Daily Allowance	Each officer of Parliament other than Chairman, Rajya Sabha is entitled to a Daily Allowance of Rs. 75 per day during the whole of his term as such officer.
Sumptuary Allowance	The Chairman of Rajya Sabha and the Speaker of Lok Sabha are entitled to a sumptuary allowance Ω Rs. 1000 p.m. and the Deputy Chairman, Rajya Sabha and Deputy Speaker, Lok Sabha are entitled to a sumptuary allowance Ω Rs. 500 p.m.

What travelling expenses etc. are paid to Members

(i) *Rail facility*

Members representing some Islands in India are provided with one free non-transferable pass by the highest class by steamer to and from any part of his constituency or the nearest port on the mainland of India. Such a pass is valid for the term of his/her office. The passes are valid for travel in the lowest class by steamer of one person to accompany the member when he travels by steamer. Such passes are

issued to the spouses of Members to travel by the highest class in ship once during every session of Parliament.

(iii) Besides rail and steamer passes, M.P.s are entitled to the following:

(a) For attending a session of the House or a sitting of a Parliamentary Committee or any business in the capacity of a Member of Parliament, each Member is entitled to Travelling Allowance for the journey performed by him from his/her usual place of residence to the place where a session or meeting is to be held or such business to be transacted and for the return journey from such place to his/her usual place of resident:
  (i) if the journey is by rail, an amount equal to one first class plus one second class fare irrespective of the class in which the member actually travels and this fare is in addition to the railway pass issued to them;
  (ii) if the journal is by air, an amount equal to one and one-fourth of the air fare for each such journey.
  (iii) if the journey or any part thereof cannot be by rail or air –
    (1) where the journey or any part thereof is performed by steamer an amount equal to one and three-fifths of the fare (without diet) for the highest class in the steamer in addition to the steamer pass issued to them.
    (2) where the journey or any part thereof is performed by road, a road mileage at such rate as admissible to a Central Government officer of the First Grade (at present the rate is Rs. 2 per kilometer).

(b) Sixteen single air journeys are allowed to Members of Parliament in a year from any place in India to any other place in India.

(c) A Member is also entitled to receive travelling and daily allowance in respect of a journey performed by him in the course of a tour outside India undertaken in the discharge of his/her duties as a Member.

What other payments are made

Besides Travelling Allowance the other payments made to MPs are given below:

Salary: Rs. 1000 p.m.

Daily Allowance: The Members of Parliament are entitled to Daily Allowance Ω Rs. 75 per day for the actual days of sittings of the session or Parliamentary Committees or any business connected with his duties as such Member of Parliament. Besides this, Daily Allowance is payable in the case of a session of a House of Parliament not exceeding three days, immediately preceding the commencement of the session and a period of three days immediately succeeding the date on which the

House of Parliament is adjourned and in the case of Parliamentary Committees or any other business two days preceding and two days succeeding provided the Members remain at the place of duty during these days.

Constituency Allowance: Rs. 1250 p.m.

Please give details of any investigations and reports into Members' pay and related matters since about 1975

No investigation or report into Members' pay and related matters since 1975 has been made.

Salaries etc. of the Leader of the Opposition

Salaries etc. allowable to the Leader of the Opposition are given below:

Salary	– The Leader of the Opposition is entitled to a salary of Rs.1000 per month.
Daily Allowance	– The Leader of the Opposition is entitled to daily allowance Ω Rs. 75 per diem throughout the year.
Constituency Allowance	– The Leader of the Opposition is entitled to a Constituency Allowance Ω Rs. 1250 per month.
Sumptuary Allowance	– The Leader of the Opposition is entitled to a sumptuary allowance Ω Rs. 1000 per month.

Salaries and allowances to Whips are paid in their capacities as Members of Parliament under the Salary, Allowances and Pension of Members of Parliament Act 1954 and rules made thereunder.

INDIA: GUJURAT

What salaries are paid to your Speaker, Deputy Speaker, Leader of the Opposition

The above officers of the Gujarat Legislative Assembly are entitled to salary as follows:

Speaker	: Rs. 2000/- p.m.
Deputy Speaker	: Rs. No salary is paid ex-offico but he is paid salary Rs. 500/- p.m. as M.L.A.
Leader of the Opposition	: Rs. 2000/- p.m.
Whips	: Whip of the Ruling Party in Gujarat Legislative Assembly is paid Rs. 1800/- p.m.

The pay of Members of the Assembly is normally reviewed keeping in view the price index.

What travelling expenses etc. are paid to Members? What other payments are made?

Salary and other payments are paid to Members of the Gujarat Legislative Assembly according to the statement attached herewith.

GUJARAT Legislative Assembly

1. *Salary* : RS. 500/- p.m.
2. *Daily Allowance* : Rs. 70/- per day
3. *Travelling Allowance* : If journey is undertaken
   (a) *By Rail or steamer*: one and one half of first-class fare.
   (b) By Road:
      (i) By own vehicle Rs. 1.70 ps. per KM.
      (ii) in a hired conveyance Rs. 1.70 per KM. or the actual cost incurred whichever is less.
      (iii) in a service bus of the Gujarat State Road Transport Corporation by the free non-transferable pass five paise per KM.
      (iv) in any other manner Rs. 1.70 paise per KM.
   (c) By sea or river: in a steam-launch or in any other vessel other than a steamer Rs. 1.70 paise per KM.
4. *Other Allowances* : (a) Consolidated Allowance Rs. 500/- p.m. for all other facilities not specifically provided for.
   (b) Rs. 400/- p.m. to meet the cost of telephone charges incurred by a Member, whether or not, Member has a telephone installed at the place where he resides or at any other place in the state of Gujarat.
   (c) Postal charges: Rs. 200/- p.m. to meet with the cost of postal charges incurred by a Member.
   (d) Personal Assistant Allowance: Rs. 150/- p.m. towards the cost of services of a personal Assistant that may be incurred by him as such member.
5. *Travel facilities* : (a) By Road:
   (1) A member is entitled to travel, free of charge, singly or jointly with his spouse or any one other member of his family residing with or dependent on him within the state of Gujarat by the service buses of Gujarat Road Transport Corporation.
   (2) The member is also entitled to travel singly 5000 KMS and jointly with above mentioned co

traveller 10000 kms. within a financial year, outside the state of Gujarat in any part of India by the Road Transport Services.

(b) By Rail: Using Rail Travel Coupons.

(1) A Member is entitled to travel free of charge by railway by first class or any other class the fare for which does not exceed that for the first class singly or jointly with his spouse or any one other Member of his family residing with and dependent on him in any part of the state of Gujarat.

(2) The Member is also entitled to travel 7500 kms. singly and 15000 kms. jointly with above mentioned co-traveller, within a financial year in any part of India outside the state of Gujarat.

6. *Telephone facilities* : (a) where a Member has a telephone installed at his residence, the rental charges in respect of such a telephone are borne by Govt. Telephone is provided near at the Assembly Hall for the use of Members and also to each member at MLAs' Hostel. A Member is entitled to make local calls free of charge from the telephones provided near the Assembly Hall and Legislature Secretariat. (See also Sr. No. 4(b))

7. *Postal facilities* : A post office functions within the precints of the Assembly. (See also Sr. No. 4(c))

8. *Housing facilities* : A Member is provided with residential accommodation and boarding in a MLA Hostel at concessional rates i.e. two furnished rooms attached with bathroom and latrine Rs. 1.25 per day and boarding at Rs. 6/- per meal.

9. *Medical facilities* : A Member or a member of his family is entitled. free of charge to accommodation in hospitals maintained by the State Govt. and to medical attendance and treatment therein. In a place where there is no hospital maintained by the State Govt. a member or a member of his family is entitled to such treatment in a hospital maintained by a Municipality or a Panchayat. In case however there is no hospital maintained by the State Govt, & Municipality or a Panchayat, a Member is entitled to be reimbursed by the State Government any amount paid by him on account of the attendance and treatment taken by him or a member of his family from any registered medical practitioner on production by him of

the certificate and bills regarding the charges paid.

10. *Other facilities* : Bank facility: A Branch of the State Bank of India Operates within the precincts of the Assembly building for the convenience of the Members, during the Session of the Assembly and a week after its termination.

11. *Secretarial Assistance* : The Legislature Secretariat provides free typing service to Members for their legislative work during Sessions.

12. *Pension* : Nil.

INDIA: HARYANA

1. Pay and facilities provided to the Members of Haryana Legislature are regulated by order issued by the State Government from time to time in the form of notification or Act/Rules which generally provide for the regularisation of Daily and Travelling Allowances etc. of Members.

The Speaker and deputy Speaker, who receive their salaries and allowances under the Haryana Legislative Assembly (Speaker's and Deputy Speaker's Salaries and Allowances) Act 1975 and Rules framed thereunder, are not entitled to receive, by virtue of their Membership of Haryana Legislative Assembly, any sum out of funds provided by the State Government by ways of salaries or allowances to Members.

Salary and Allowances

(i) Salary	Rs. 1500 p.m. (Income tax on the salary and allowances of the Speaker/Deputy Speaker is paid by the State Government).
(ii) Allowances	Rs. 750 p.m. as Constituency Allowance.
(iii) Daily Allowance	Rs. 75 per day on official tours.

2. Leader of Opposition

The Leader of the Opposition in the Haryana Legislative Assembly is entitled to salary and allowances under the Haryana Legislative Assembly (Allowances and Pension of Members) Act 1975 and the Rules framed under section 9 thereof at the rate mentioned hereunder:

(i) Salary: Rs. 1000 p.m.
(ii) Constituency Allowance: Rs. 750 p.m.
(iii) Compensatory Allowance: Rs. 500 p.m.
(iv) Telephone Allowance: Rs. 500 p.m.
(v) Conveyance Allowance: Rs. 300 per month or in lieu thereof of a State car.

(vi) He is further entitled to stationery and stamps of, or to incur expenditure thereon to the value of, not more than two thousand and four hundred rupees per annum.
(vii) Halting allowance: 75 per day.

3. Payments of Members

The Members of Haryana Legislative Assembly were entitled to receive the following travel expenses and other payments before 22.8.1975:

(i) Compensatory Allowance: Rs. 500 p.m.
(ii) Constituency Allowance: Rs. 250 p.m.
(iii) Halting Allowances: Rs. 35 p.m.
(iv) Telephone Allowance: Rs. 100 plus Rent.
(v) Journey performed by rail: An amount equal to one first class fare plus one half first class fare as incidental expenses.

On 22.8.75 the above mentioned payments were enhanced as under –

(i) Compensatory Allowance: Rs. 500 p.m.
(ii) Constituency Allowance: Rs. 250 p.m.
(iii) Halting Allowance: RS. 51 per day.
(iv) Telephone Allowance: Rs. 500 p.m.
(v) Journey performed by road: Rupee, one per kilometre.

Thereafter increases in the payments to Members were effected in 1984 when the rates were increased as under –

(i) Compensatory Allowance: Rs. 500 p.m.
(ii) Constituency Allowance: Rs. 500 p.m.
(iii) Telephone Allowance: Rs. 500 p.m.
(iv) Halting Allowance: Rs. 51 per day.
(v) Journey performed by road: Rupee, one per kilometre.

Increases effected from 1985 –

(i) Compensatory Allowance: Rs. 500 p.m.
(ii) Constituency Allowance: Rs. 750 p.m.
(iii) Halting Allowance: Rs. 75 p.m.
(iv) Telephone Allowance: Rs. 500 p.m.
(v) Journey performed by road by his own car: Rs. 1.25p. per Kilometre.
(vi) Journey performed by rail: An amount of equal to one first class fare plus one half first class fare as incidental expenses.

4. Whips

No separate provision is made for whips in Haryana Legislative Assembly. They are chosen from Members of the party itself.

INDIA: MAHARASHTRA

INFORMATION REGARDING MEMBERS' SALARY, ALLOWANCES AND OTHER FACILITIES

1. *Salary* — Rs. 450 p.m.

2. *Daily Allowance* — Rs. 75 for each day of the period of residence for the purpose of attending a Session of the Assembly/ Council or the meeting of a Committee and for each day of period of residence at any place where any other business connected with his duties as Member is transacted, such as attending a refresher course in parliamentary practice and procedure or a seminar, conference or meeting of any Parliamentary Association, University or other recognised body on matters connected with parliamentary affairs.

3. *Travelling Allowance*

1. (*a*) By Railway or Steamer – One and one-half of the First Class fare.
   (*b*) Where a member travels by railway in accordance with facility (Rail travel coupons) or by road transport services on a free pass, then he is entitled to a travelling allowance of an amount equal to one First Class fare for the distance travelled as if such journey had been performed by railway.
   (*c*) By road –
      (*i*) in hired conveyance, 1 Re. per km. or the actual cost incurred, whichever is less.
      (*ii*) in any other manner, 1 Re. per km.
   (*d*) By sea or river – in steam-launch or in any other vessel other than a steamer, 1 Re. per km.
2. If the session of the Assembly or the Council or a meeting of a Committee is adjourned for more than one day and if a member undertakes journey from the place where the session or the meeting of a Committee is held to the place where he ordinarily resides or carries on business and returns to the place where such session or meeting is held, he is entitled to draw at his option either the daily allowance for the

period of such journeys or the travelling allowance.

3. Every Member who travels with spouse once during every session of the House is entitled to one First Class railway/steamer fare for his spouse for onward and return journeys.

4. *Other Allowances* — Consolidated allowance of Rs. 500 p.m.

5. *Telephone Facilities*

(*i*) Local calls are allowed free of charge on telephones installed in the Legislator's Hostel and on those installed for Member's use near the Assembly or Council Chamber.

(*ii*) Every Member is entitled to have a telephone installed at Government cost at the place where he ordinarily resides or at any other place in the State which is also used by him for residence. The amount of initial deposit, installation and rental charges are borne by Government.

(*iii*) In the case of a Member already having a telephone, the rental charge is borne by Government.

(*iv*) Every Member is paid a sum of Rs. 600 p.m. irrespective of whether or not telephone facility has been provided or a Member has a telephone installed at his own cost.

6. *Travel Facilities*

(*i*) Every Member is provided with a free non-transferable pass for travel either singly or jointly with his spouse in any class by services of the Maharashtra State Road Transport Corporation, the Maharashtra Tourism Development Corporation Limited within the State of Maharashtra and by the Bombay Electric Supply and Transport buses in Greater Bombay.

(*ii*) Every Member is provided with facilities (Rail Travel Coupons) for free travel by rail or by steamer by First Class in any part of the State.

(*iii*) Every Member is also provided with facilities (Railway Travel Coupons) for free travel by First Class by rail in any part of India whether within the State or outside the State either singly or jointly with his spouse or with his

minor children or jointly with his spouse and minor children so however that distance travelled by member outside the State and by his family members within or without the State does not exceed an overall limit of 20,000 kms. in a financial year.

(*iv*) (*a*) Where a Member, undertakes journey, either singly or jointly with his spouse or with his minor children or jointly with his spouse and minor children by air, in any part of India, whether within or outside the State, instead of by railway, he shall be entitled, subject to the aforesaid limit of twenty thousand kilometres for travelling, to claim travelling allowance, as if he or all of them had undertaken the journey by railway. In such cases, the difference between the fare for journey by air and the fare for journey by railway will have to be borne by the member.

(*b*) Where a member, either singly or jointly with the members of his family undertakes journey by steamer or road transport, in any part of India outside the State, he shall be entitled, subject to the maximum limit of twenty thousand kilometres for travelling to claim fare for the journey by steamer or road transport, if it is less than the fare for journey by railway for the same distance. If the fare of the journey by steamer or road transport is more than the fare for journey by railway, then the member will have to bear the difference.

Note. – In case of a Lady Member, instead of spouse, above facilities are also available for son or daughter or father or mother or brother or sister at a time accompanying the member.

7. *Postal Facilities* — Every Member is paid a sum of Rs. 100 p.m. for stationery and postage.

8. *Housing Facilities* — Members are provided with free residential accommodation in the Legislators' Hostel at Bombay or Nagpur.

9. *Medical Facilities* — Free medical treatment is admissible for Members and their families in Hospitals maintained by the State Government.

10. *Other Facilities* — (*a*) Every Member is entitled, free of charge to the services of a personal assistant throughout his term of office. The personal assistant is entitled to receive a fixed salary of Rs. 700 p.m. from the State Government.

(*b*) Every Member elected to the Legislative Assembly is entitled to the use of a motor vehicle provided by the State Government, for ten days in a month, subject to a maximum limit of 800 km. for the purpose of touring within the limits of his constituency. Similarly, the nominated member of the Legislative Assembly and any member of the Legislative Council shall be entitled to the use of the motor vehicle, however, they have an option to choose either any Assembly Constituency in a month or to tour in a Taluka where he ordinarily resides or carries on business. In case a Member does not make use of the said vehicle, then he is entitled to a mileage allowance at the rate of 62.5 paise per kilometre subject to a maximum of Rs. 500 p.m.

11. *Secretarial Assistance* — Services of one typist are made available to Members at M.L.A.'s Hostel and in the Council Hall during the session period.

12. *Pension* — Rs. 500 p.m. for service for a period of five years plus Rs. 50 p.m. for every additional year of service, subject to a maximum pension of Rs. 1000 p.m.

	Speaker	*Deputy Speaker*	*Leader of the Opposition*	*Whip*
1. Salary	Rs. 1800/-p.m.	Rs. 1600/-p.m.	Rs. 1800/-p.m.	–
2. Conveyance Allowance	Rs. 1500/-p.m.	Rs. 1500/-p.m.	Rs. 1500/-p.m.	–
3. Telephone call charges	Rs. 600/-p.m.	Rs. 600/-p.m.	Rs. 600/-p.m.	–

INDIA: RAJASTHAN

STATEMENT SHOWING PAY, ALLOWANCES AND OTHER FACILITIES PROVIDED TO OFFICERS OF THE RAJASTHAN LEGISLATIVE ASSEMBLY, INCLUDING LEADER OF OPPOSITION, SINCE 1975.

Name of Officer	*June 1975 to April 1981*	*April 1981 to 12.2.86*	*From 13th February 1986*
		PAY	
Speaker Rs.	1,250	1,750	2,000
Deputy Speaker	1,125	1,500	1,750
Chief Whip	1,125	1,750	2,000
Deputy Chief Whip	–	1,250* *from Oct. 1985	1,500
Leader of Opposition	–	1,750	2,000
		SUMPTUARY ALLOWANCE	
Speaker	250	500	750
Deputy Speaker	–	300	550
Chief Whip	–	500	750
Deputy Chief Whip	–	–	–
Leader of Opposition	–	–	–
		CAR ALLOWANCE	
Leader of Opposition	–	500	750

One car for Jaipur and one car for travel outside Jaipur is provided to all the Speaker, Deputy Speaker and the Chief Whip.

OTHER FACILITIES

A furnished house, free telephone, free medical facilities are provided to all the officers of the Legislative Assembly including the Leader of Opposition.

ISLE OF MAN

(a) The pay of Members is normally determined by the Branches sitting in private, acting upon the recommendations of the Joint Committee on the Payment of Members' Expenses. However, in 1986 a Commission was appointed by the Governor in Council to review members' remuneration and pensions and report thereon to Tynwald. The report of the Commission is still awaited.

PAY, ALLOWANCES AND OTHER FACILITIES PROVIDED TO MEMBERS OF RAJASTHAN LEGISLATIVE ASSEMBLY

	From	*1975*	*1976*	*1978*	*1981*	*1983*	*1986*	*1987*
Pay	Rs.	300	500	500	600	600	900	1,000
Daily Allowance		35	51	51	51	51	75	100
House Rent allowance		–	200	200	200	350	500	500
Water & Electricity allowance		100	100	100	150	150	250	400
Postage allowance		100	100	100	150	150	250	400
Telephone Allowance		–	–	–	250	250	450	450
Fixed Allowance		100	100	100	400	400	600	900
Travel by bus		One free pass	One free pass	One free pass	Two free passes	Two free passes	Two free passes	Two free passes
Travel by Train		Free travel facility up to 1200 KM in a calendar year	Free travel facility up to 1200 KM in a calendar year	Free travel facility up to Rs. 2250 in a calendar year	Free travel facility up to Rs. 4000 in a calendar year	Free travel facility up to Rs. 6000 in a calendar year	Free travel facility up to Rs. 10000 in a calendar year	Free travel facility up to Rs. 12000 in a calendar year

(b) There is no set programme for the review of Members' pay.

(c) The basic salary is tied to the midpoint of the scale paid to Executive Officers Grade II in the Civil Service. A further sum is paid in respect of expenses.

MALTA

Remuneration to members of the House of Representatives is a form of honorarium amounting to Lm2486 per annum and is paid monthly. Subsistence allowance at the rate of Lm8.50 per diem which is also not taxable is paid to members of the House elected from the sister island of Gozo. Though salaries might seem somewhat low, it is to be pointed out that as sittings are nearly always held after 6 o'clock in the evening members are not fully committed in the morning and therefore can retain and indulge in the practice of their former professions.

Similar conditions affect Mr Speaker, Deputy Speaker and the Leader of Opposition whose emolmuments are Lm2900, Lm2620 and Lm2829 per annum respectively. The Leader of Opposition is also allocated Lm1000 per annum as Secretarial Assistance while Lm400 is paid as an allowance for persons detailed to act as Private Secretary to Mr Speaker and a Lm40 annual allowance to the Government and Opposition whips respectively.

Regarding the Prime Minister and Ministers Lm6106 is provided by the annual appropriation Acts as the Prime Minister salary while Lm5086 is provided as Ministers' Salary under the same Act. Another sum amounting to Lm1650 is allocated as hospitality and entertainment allowance to meet expenses in connection with V.I.P.s visiting the Prime Minister.

These salaries are reviewed and increased with the General increases in wages and salaries of the Civil Service and pension applicable to retiring members of parliament is contemplated under specific legislation resulting after consultations during meetings of the Commonwealth Parliamentary Association Malta Branch.

NEW ZEALAND

Since 1974, parliamentary salaries and allowances have been determined by a statutory body – the Higher Salaries Commission.

This Commission consists of three members appointed by the Governor-General by Order in Council. On the present Commission are an academic (who is Chairman), a retired permanent secretary, and a retired business executive.

The Commission is required to carry out general reviews at intervals

of not less than one and not more than three, years. There is also provision for interim reviews on the application of the Speaker.

The following salaries and allowances were determined by the Commission with effect from 1 December 1986:

Salaries

	$
Prime Minister	129,250
Deputy Prime Minister	101,200
Ministers with portfolio	90,200
Parliamentary Under-Secretaries	70,400
Speaker	83,600
Chairman of Committees	72,050
Deputy Chairman	54,000
Leader of the Opposition	90,200
Deputy Leader	70,400
Senior Government and Opposition Whips	62,150
Junior Whips	58,300
Other Members	49,500

Allowances

Prime Minister	23,400
Deputy Prime Minister	10,200
Minister with portfolio	9,600
Parliamentary Under-Secretaries	7,500
Additional allowance for Minister of Foreign Affairs	6,000
Ministerial travelling allowance within New Zealand	132 per day

Ministers are entitled to a Government residence in Wellington.

Speaker	12,600

The Speaker is also entitled to an electorate allowance (see below) at the appropriate rate, reduced by one-third, and to a day allowance and travelling allowances as for Ministers. The Speaker has accommodation provided in Parliament House.

Chairman of Committees and Deputy Chairman:	
Basic expense allowance	4,800

Additional allowance (Chairman)	4,500
(Deputy)	500

The Chairman and Deputy Chairman also receive an electorate allowance at the appropriate rate (reduced by one-third in the case of the Chairman who has accommodation provided) and day allowances.

Leader of the opposition	9,600

The Leader of the Opposition is provided with a Government residence in Wellington and is entitled to ministerial travelling allowances.

Deputy Leader of the Opposition	8,550

The Deputy Leader also receives an electorate allowance and day and night allowances.

Other Members:	
Basic expense allowance	4,800
Electorate allowance (depending upon classification into three categories on the grounds of difficulty of transport)	7,000–14,000
Day allowance for attendance at Parliament or Committee	40 per day
Night allowance if overnight stay required for attendance	50 per day

SINGAPORE

1. How is the pay of Members of your House determined?
By the Cabinet.

2. How often is it reviewed and increased?
30.5.59 – $500 p.m.
1.6.70 – $1,000 p.m.
1.11.77 – $1,340 p.m.
1.4.81 – $2,000 p.m.
1.11.82 – $3,000 p.m.

3. How does it compare with public service salaries in general?
Our Members do not receive a salary but a monthly allowance of $3,000. In addition, they receive:

(i) the 1984 (12%) National Wages Council wage supplements; and

(ii) a 13th month annual allowance equivalent to one month's gross allowance in December.

4. *What salaries (if any) are paid to your Speaker, Deputy Speakers, Leader of the Opposition and Whips?*
Speaker – $17,400 p.m. (full-time)
$ 9,500 p.m. (part-time)
Deputy Speaker – $1,500 p.m.
In addition, they receive:

(i) the 1984 (12%) National Wages Council wage supplements; and
(ii) a 13th month annual allowance equivalent to one month's gross allowance in December.

Leader of the Opposition – Nil.
Whips – Nil.

5. *What travelling expenses etc are paid to Members?*
No travelling expenses are paid to Members.

6. *What other payments are made?*
Nil.

UNITED KINGDOM: HOUSE OF COMMONS

History

Payment of Members of Parliament can be traced as far back as the 13th century, when the shires and boroughs allowed their representatives certain '*wages*' for attending Parliament; knights received four shillings a day, and citizens and burgesses two shillings a day for the duration of the Parliament. These rates were first prescribed in 1322, and remained in force throughout the Middle Ages, although there were local variations above and below the set rates – for example, in 1296 the two Aldermen representing the City of London were paid ten shillings a day. Andrew Marvell was reputedly the last person to receive a parliamentary salary – paid by the Borough of Kingston upon Hull until his death in 1678, but as late as 1681 Thomas King presented a Petition stating he had not been paid his wages by the Borough of Harwich.

In general, then, payment of Members by their own electors had ceased by the end of the 17th century. Samuel Pepys' diary entry for 30 March 1668 remarks '*At dinner . . . all concluded that the bane of the Parliament hath been the leaving off the old custom of the places allowing wages to those that served them in Parliament, by which they*

chose men that understood their business and would attend it, and they could expect an account from, which now they cannot'.

In the 18th and for much of the 19th century, a seat in the House of Commons could be a lucrative source of wealth in the form of sinecure offices and pensions. Many were prepared to pay large sums for a seat, or sought the patronage of the magnates who had seats at their disposal. In so far as Members were paid during the period, Lloyd George described the system in 1911, during the debate on the resolution to pay M.P.s a regular salary [Vol. 29, c. 1367], as '*indirect, surreptitious and corrupt*'. Of course many Members were equally concerned to maintain their independence of such corruption.

The system was brought into question in 1780, when a Committee appointed by the Westminster electors, with Charles James Fox as Chairman, recommended the payment of Members, and their Report was adopted by the influential Society for Constitutional Information. A Reform Bill of 1830, and the People's Charter of 1838 also proposed that Members of Parliament should be paid. In the later 19th century payment of Members was taken up by reforming organisations like the National Democratic League, and the Metropolitan Radical Federation, and also, in the first decade of the 20th century, became an aim of the Labour Party: it was advocated by Keir Hardie in 1887. Motions or Bills supporting such a proposal were brought before the House of Commons in 1870, 1888, 1892, 1893, 1895, and 1903, but M.P.s remained unpaid until 1911, when, by Resolution passed that year [Vol. 29, c. 176, Ayes 265; Noes 173], they became entitled to draw £400 per annum from public funds. In part, it was Labour pressure, exerted in particular after the Osborne Judgement of 1909, which declared the Trade Union levy to pay for the support of Labour M.P.s illegal, which induced the Liberal Government to make the change. The then Chancellor of the Exchequer, Lloyd George, summarised the arguments in favour as follows:

'*When we offer £400 a year as payment of Members of Parliament it is not a recognition of the magnitude of the service, it is not a remuneration, it is not a recompense, it is not even a salary. It is just an allowance, and I think the minimum allowance, to enable men to come here, men who would render incalculable service to the State, and whom it is an incalculable loss to the State not to have here, but who cannot be here because their means do not allow it. It is purely an allowance to enable us to open the door to great and honourable public service to these men, for whom this country will be all the richer, all the greater, and all the stronger for the unknown vicissitudes which it has to face by having here to aid us by their counsel, by their courage, and by their resource*'.

[Vol. 29, c. 1383]

This £400 was increased at irregular intervals (and reduced in 1931) [see Table], but there was no regular machinery for its review. In 1963 the Government appointed an independent Committee (The Lawrence Committee) to review payments to Members of both Houses and to Ministers. Its recommendations for M.P.s' pay were accepted by the Government and agreed by the House in 1964.

M.P.s pay since 1970

In 1970 the Commission for Industry and Manpower Bill provided for a special panel to report on (amongst other groups) parliamentary pay. In the Second Reading debate on 8 April 1970 Mrs. Castle said she proposed to ask the panel for *'a system of automatic reviews at regular intervals'*, – full reviews every four years. However, these plans were overturned by the General Election of June 1970, which the Labour Government lost.

On 4 December 1970 the incoming Leader of the House, Mr Whitelaw, announced that M.P.s' pay would instead be referred to an independent review body, with the final decision resting with Parliament.

The Top Salaries Review Body, appointed in 1971, (chaired by Lord Boyle, until 1981 and since by Lord Plowden), produced its first major Report on Members' and Ministers' Pay and Pensions in 1971, and since then has issued further Reports at fairly regular intervals. The Reports were not always implemented in full: the most obvious example of this came in 1975, when the Top Salaries Review Body recommended an increase in M.P.s' basic pay from £4,500 to £8,000 a year, and the Government felt able to agree to no more than £5,700. Again, the 1979 increase, though granted in full, was staged over three years.

It has often been suggested that Members' pay should be linked to a salary in the Civil Service. For example, in 1975 the then Leader of the House, Mr. Edward Short, moved a motion *'That in the opinion of this House it is desirable in principle that the salaries of Members should be regulated to correspond with the amounts of the salary paid to a specified grade in the public service'*. This motion was amended by the House (128 votes to 127) to read *'That in the opinion of this House, it is desirable in principle that the salaries of Members should be regulated to correspond with a point on the scale paid to an Assistant Secretary in the public service, not later than three months after the next General Election, and annually until that date, the salaries of Members should be increased by not less than the same amount of increase as these Assistant Secretaries'*. (Vol. 896, c.508).

In this amended form, it was agreed to by 169 votes to 70, but nothing then came of the resolution.

The 1975 Top Salaries Review Body Report recommended that M.P.s' pay be reviewed at two yearly intervals, but so far the Govern-

ment has not agreed to this. More recently (February 1982) an all-party Select Committee on Members' Salaries (HC 208) suggested that between four-yearly reviews, M.P.s' pay be adjusted annually, in line with increases shown for outside earnings, in the survey published by the Department of Employment each November. The Leader of the House, Mr. John Biffen, rejecting this, accepted a proposal that M.P.s' pay should be examined by the Top Salaries Review Body in the fourth year of each Parliament, and that the M.P.s' annual rises would be based on such groups as non-industrial civil servants, teachers, doctors and dentists. This would not be automatic, however, and Mr. Biffen stressed that 'in short the Government reserve the right to respond flexibly to exceptional circumstances'. (Vol. 25, c.470).

The 20th Report of the Top Salaries Review Board recommended in 1983, *inter alia*, that Members' pay should be £19,000 per annum, an increase of about 31%; it further recommended that the research and secretarial allowance be increased to £13,000 per annum.

However the Government felt unable to accept these recommendations, and instead proposed an increase of 4% – that is, £15,090 from 13 June 1983. The then Leader of the House said:

> '*The proposed increase represents a value judgment of what is an appropriate salary for a Member. We are all constrained to make a value judgment of what that figure should be. The Top Salaries Review Body Report suggests that it should pay regard to a Member being full time with no other source of income. It must also take account of the unique nature of a Member's occupation. Those factors alone, however, do not indicate a self-evident salary. We have still to make our own political judgment about an issue sensitive in its economic and social consequences*'.
>
> [H.C. Deb., Vol. 46, c. 273]

However, after a debate which continued late into the night of Tuesday 19 July, the House rejected the Government proposals and instead accepted a compromise of a 5.5% increase immediately (to £15,308), with increases every 12 months over a 5-year period, bringing the Members' salary up to £18,500 in 1987. In addition, by 226 to 218 votes, M.P.s decided to link their pay with a senior civil servant: from 1 January 1988 M.P.s' salaries will be at a yearly rate equal to 89% of the maximum point of the senior principal (Grade 6) pay scale in the non-industrial Civil Service.

Other Allowances

At the time of the Lawrence Committee Report in 1964, there were only a limited number of allowances available to M.P.s. These consisted of various facilities in kind, such as free telephone calls from the House within the London area; the use of a limited number of rooms where

Year	*M.P.s' Salaries* £	
August 1911	400	
October 1931	360	
July 1934	380	
July 1935	400	
June 1937	600	
April 1946	1,000	
May 1954	1,250	(including Sessional Allowance)
July 1957	1,750	
October 1964	3,250	
January 1972	4,500	
June 1975	5,750	
June 1976	6,062	
June 1977	6,270	
June 1978	6,897	
June 1979	9,450	
June 1980	11,750	
June 1981	13,950	
June 1982	14,510	
June 1983	15,308	
Yearly rate for 1984	16,106	
Yearly rate for 1985	16,904	
Yearly rate for 1986	17,702	
Yearly rate for 1987	18,500	
January 1988	Salaries to be linked with Senior Principal (Grade 6) pay scale of the Civil Service (to be confirmed within 3 months of a new Parliament).	

N.B. The Parliamentary salary of *Ministers* is reduced – the current salary being £13,875 per annum: the salary is reduced because Ministers also receive a ministerial salary.

Also, please note that not *all* increases are listed in this table. Members and Members' private secretaries might do their secretarial and typing work; free postage for correspondence with Government Departments, nationalised industries and officials of the House, and free copies of parliamentary and certain other official publications. There were also certain travel allowances including a car mileage allowance covering the cost of motor fuel, and a railway season ticket for a Member travelling from his home to the House.

Since then, the number and variety of allowances available to Members has been increased.

Travel Concessions [On Parliamentary Business]

In 1984 an independent inquiry was set up under Lord Peyton of Yeovil to look at the means by which M.P.s were reimbursed the cost of their motor mileage: this recommended that M.P.s should be reimbursed by way of a payment per mile, appropriate to the engine size of the car, based on the Royal Automobile Club schedule of motoring costs, and subject to an upper limit. A higher rate should be payable for the first 20,000 miles per annum, a lower rate for mileage beyond this. The table below gives the applicable figures:

	Up to 1300 cc	*1301–2300 cc*	*2301 and above*
First 20,000 miles	19.3p	28.4p	42.3p
After 20,000 miles	11.5p	14.9p	21.2p

The report also recommended that when a Member claims for mileages in excess of 25,000, he should be required to furnish detailed particulars of all journeys covered by the claims.

The Government accepted the report's findings and they were approved by resolution of the House on 20 July 1984.

In addition, Members are currently provided with *travel vouchers* which may be exchanged for an appropriate ticket, for journeys by rail, sea or air on Parliamentary business. These cover journeys within the same triangle of home, Constituency and Westminster as the car mileage allowance.

Costs of journeys outside this triangle, on Parliamentary business, may also be reimbursed if the Member notifies the Fees Office at least three days in advance [the three day rule may be waived in exceptional circumstances].

Travel Facilities for Members' Spouses' and Children

Special travel warrants are available for use by the spouse and children under the age of 18 of a Member, between London and the Constituency, and/or London and home by rail, air or sea – this concession was extended to include Members' children on 10 June 1982, where previously it applied to Members' spouses only. Children are allowed not more than 15 return journeys each: likewise, the limit for free journeys by spouses is 15.

Postage, and Telephone Services [On Parliamentary Business]

Members are currently entitled to free stationery, free inland telephone and postal services from Parliament.

Secretarial and Research Allowances

Members may claim reimbursement of expenses incurred in the performance of their Parliamentary duties on secretarial assistance,

general office expenses and on the employment of research assistants. There is limited free travel for M.P.s' staff between Westminster and the constituency – up to nine return journeys a year for staff in respect of each M.P., from January 1984.

The Table below shows the level of allowance since its introduction in October 1969:

Year	*Secretarial/Research Allowance* £
October 1969	Up to 500
January 1972	Up to 1,000
August 1974	Up to 1,750
June 1975	Up to 3,200
June 1976	Up to 3,512
June 1977	Up to 3,687
June 1978	Up to 4,200
June 1979	Up to 4,600
February 1980	Up to 6,750
August 1980	Up to 8,000
June 1981	Up to 8,480
June 1982	Up to 8,820
July 1983	Up to 11,364
*April 1984	Up to 12,437
April 1985	Up to 13,211
April 1986	Up to 20,140

*On 20 July 1984 the House decided by resolution that the allowance be uprated from 1 April each year by the increase in the maximum point of the pay scale (excluding allowances and overtime) for a senior personal secretary in the Civil Service in receipt of Inner London weighting.

However, on 16 July 1986 the House decided to reject the Government recommendation of a 6% increase in Secretarial/Research Allowances, and instead voted for an amendment which raised the base figure for allowances from £13,211 a year to £19,000, an increase of over 50%.

Temporary Assistance

If a Member's secretary or research assistant is absent from work for 4 weeks or more through illness the Member concerned may claim reimbursement of the additional costs incurred in obtaining temporary help: the maximum period is 26 weeks in any period of 12 months, and may not exceed a total of 52 weeks in any period of 4 years. The

maximum sum available for reimbursement is calculated pro-rata, and is determined by reference to the annual rate of the Secretarial Allowance in force.

London Supplement and Additional Allowances

Those Members whose Constituencies are within Inner London are currently entitled to claim a payment of £1,023 a year.

Members with Constituencies outside Inner London are entitled to claim additional expenses incurred in staying overnight away from home whilst performing Parliamentary duties, within a maximum of £8107 per annum. Whilst it is recognised that M.P.s really have two places of work – Westminster and the Constituency, additional costs can be only admitted in respect of *one* of these places, and a Member is required to notify the Fees Office at the Commons of the location of his main residence – the additional expenses are claimable when the Member stays overnight away from this main residence. Thus, for example, a provincial Member with a home registered in his Constituency would be entitled to additional expenses incurred in staying away from home overnight for the purpose of carrying out Parliamentary duties either in London, or within his Constituency, if he would otherwise be involved in an '*unreasonably*' lengthy journey home.

Pension Arrangements

The *Members' Pensions Act* of 1965 introduced the first comprehensive pension scheme for M.P.s – the scheme was amended in 1976 under the terms of the *Parliamentary and other Pensions and Salaries Act 1976*, to provide for pensions to be based on a notional salary of £8,000, although a lower rate of salary was actually authorised for payment. In 1978 the *Parliamentary Pensions Act* modified earlier Acts to provide, *inter alia*, ill-health, retirement pensions, and improvement in the level of benefits payable to widows and widowers of M.P.s.

The Top Salaries Review Body 20th Report (Cmnd. 8881), published in May 1983, recommended that in view of the uncertainty of Parliamentary careers, M.P.s should be able to earn a full pension in a shorter period. They suggested therefore, that Members' and Ministers' pensions should accrue at a rate of 1/50th, (instead of 1/60th) of final salary per year of service, enabling a Member to earn a full pension of 2/3rds of final salary at age 65 after 33 1/3 years service. These recommendations were adopted by resolution of the House on 19 July 1983. The Top Salaries Review Body also suggested that Members' contributions should rise from the levels of 5% of salary for Ministers and 6% for Members to a single rate of 8%. However this particular recommendation was not accepted – the House instead accepted a Government recommendation of a single rate of 9%.

A Bill to implement these changes was introduced in May 1984 by

Mr. John Biffen, Leader of the House – The Parliamentary Pensions, Etc. Bill 1983–84. (It should be noted, however, that the increase in pension contributions is staged to co-incide with the staged pay-increases for Members).

Other proposed changes in the Bill included improved pension arrangements for M.P.s who are aged 60 or above with 20 years service and wish to retire at a General Election; a facility where M.P.s may convert back service to the faster accrual rate, and other, minor changes. The Bill had the Royal Assent on 31 July 1984.

Winding Up Allowance

An allowance of up to 1/6th Secretarial Allowance currently in force may be paid for the reimbursement of the cost of any work on Parliamentary business undertaken on behalf of a deceased, defeated or retiring Member after the date of cessation.

(*Contributed by Gillian Howarth, Public Information Office, House of Commons*)

UNITED KINGDOM: HOUSE OF LORDS

Members of the House of Lords receive no salary. They receive reimbursement of their travelling expenses incurred by them on Parliamentary duty and other expenses up to specified maxima for each day's attendance at sittings of the House or Committees of the House.

The limits for other expenses, i.e. night subsistence, day subsistence and secretarial, etc. costs are regulated by Resolutions of the House and determined, annually, by reference to the percentage changes in rates of subsistence payable to members of the civil service and in the case of secretarial costs to the percentage change in the rate of pay of a civil service senior personal secretary.

The Lord Chancellor (in respect of his duties as Speaker of the House of Lords), the Chairman of Committees and the Principal Deputy Chairman of Committees are the only three Members of the House of Lords who receive salaries payable from the House of Lords' Vote.

The salaries of other office holders and Lords' Ministers are paid from government departmental Votes. Ministerial salaries are governed by Act of Parliament and amending regulations with reviews undertaken at irregular intervals and at the invitation of the Government by an independent Review Body whose recommendations may or may not be accepted. The Top Salaries Review Body's Reports are available as Command Papers.

ZAMBIA

The revision of salaries and allowances of Members is considered first by the Standing Orders Committee of the House. Upon the recommendations of the Committee, an amendment Bill is brought in under the Central Committee Members', Ministerial and Parliamentary Offices (Emoluments) Act No. 3 of 1981. The salaries and allowances of Members are, therefore, effected by a resolution of the House itself. There is no specific period given for the review of Members' salaries and allowances. There was, for instance, a salary review for Members in 1981, and another one in 1985.

There is no basis for comparing Members' salaries with those in the public service as Members have no equivalent in the nation.

The current basic annual salary for the Hon Mr Speaker is K16,360.00, while the basic annual salary for the Hon Mr Speaker is K13,376.00. In addition, the Hon Mr Speaker is paid an annual special allowance of K10,000.00 and the Hon Mr Deputy Speaker gets K7,800.00.

The Chief Whip is usually a Cabinet Minister. He receives an annual allowance of K480.00, whereas the Deputy Chief Whip, who is usually a back-bencher, receives an annual allowance of K360.00 for that purpose. All salaries are taxed, while allowances are tax-free.

Members receive the following allowances:

	Kwacha
1. Special Allowance	5,200.00 p.a.
2. Constituency Allowance	
– Urban	1,200.00 p.a.
– Rural	2,400.00 p.a.
3. Subsistence Allowance	
– Resident within 40 km from Lusaka	300.00 p.a.
– Resident more than 40 km from Lusaka	900.00 p.a.
4. Kilometre Allowance	.40 per km
5. Attendance Allowance	
– National Assembly Motel Residents	75.00 per day
– Non-Motel Residents	25.00 per day
6. Transport Allowance	25.00 per day
7. Postal Allowance	200.00 p.a.
8. Secretarial Allowance	120.00 p.a.

Further, a tax-free gratuity of twenty-five per cent of gross salary is paid to any Member who has served continuously as a Member for three years. Mr Speaker receives a gratuity of twenty-five per cent of salary for any period of service.

AUSTRALIA: SENATE

On 18 March 1987 the Senate passed the following resolutions:

(1) The Senate reaffirms its resolutions of 26 February 1980, as follows:
   (a) It is the right of the Senate to receive notification of the detention of its members.
   (b) Should a Senator for any reason be held in custody pursuant to the order or judgment of any court, other than a court martial, the court ought to notify the President of the Senate, in writing, of the fact and the cause of the Senator's being placed in custody.
   (c) Should a Senator be ordered to be held in custody by any court martial or officer of the Defence Force, the President of the Senate ought to be notified by His Excellency the Governor-General of the fact and the cause of the Senator's being placed in custody.

(2) That, where a Senator is arrested, and the identity of the Senator is known to the arresting police, the police ought to notify the President of the Senate of the fact and the cause of the Senator's arrest.

The resolutions were recommended by the Committee of Privileges following its inquiry into the arrest and detention of a Senator in the State of Queensland.

The 1980 resolutions were passed on the recommendation of the Committee after an earlier case of the incarceration of the same Senator in the same state. (The Senator in question has been frequently on the wrong side of the authorities in his state because of his participation in demonstrations.) On that occasion the Committee found that the detention of the Senator had occurred in the course of his arrest and prosecution in a criminal matter, and that therefore there could be no question of the immunity from arrest having effect. As in Britain, that immunity applies only in civil matters. The Committee suggested, however, that the Senate establish its right to be notified of any arrest of any of its members.

The Committee, in its 1980 recommendation, deliberately limited the obligation to notify to the courts. Its stated reasons for this were that, under existing laws, an arrested person should not be long in custody before appearing before a court and being released on bail or remanded

in custody, and it might not be practicable to impose an obligation on police.

In the case the subject of the most recent report, it was found that in fact the Senator had been held in custody for over 24 hours, during part of which time the Senate was sitting, before appearing before a magistrate and being released on bail. This was because of what the Committee called a strange interpretation by the police of a state statutory provision. The police took the view that the statute required an arrested person to be fingerprinted before police bail was granted, and the Senator refused to be fingerprinted. In granting bail, the magistrate implicitly repudiated the police interpretation. In view of the circumstances, the Committee suggested that the Senate require police, as well as the courts, to notify any detention of a Senator, and hence the resolutions.

The Committee found that there was no evidence that the Senator had been treated differently from other persons arrested in similar circumstances, so that there was no question of harassment of a Senator. The Senate declared some years ago, in a case of abusive telephone calls to a Senator, that harassment of a Senator is a contempt.

The Committee observed that there was considerable scope for state authorities under state laws to 'remove from circulation' members of the Houses for considerable periods, and suggested that the Parliament give consideration to enacting some limited and/or waivable immunity from criminal process for its members. No action has been taken on this suggestion.

(*Contributed by the Clerk of the Australian Senate*)

AUSTRALIA: HOUSE OF COMMONS

Disruption of Electorate Office by Telephone Calls

On 22 September 1986 Mr W. P. Coleman, M.P., raised as a matter of privilege the inclusion by persons not known to him of his electorate office telephone number in certain classified advertisements placed in a major Sydney morning newspaper the preceding Saturday. Mr Coleman stated that the volume of telephone calls received by his electorate office in response to the advertisements had obstructed the work of the office.

Madam Speaker accorded precedence to a motion on the matter, and it was referred to the Committee of Privileges, which received written evidence from Mr Coleman and his electorate secretary, and a detailed memorandum from the Clerk of the House.

In its report the committee:

- endorsed the modern view of the need for restraint in the exercise of Parliament's penal jurisdiction;
- noted that Members from time to time were subject to various forms of inconvenience or irritation, and that the difficulty was to distinguish between acceptable forms of expression and actions which constituted harassment or obstruction and which caused constituents and other citizens, as well as the Member and his or her staff, to suffer;
- noted the effect of the calls on the work of Mr Coleman's electorate office, and expressed the view that the actions of those who gave rise to the calls were to be deprecated, and
- concluded that, bearing in mind the reluctance to extend the ambit of Parliament's penal jurisdiction, in all the circumstances further action would be inconsistent with the dignity of the House.

The committee also drew attention to the fact that it was over 2 years since the final report of the Joint Select Committee on Parliamentary Privilege had been presented, and stated that a high priority should be accorded to the consideration of the committee's recommendations and decisions made to guide the House, its committees and Members in privilege and contempt matters (The report had made wide-ranging recommendations covering the whole area – *see The Table*, Vol. LIII (1985), pp. 51–6).

References: H.R. Deb. (22.9.86) 11145–6; (23.9.86) 1195; (23.10.86) 2700–1. VP 1985–86/1139, 1143, 1272.

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

NEW SOUTH WALES: LEGISLATIVE ASSEMBLY

In 1986 the following matters involving parliamentary privilege arose:

1. 13 March – Stranger in the Chamber – Mr Speaker stated that members would be aware that yesterday afternoon a stranger entered the Chamber. He informed the House that steps had been taken to ensure there would be no repetition of this incident. (New South Wales Legislative Assembly, Votes and Proceedings, No. 8, p. 65.)
2. 23 September – Office of Premier – Under Standing Order 158, the Honourable Member for Lane Cove moved the following motion:

   'That this House reaffirms the tradition and practice of the Parliament of New South Wales, that, except for the period that Executive Councillors remain in office between the calling

of a general election and the swearing in of a new government, no person shall be a member of the Executive Council unless that person shall be a member of either House of Parliament and the further principle that the Premier of New South Wales shall be selected from amongst the members of the Legislative Assembly.'

Mr Speaker ruled that the member had not demonstrated how the matter had interfered with members in the course of their duties nor had he shown how it had affected the authority, immunity or dignity of the House. Mr Speaker ruled that no breach of privilege had occurred.

(New South Wales Legislative Assembly, Votes and Proceedings, No. 24, page 246.)

3. 14 October – Attack on Chair – Mr Speaker stated his attention had been drawn to a newspaper article in which a member of the House had attacked the alleged bias of Mr Speaker. The member's actions were ruled by Mr Speaker as improper and contrary to the traditions of Parliament.

   (New South Wales Legislative Assembly, Votes and Proceedings No. 30, page 301.)

4. 23 October – Security in Parliament House – The Honourable Member for Charlestown established to the satisfaction of the Chair, a 'prima facie' case of breach of privilege. The member drew the attention of the House to the unauthorised entry into his office of a stranger who was attending a function at Parliament House, unaccompanied by an honourable member or an authorised person.

   Whereupon it was moved, 'That this House upholds the privilege of members to be free from interference in the performance of their duties by the intrusion of strangers in the non-public areas of the parliamentary precincts.' Debate ensued. Question put and passed.

   (New South Wales Legislative Assembly, Votes and Proceedings, No. 35, pages 342–343.)

5. 28 October – Information from Government Departments to members –

   The honourable member for Hurstville, drew the attention of the House to the refusal of an officer of the Department of Youth and Community Services to assist a librarian of the Parliamentary Library when that librarian declined to divulge the identity of the member for whom information was being sought. The member stated that the refusal by the officer of the Department of Youth and Community Services had interfered with the performance of his duties and constituted a breach of privilege.

Mr Speaker was satisfied that a 'prima facie' case of breach of privilege had been established. Whereupon it was moved –

'That this House re-affirms the rights and privileges of all honourable members to have made available to them non-confidential information from government departments through the services of the Parliamentary Library.' Debate ensued. Question put and passed.

(New South Wales Legislative Assembly, Votes and Proceedings, No. 36, pages 350–351.)

6. 29 October –

'The honourable member for Lane Cove, drew the attention of the House to the fact that he had received a memorandum indicating that the Parliament would be deprived of the opportunity for an Address-in-reply debate early next year and that this threatened his ability as a member to address the Governor's programme for the Parliament.

Mr Speaker stated that the honourable member for Lane Cove could not raise as a matter of privilege the business of the House, as it was the prerogative of the Government to establish the business of the House.

Mr Speaker stated that a prima facie case of breach of privilege had not been established.'

(New South Wales Legislative Assembly Votes and Proceedings, No. 37, p. 357.)

7. 21 November – Exemption of attendance of a member as a witness – Mr Speaker advised the House that he had written to the Chief Judge of the Land and Environment Court advising that, a Minister who had been subpoenaed to appear as a witness in proceedings, had not been granted leave of the House. Mr Speaker advised the Chief Judge that, having regard to the paramount right of Parliament to the attendance and service of its members, the Legislative Assembly claimed the privilege of exemption of the said member from attendance as a witness before the court, whilstsoever the House was sitting.

Subsequently an acknowledgment was received from the Court advising that compliance with the subpoena while the House was sitting, was not to be enforced.

(New South Wales Legislative Assembly Votes and Proceedings, No. 45, p. 447.)

8. 3 December – Statutory Instruments –

'The honourable member for Wagga Wagga moved, pursuant to notice, That this House –

(1) Affirms that non-compliance with section 41 of the Interpretation Act 1897 and other legislation relating to the tabling of certain statutory instruments within 14 days of their

publication in the Government Gazette, is a breach of the rights and privileges of all honourable members; and

(2) calls upon all ministers to fulfil their obligations to table statutory instruments in accordance with the law.

Debate ensued. Question put and passed.'

(New South Wales Legislative Assembly Votes and Proceedings, No. 48, p. 501.)

(*Contributed by the Clerk of the Legislative Assembly*)

QUEENSLAND: LEGISLATIVE ASSEMBLY

EXTRACT FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY

Thursday, October 17, 1985

REFERRAL OF SPEECH TO PRIVILEGES COMMITTEE. – Mr Hinze moved (*by consent*) without notice, That the speech by the member for Salisbury, Mr Goss, during Matters of Public Interest yesterday, be referred to the Committee of Privileges.

Question put and Passed.

Thursday, December 5, 1985

STATEMENT BY MR SPEAKER. CHANGE TO VOTES AND PROCEEDINGS ENTRY. – Mr Speaker said –

'Honourable Members,

'With reference to matters raised by the Honourable Member for Salisbury and a subsequent motion put to the House by the Minister for Local Government, Main Roads and Racing referring those matters to the Select Committee of Privileges and the difference in the record between the Votes and Proceedings and the verbatim Hansard, I believe it is imperative that action be taken to resolve the matter.

'I now call on the Leader of Government Business in the House.'

Whereupon Mr Wharton moved (*By consent*), without notice, That the House agrees that wording of the motion of referral to the Select Committee of Privileges namely entry Number 4, Votes and Proceedings No. 21 dated October 17, 1985, be changed to 'That the matters raised by the honourable Member for Salisbury during his speech on matters of public interest on Wednesday, 16 October, be referred to the Select Committee of Privileges for consideration'.

Question put and passed.

EXTRACT FROM THE REPORT OF THE SELECT COMMITTEE OF PRIVILEGES

In the matter of the reference to the Committee of Privileges by the House on 17 October, 1985 in respect of the resolution carried by the House which states:

> 'That the matters raised by the honourable Member for Salisbury during his speech on matters of public interest on Wednesday, 16 October, be referred to the Select Committee of Privileges for consideration',

the Committee considered the reference and finds:

That it is not a matter falling within the jurisdiction of the Committee of Privileges for the following reasons:

1. The Committee of Privileges is not a committee of enquiry of such a nature as would be envisaged by the present reference.
2. The Honourable Member for Salisbury, in raising matters in the Parliament, had the right to do so, subject to the constraints of the Standing Orders.
3. The Honourable Minister for Local Government, Main Roads and Racing had available to him similar rights under the Standing Orders to respond adequately.
4. The Committee of Privileges draws the attention of the House to an excerpt from the Special Report of the Select Committee of Privileges tabled in the House on 20 May, 1980:

   > The Committee has considered the allegations made by the Honourable Member for Archerfield against the Minister of the Crown (the Minister for Welfare). The Committee feels that the Minister has had an adequate opportunity to defend himself in Parliament and has indeed taken advantage of that opportunity. The Committee also believes that the forms of the House and the powers of Mr. Speaker are adequate protection for a Member to defend himself against an attack by another Member.

   The Committee of Privileges is of the opinion that this is an authoritative precedent with which it concurs.

In coming to this conclusion, the Committee of Privileges sees itself as a body to protect the privileges of Members individually and of the House pursuant to the Standing Orders of this Parliament and Erskine May, *Parliamentary Practice*, 20th edition, particularly at pp. 143 ff.

b) Mr. T. Burns, Deputy Leader of the Opposition, on 16 September 1986 complained about a National Party candidate's misuse of the honorific 'MLA' after his name in election advertising. The revelant excerpt at page 1360 is set out hereunder:

PRIVILEGE

Use of 'MLA' in Advertisement by Mr Turner in The Bowen Independent

Mr BURNS (Lytton) (11.35 a.m.): Mr Speaker, I rise on a matter of privilege. I draw your attention to an advertisement in *The Bowen Independent* by a National Party candidate named Turner, who claims in bold print that he is an MLA. As the letters 'MLA' are used by members of the Legislative Assembly, who have been elected to this House, and as Mr Turner's parliamentary-election record is one of abject failure, will you investigate that blatant misrepresentation? Or will you accept the obvious explanation that, in Mr Turner's case, 'MLA' really stands for 'member of the liars association'?

Mr SPEAKER: Order! I will report to the House on the matter.

The House rose for the election campaign before the Speaker was able to report back.

BOTSWANA: NATIONAL ASSEMBLY

Complaint against the police by Hon. Mr. Dabutha re: Alleged duplication of car registration number BD 216A

On Wednesday 19 November, in the debate on His Excellency's speech, the Honourable Mr. Dabutha alleged that the Botswana Police had registered one of their vehicles as BD 216A, and that this vehicle was a Toyota Hilux Pickup. The Honourable Mr. Dabutha claimed that he also had a Toyota Hilux Pickup with exactly the same number. He further claimed that the reason for this duplication of registration number was deliberate and intended to frame him. He went on to say that the Police were planning to commit offences using that vehicle in order to ensure that he would be held responsible for any crime that they may commit.

The Leader of the House undertook to investigate these allegations. Investigations revealed that motor vehicle BD 216A was registered in the name of Ipopeng (Pty) Ltd on 31 August 1984. The CID have a Toyota Hilux Pickup with registration number BD 2176A registered on the 30 June 1986.

On 8 November 1986 the Honourable Mr. Dabutha approached the Deputy Head of CID, Mr. Paul Marathe, and queried the alleged duplication of his number plates. Mr. Marathe undertook to investigate. He further advised the Honourable Mr. Dabutha to check with the Police at CID (South). On 10 November 1986 the Honourable Mr. Dabutha accompanied by Mr. Knox Kowa went to CID (South) and met Inspector Manewe, Inspector Maliko and Sub-Inspector Malokwane who is also a transport officer. During that meeting the Honour-

able Mr. Dabutha was informed that no such duplication existed and that the Police vehicle was registered BD2176A. In fact the vehicle was shown to both the Honourable Mr. Dabutha and Mr. Kowa who inspected it. Both the Honourable Mr. Dabutha and Mr. Kowa admitted that the allegation was a mistake and left the CID (South) offices satisfied. On the basis of this information it is clear that the allegations made by the Honourable Mr. Dabutha were a mistake.

The hope was expressed that Mr. Dabutha would make a public apology for such unfounded allegations against the Police Force.

(*Contributed by the Clerk of the National Assembly*)

BRITISH VIRGIN ISLANDS: LEGISLATIVE COUNCIL

Breaking of the Mace

During the first sitting of the third session of the tenth Legislative Council of the Virgin Islands held at the Legislative Council Chamber, Road Town, Tortola on friday 14 March 1986 at 10 a.m., the following incident took place, resulting in the Mace being broken into two pieces. Extracts are from the Report of the Debates in the Legislative Council.

On the motion 'that this Council stand adjourned *sine die*':

Speaker:	The Honourable member [Hon. O. W. Hodge, Member for the Sixth District] continues to use unparliamentary expressions, and if you continue like this I am going to ask you to take your seat. You should be conversant with these things.
Member for the Sixth District:	If you ask me to take my seat I will move that mace from there. I am as serious as that. I have a right to speak in here. I am going to speak as I feel like speaking and I am going to express myself in here and if you make a move to make me take my seat I will move that mace from there, it will have no more Council. I told you when I got up, my spirit is vexed and I want to speak – the people put me here in this House and I will speak at all times in here. I would not worry about these dishonourable politicians telling lies to the people all day – and they're lying and they're lying.
Speaker:	I must remind the Honourable Member that he is responsible for what he says.
Member for the Sixth District:	That is right, Sir, I take responsibility for what I say and . . .
Speaker:	Be careful, do not refer to any member discourteously.
Member for the Sixth District:	I said all that to make two points, Mr. Speaker. Because if I cannot speak in here I will speak . . . I can assure you. Take for instance the policy banning rastafarians

from this country. Mr. Speaker, we have an Immigration law and in that Law the Chief Immigration Officer does not even have to give a reason why he asks he or she to leave the BVI. That law is sufficient. We do not need a policy discriminating against rastafarians. We don't need that. But you know the time is coming Mr. Speaker – you know there came a time, Jesus moved with indignation – the Prince of Peace – yes, he moved with indignation. Once this continues to go the way it is going in this little nation, we are going to have ruction . . .

Chief Minister: Mr. Speaker point of order. If I may offer a suggestion here – it is obvious that the Honourable Gentleman is very agitated and he has not only . . . as you indicated, but he has threatened something which goes to the very root of the dignity of the House and I at this stage would ask that you give him the opportunity of retracting those threats and to take some time off and cool himself down and discuss this matter at a more appropriate time. I do not believe that on the adjournment of the House is the appropriate time for discussion or debate on the matter or matters which he is discussing.

Speaker: The sentiments expressed by the Chief Minister are well taken. I tried to be reasonable, as much as I can, but as I said the Honourable Member's actions of a few minutes ago threaten the very core of the system and I am going to give you the opportunity to retract the statements that you have made. He has the opportunity now to retract his statement. If you do not feel inclined to retract your statement the Chair will have to ask you to leave for the rest of the sitting.

Member for the Sixth District: Am I free to get up and speak, Mr. Speaker?

Speaker: The Chair has given you a choice.

Member for the Sixth District: All right I will get up and speak along other lines. Can I get up and speak now? You can take out whatever you don't want. I have . . .

Speaker: Can the Member be more explicit?

Member for the Sixth District: Well, I beg to apologise for what went on.

Speaker: The Clerk will take note that that expression which was used will not reflect in the record of the House.

Member for the Sixth District: Can I go on to speak?

Speaker: You may now continue.

Member for the Sixth District: Mr. Chief Minister I want you . . .

Speaker: The Hon. Member must address the Chair.

Member for the Sixth District: I am sorry. Yes, Mr. Speaker, I would like the Chief Minister of this country to take warning. I am asking him

in this Honourable House today to call out the Chief Immigration Officer from abusing pregnant women. I am also asking, Mr. Speaker, the Chief Minister of this Country to repeal that policy – banning rastafarians and hippies.

Speaker: I find it necessary – and when the Speaker is standing the Hon. Member will sit. I find it necessary to interupt you here. In your last statement you referred to the Hon. Chief Minister as abusing pregnant women. The Member did not refer to the Hon. Chief Minister's Government. You are making a personal attack. The Hon. Member must withdraw that statement.

Member for the Sixth District: I am not . . .

Speaker: Well, the Hon. Member must leave this House for the remainder of the Sitting.

Member for the Sixth District: I am not going to take this at all. I am not leaving the House. No Sir, No! I am not leaving the House, that's what I say. (The Member thereupon broke the mace in two pieces)

Speaker: This Sitting is hereby suspended. (The Sitting was suspended at 12:00 noon because of the broken mace)

Speaker: Council will now resume its sitting. Honourable Members as you know we are here to continue this sitting which was unexpectedly interrupted this morning and the main purpose is to amicably resolve the situation in order that the dignity of the House and the Chair can be maintained. I have spoken privately to the Hon. Member for the Sixth District and I gave him two alternatives. As I have said, in the interest of all concerned it is best to have this resolved as peacefully as possible. My personal feeling on the matter is that the action of this morning was an insult to the House, to the country, to the Queen. I have asked the Honourable Member to apologise to this House, being very sorry for the act that he has committed and promising that he will at all times respect the dignity of the House and the Chair and willingly accept any order that is given him by the Chair. I have consulted with the Ag. Attorney General, the Leader of Government Business and the Leader of the Opposition, and they thought that this was the best way to handle the situation. I am very anxious to have the matter resolved, so I shall not belabour the matter, so at this time I am going to give the Honourable Member for the Sixth District an opportunity to speak.

Member for the Sixth District: Mr. Speaker, I have told you in the coffee room just a while ago, in the presence of the Chief Minister and the Leader of the Opposition, that for 6 years I have been in this Council representing the people and I have not at any time moved to disrespect the Chair. I want to say that I

am sorry for what took place this morning. And I promise you whether in the Chief Minister's chair or on the Opposition bench, I will do no such thing again – particularly breaking the mace. Again I am sorry.

Speaker: Would the Hon. Member undertake to respect the dignity of the Chair?

Member for the Sixth District: Yes.

Speaker: Well, Hon. Members the Member for the Sixth District said what we were hoping he would say and I would like to be assured that this will never recur again. I don't know if any Member would like to make any comments but we would like to keep this as short as possible. It has been moved and seconded that this Council do stand adjourned sine die. Those in favour say Aye.

Members: Aye.

Speaker: Those against say No. (No response.)
The Ayes have it. The Council now stands adjourned.

INDIA: GUJARAT LEGISLATIVE ASSEMBLY

Alleged misleading of the House by a Minister

On 5 August 1986 the Speaker (Shri Natwarlal C. Shah) made the following statement –

'I have to make an announcement. Hon'ble Member Shri Ashok Bhatt had given me a notice of a breach of privilege under rule 250 of G.L.A. Rules against Hon'ble the Minister for Health. He had stated therein that during the Question Hour on 12th March 1986 Hon'ble Member Shri Keshubhai Patel had, at the time of supplementary questions on the starred question pertaining to withdrawal of cases of adulteration in oil in Rajkot district, asked a question to Hon'ble the Minister for Health, viz. Whether Hon'ble the Minister was ever associated in one or the other way with the organisation in respect of which he has withdrawn the case? To this question Hon'ble the Minister for Health had replied, "I have not withdrawn this case. My opinion was also not asked. The Home Department had decided to withdraw the case before I had become the Minister. The decision is not taken by the Department in my charge." Shri Ashok Bhatt, M.L.A. had stated that Hon'ble the Minister's reply was far from truth and that it had misled the House. In support of his statement he produced copies of letters dated 3 September 1985 and 16 October 1985 written to the Director of Food and Drugs Control Administration and the Additional Government Pleader of Rajkot, respectively, by the Health and Family Welfare Department.

When the point whether he had withdrawn the case which was filed against the organisation with which he was associated was raised in the House during the Question Hour, Hon'ble the Minister had replied, "I have not withdrawn this case. My opinion was also not asked. The Home Department had decided to withdraw the case before I had become the Minister. The decision

is not taken by the Department in my charge." Obviously this organisation is GUJCOMASOL and Hon'ble the Minister for Health was one of its Directors and, therefore, he had given his replies keeping in mind the application to implead Directors of the GUJCOMASOL as the co-accused in this case and the Government's decision thereon. I feel satisfied that the . . . Collector of Rajkot had, vide his letter dated the 11th January, 1985, instructed the Government Pleader to withdraw the said application. All this was decided before Hon'ble Shri Vallabhbhai had become the Health Minister on 11th March, 1985. Thus when the question of withdrawal of the case against the organisation with which he himself was formerly associated was referred to in the House, Hon'ble the Minister for Health had replied as above in the House. I have observed that Hon'ble the Minister for Health was correct on the point and as the matter pertained to the complaint against the organisation with which he was associated, he had given reply in the House under the presumption that the House was concerned about withdrawal of the case against the Directors of the GUJCOMASOL.

The other aspect of this case is the original criminal case No. 362/84 against the Godown Officer. As stated by Hon'ble the Minister for Health this case was also subsequently withdrawn and this process of withdrawal of the case initiated on the basis of his own recommendation to the Home Department which he had made after he had become the Minister, The Home Department had taken a decision in this matter on 28 September 1985 but as per the advice of the Legal Department this decision was intimated to the Government Pleader not by the Home Department but by the Health Department vide its letter dated 16 October 1985.

So far as withdrawal of the original case against the Godown Officer is concerned, it is true that, as stated above, the Home Department had taken a decision. But the two aspects viz (1) withdrawal of the original case against the Godown Officer and (2) withdrawal of the application to implead the Directors of the GUJCOMASOL as the co-accused, were involved. Hon'ble the Minister for Health had, while replying on the issue of withdrawal of the application to implead the Directors of GUJCOMASOL, stated that the said decision was not taken by the Department in his charge and the decision to withdraw the case was taken by the Home Department. But in this case, as stated by Hon'ble the Minister for Health, Hon'ble Member Shri Ashok Bhatt's original question pertained to the withdrawal of cases of adulteration in oil in Rajkot district while the present case pertained to the storing of wheat and hence he had not the adequate details to reply to the supplementary question which pertained to an issue altogether different from that of the original question. He had with him no file necessary to reply to that supplementary question and so he had replied that a separate question would have to be asked.

In view of the above, it appears that while replying to the supplementary question, Hon'ble the Minister for Health mixed up the point and being so confused he had replied that in this case the decision to withdraw the application to implead the Directors of the GUJCOMASOL as the co-accused was taken by the Home Department and not by the Health Department. Hon'ble the Minister for Health had stated in his clarification that at that time he had not with him the complete details. Further he had stated that

he had inadvertently referred to the Home Department in his reply. He has also expressed regret for his mistake and said that there was no intention on his part to commit the breach of privilege.

In this way, Hon'ble the Minister for Health has explained the circumstances under which he had committed the mistake and he has also expressed his regret for the same. In view of this I feel that no further action is required to be taken in the matter.'

INDIA: MAHARASHTRA LEGISLATIVE ASSEMBLY

Insulting treatment meted out to Legislators by Railway employees

On 9 December 1986 Shri P. K. Patil and six other Members of the Maharashtra Legislative Assembly gave notice of their intention to raise a question of breach of privilege arising out of insulting treatment meted out to the Legislators by Railway employees. The Members stated that on Friday 5 December 1986 after the sitting of the House was over, they came to Nagpur Railway Station to board 2 UP Howrah-Bombay Mail in order to visit their constituencies during the adjournment of the session. However, to their surprise they found their special bogie which was exclusively reserved for them being occupied by some 27 unauthorised persons. When they brought this fact to the notice of the Railway Conductor, Shri B. S. Verma, he did not pay any attention to them. The said unauthorised persons abused the Legislators and one of them threatened one Member with a knife. At the next halt at Wardha when the Member sought the help of the Railway Police they did nothing but stood aside as spectators. The Members, therefore, alleged that the said railway employees by their action lowered the image of the Legislators in the eyes of the public and thereby committed a breach of privilege.

The Speaker, after satisfying himself that there was a *prima facie* case of breach of privilege, allowed the matter to be raised in the House on 11 December 1986 and after the House had granted leave referred the matter to the committee of Privileges for examination and report.

The Committee has yet to present its report.

(*Contributed by the Clerk of the Legislative Assembly*)

INDIA: RAJASTHAN LEGISLATIVE ASSEMBLY

Several apparent breaches of privilege were raised during 1986. Two related to failures to inform the Speaker of the arrest of Members. A third drew attention to a discrepancy between an amendment in rates proposed in the Finance Bill 1986, immediately after the Chief Minis-

ters' Budget Speech, and the Budget Speech itself. Another alleged breach of privilege was made against the State government for failure to make proper arrangements for the tour programme of the Scheduled Tribes Welfare Committee.

The Speaker referred the first two and the last to the Privileges Committee.

ISLE OF MAN: TYNWALD

(a) Witnesses were summoned to the Bar of Tynwald to give evidence concerning allegations that certain documents relating to two rival bids for the Island's telecommunications licence were improperly suppressed by a Government Committee and that, had they not been so suppressed, a different decision might have been reached by Tynwald on the award of the licence. The witnesses refused to answer questions and thus were potentially in contempt of Tynwald. Subsequently, the witnesses apologised for their failure to answer questions properly addressed to them and acknowledged that the document did not exist.

(b) It was alleged, as a result of the revelation of confidential documents, that certain evidence given at the Bar of the House of Keys in 1985 concerning a proposed merger of two shipping companies was incorrect. A Committee of Privilege was constituted to consider whether such evidence had been incorrect and if so, whether the witness had intended to mislead the House and was in contempt. The Committee subsequently recommended that, whilst some statements made by the witness were misleading, they were not intentionally so and thus no action should be taken.

MALTA: HOUSE OF REPRESENTATIVES

The 'Mhux' Case

On Monday 13 January 1986 the Minister for Agriculture and Fisheries and the Hon. Alfred Bartolo M.P., as a breach of privilege, complained against the fortnightly 'Mhux' saying that they were offended as members of the House by the feature 'Mix-Xena tax-Xandir' and asked a ruling by Mr Speaker. Mr Speaker replied that he would give a ruling at another sitting.

On Monday 10 February 1986 Mr Speaker said that there was a *prima facie* breach and invited the Minister for Agriculture and Fisheries and also the Hon. Alfred Bartolo M.P., to move the necessary motion to start proceedings. The Minister for Agriculture and Fisheries said that the article in question ridiculed him in the eyes of his constituents and that the House should protest. The Hon. Alfred Bartolo M.P.,

said that he was also displeased at the way the newspaper ridiculed his intervention in Parliament. When Mr Speaker put the question it was carried and the House found the Editor of 'Il-Mhux' guilty and instructed the Clerk to issue writs of summons for the Editor of 'Il-Mhux' to appear below the bar of the House.

On 18 March 1986 the House continued discussing the breach of privilege and the Editor of 'Il-Mhux' appeared below the bar with his legal aides to answer questions put to him. The only words pronounced in defence were that the Editor of the newspaper was not answering questions.

On 19 March 1986 the House resumed debating the motion and pronounced the Editor of the 'Il-Mhux' guilty in his presence. The matter went to the Constitutional Court because the Editor had filed an application requesting the Court to declare that the case instituted against him in relation to an alleged breach of privilege was null as it violated his right to a fair trial according to the Constitution. The court in its judgement stated that Parliament was only sovereign within the limits of the Constitution. Furthermore, the word 'Court' meant only the regularly constituted Courts of Malta, and though punishments contemplated by the Privileges Ordinance were similar to punishments given out by a criminal Court, the decision of the House of Representatives in meting out punishment did not constitute a criminal judgement. Moreover the Privileges Ordinance did not form part of the Criminal Courts of Malta. The Court stated that a libel entailed both questions of fact and law and that the Ordinance in question did not leave it in the discretion of Parliament to decide. This meant that the proof that a libel existed had first to be established in Court for Parliament to be able to proceed with meting out punishment. For such reasons the Court stated that Parliament had acted beyond its powers. On an appeal entered by Counsel to the Prime Minister the Constitutional Court after thorough study of the relevant articles of the Constitution upheld that proceedings taken by the House for Breach of Privilege did not violate Section 40 of the Constitution (as has been alleged) but are Consonant with section 35 of the Constitution.

On 8 December 1986 the Minister for Justice and Parliamentary Affairs moved the motion for inflicting a penalty of Lm250 and that an apology be published in the next issue of 'Il-Mhux'. The motion was carried.

The 'Il-Pulizija' Case

On 24 September 1986 the Hon. Joseph Brincat M.P., raised as a breach of privilege the Editorial of the July/August 1986 issue 'Il-Pulizija' which he said was injurious to his reputation and esteem as a member of the House of Representatives. Mr Speaker reserved the right to give a ruling at another sitting.

On 1 October 1986 Mr Speaker ruled that the article in question constituted a *prima facie* breach of privilege and that the Hon. Joseph Brincat M.P., could move the relevant motion to start proceedings. The House then deliberated; and the motion was agreed to.

On 29 January 1987 the Hon. Joseph Brincat M.P., asked for the suspension of the Standing Orders. Permission was granted. He said that in conformity with the amnesties accorded on the occasion of the 63 to 1 vote of approval in the House for constitutional changes, he was asking the permission of the House to halt any further action in this breach of privilege and deem the case closed. Permission was granted and the case was thus finalised as requested.

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

NEW ZEALAND: HOUSE OF REPRESENTATIVES

Reflection on the Chairman of Committees

During the committee stage of a bill, a Member accused the Chairman of Committees of being in collusion with the sponsor of the bill (a private member's bill). The Member was found to be in contempt for this serious reflection on the Chair. The fact that the accusation was in itself of such a nature as to constitute a contempt was not seriously disputed; the case was interesting for the unusual defence mounted to the charge.

On the night in question, the Member had been interjecting frequently and vociferously. The Chairman required him to withdraw and apologise for certain of these remarks. There was confusion as to whether he actually did withdraw and apologise but in the event the Chairman named the Member. Immediately he was named, the Member made the allegation about the Chairman being in collusion with the bill's sponsor. The Committee reported progress and the Member was duly suspended on motion of the Leader of the House. Subsequently, the allegation made against the Chairman was raised as a matter of privilege and, when the Speaker accepted that a question of privilege was involved, was referred to the Privileges Committee.

Before the Privileges Committee, the Member's defence to the complaint was that he had already been punished for his offence by being suspended pursuant to the naming procedure. Applying the well-known principle of double jeopardy, the House either was unable to punish him again or should not do so.

It was not clear that the Member had in fact been suspended because of his allegation about the Chairman. The naming preceded the allegation although the order of the House suspending him occurred subsequently. Nevertheless, the Privileges Committee was content, for

the purpose of considering the submission, to assume that the suspension did relate, in part at least, to his allegation against the Chairman.

In considering the submission of double jeopardy, the Committee considered first the legal basis for parliamentary privilege. In New Zealand the privileges of the House are conferred by statute (the Legislature Act 1908) and are, in general, the privileges held by the House of Commons on 1 January 1865.

No legal or parliamentary precedents in which the point at issue in this case was considered could be found. The closest analogy seemed to the Committee to be those cases in the House of Commons in which an offender released at the end of a session had been reimprisoned in the next session because the House of Commons did not consider that he had undergone sufficient punishment (*Erskine May*, Twentieth Edition, p. 135).

The Committee concluded that these applications of the privilege to punish for contempt were inconsistent with a double jeopardy rule and found that the House was not prevented from punishing the same offence twice.

The next consideration was whether, by its own rules, the House had introduced a double jeopardy rule. This involved a construction of the Standing Orders relating to the naming and suspending of a Member for breach of order. These are similar to those of the House of Commons from which they were copied at the end of the last century. It was argued for the Member that, by invoking this procedure for punishing the Member, the House could not now pursue him for a contempt of the House.

The Committee found the answer to this proposition in a Standing Order (again borrowed from the House of Commons) which provides that nothing in the naming and suspending provisions is to be taken to deprive the House of the power of proceeding against any Member according to its privileges. If the House, having suspended a Member under these provisions, was prevented from proceeding against him according to its privileges, this would negate the Standing Order. Consequently, rather than being prevented from holding the Member to be in contempt because he had been named and suspended, the House had, by Standing Order, expressly reserved its right to do that very thing.

A further argument that the development of natural justice concepts as applied in the procedures followed by Privileges Committees in recent years should lead the Committee to sustain the double jeopardy argument, was also rejected by the Committee.

It is a fact that the Privileges Committee has modified its procedures to ensure fairness to parties appearing before it. Thus it has permitted representation by counsel, drawn up statements of the 'charge' which parties have been expected to answer, and allowed examination and

cross-examination by one party of another appearing before the Committee.

However, the Committee did not accept that by adopting these procedures it had bound itself (and much less the House) to accept as an answer to a charge of contempt a substantive defence such as a plea of double jeopardy. These other developments were of a procedural nature only and the Committee denied that double jeopardy was an aspect of natural justice, a concept which it predates.

The Committee did accept, however, that in considering what, if any, penalty to impose, it was relevant to have regard to whether the House had invoked its Standing Orders to punish the Member for the same action as that for which he was arraigned before the Committee.

Applying that principle, and having regard to a letter of apology written by the Member, the Committee recommended that the House take no further action. The House agreed to that course. (See Report of Privileges Committee 1986, I 15.)

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

XVI. MISCELLANEOUS NOTES

1. CONSTITUTIONAL

AUSTRALIA: WESTERN AUSTRALIA

The Constitution Amendment Act 1986 (Assent – 22 July 1986) increased the size of the Ministry from 15 to 17.

ISLE OF MAN: TYNWALD

As the result of the implementation of the recommendations of two Committees of Tynwald, considerable changes have been effected in the executive Government of the Island. Most of the former Boards of Tynwald (autonomous bodies which performed administrative functions devolved to them by Tynwald or transferred to them from the Governor by Tynwald) were amalgamated to create eight new Departments, each consisting of a minister and two members: the Treasury and the Departments of Home Affairs, of Industry, of Agriculture, Fisheries and Forestry, of Health and Social Security, of Tourism and Transport, of Local Government and the Environment, and of Highways, Ports and Properties. The process will be completed in September 1987 when the Department of Education will come into being. Contemporaneously with these changes the Executive Council was reformed to consist of a Chief Minister and the nine other ministers. The Chief Minister is appointed by the Governor on the nomination of Tynwald: the ministers are selected by the Chief Minister, subject to the approval of Tynwald, and appointed by the Governor. The Chief Minister holds office until the next general election to the House of Keys or until Tynwald passes a vote of no confidence in the Executive Council. Ministers hold office for a maximum of three years but may be reselected. In certain circumstances the Government may, on the advice and with the concurrence of the Chief Minister, declare a Minister's office vacant. The Selection Committee of Tynwald which had the duty of making recommendations for the Chairmanship and Membership of Boards was abolished.

UNITED KINGDOM: HOUSE OF LORDS

The procedure of petitioning for a peerage to be called out of abeyance was amended. An Address to the Crown in 1927 sought to place some limitation on claims based on tenuous grounds or made in dubious

circumstances. For example, when the claim followed an arrangement between the claimant and a co-heir, the House of Lords Committee for Privileges was to determine whether the arrangement was 'tainted with impropriety'. Hence any claim which followed discussion between co-heirs required the time and money commensurate with an application to the Committee. By an Address of 18 December 1986, the responsibility for determining whether there are grounds for doubting the propriety of such an arrangement would be given to the Attorney-General. This Address reflected a report from the Committee for Privileges in 1986. The Queen agreed to the Address in an answer of 12 February 1987.

ZAMBIA

The Constitution of Zambia (Amendment) Act of 1986 amended Article 68 of the Constitution to provide that a person holding or acting in any part, office or appointment in the armed, police or any other defence force, in the public service, teaching service, parastatal body or a party official would not be qualified to be elected as a Member of the National Assembly unless he resigned from such post, office or appointment. The same Act amended Article 71 of the Constitution to provide that a Member of the National Assembly must vacate his seat if sentenced to a term of imprisonment exceeding six months.

2. ELECTORAL

AUSTRALIA: NEW SOUTH WALES

Constitution Amendment Bills

In 1904 the number of members of the Legislative Assembly of the New South Wales Parliament was set at 90. When it was last increased, in 1973, this total had risen to 99. By comparison, membership of the Federal Parliament had increased from 75 in 1901 to its current level of 148.

Acts to amend the New South Wales Constitution Act 1902 were passed in the last sittings of the Parliament and increased the number of members of the Legislative Assembly from 99 to 109, and revised the criteria to be used for determination of electoral boundaries by Electoral Districts Commissioners.

While the quota of electors per electorate in New South Wales in February 1986 was 34,213, nine electorates at that time already had more than 40,000 voters on the rolls, ie, had more than 16 per cent above the quota level as determined under the Constitution Act.

Campbelltown had 46,273 electors (35.2 per cent above quota), Oxley and Gosford more than 43,000 (25.7 per cent above quota), while there were in excess of 42,000 in Coffs Harbour and Penrith, and the electorates of South Coast, St Mary's, Byron and Gloucester had more than 41,000 (approx 23 per cent and 20 per cent above quota respectively).

(The electorates of Oxley, Coffs Harbour, Byron and Gloucester are held by the National Party; South Coast is held by an Independent, and Campbelltown, Gosford, Penrith and St Mary's are held by the A.L.P.)

At the time of the last redistribution, these electorates fell within the requirements of the Constitution Act that the maximum marginal variation in numbers of electors in each electorate should not be greater than 10 per cent. They clearly did not do so and in the event of an immediate electoral redistribution, there would be an urgent need to redistribute electorates in these areas.

Given that this kind of variation above and beyond constitutional requirements can occur fairly quickly, the new laws establish that Electoral Districts Commissioners should have regard to population trends as far as possible, so that they may take account of population trends likely to affect electorate populations for up to four years.

This would mean that, in a situation where redistributions tend to take place at intervals of roughly eight years, allowance could be made for population trends which might apply on average throughout the effective term of any given redistribution.

Based on February 1986 figures, the proposed increase of 10 in the number of seats in the State lower house would reduce the quota to approximately 31,000 – the level reached in 1980 at the time of the last redistribution.

Subject to the consideration of population trends and the need to apply a rule in favour of a 'one person-one vote' principle, the Electoral Districts Commissioners are still to be required to take account of community interests within electorates, means of travel and communication within the district, physical features of an electorate, and the boundaries of existing districts.

Constitution (Amendment) Act 1986

The Parliamentary Electorates and Elections (Amendment) Act 1986 is cognate with this Act.

The object of this Act is to increase from 99 to 109 the number of members of the Legislative Assembly.

Act No. 57, Assented to 20 May 1986.

Parliamentary Electorates and Elections (Amendment) Act 1986

This Act is cognate with the Constitution (Amendment) Act 1986.

The object of this Act is to require the Electoral Districts Commissioners, in carrying our a distribution of electoral districts –

(a) to have regard to demographic trends within the State and, as far as practicable, to endeavour to ensure on the basis of those trends that, 4 years from the day of the return of the writs for choosing the then current Legislative Assembly, the number of electors enrolled in each electoral district will be equal; and

(b) subject to that requirement, to give due consideration, in relation to each electoral district, to –

(i) community of interests within the electoral district, including economic, social and regional interests;

(ii) means of communication and travel within the electoral district;

(iii) the physical features and area of the electoral district; and

(iv) the boundaries of the existing electoral districts.

The above requirements are subject to section 28 of the Constitution Act 1902, which also relates to the number of electors to be included in each electoral district.

Act No. 58, Assented to 20 May 1986.

Constitution (Local Government) Amendment Act 1986

The object of this Act is to recognise, in the Constitution Act 1902, the existence and role of local government.

Act No. 111, Assented to 27 November 1986.

CANADA: ALBERTA

Membership of the Alberta Legislative Assembly was increased from 79 to 83 at the general election in May 1986.

CANADA: ONTARIO

The number of electoral districts was increased from 125 to 130.

MAURITIUS

The report of the Electoral Boundaries Commission has been approved by Parliament.

Appropriate alterations have been brought to the boundaries of electoral districts so that the number of inhabitants of each constituency is as nearly equal as is reasonably practicable.

In drafting the report, the Commission has taken into account the means of communication, geographical features, density of population and the boundaries of administrative areas.

ZAMBIA

The Electoral (Amendment) Act of 1986 amended the principal Act by repealing Section 15 which provided that every candidate for election in a constituency should be nominated by means of a nomination paper subscribed, in the presence of a returning officer for that constituency, by a proposer and a seconder and not less than seven other persons. Under the repealed Section, such proposer, seconder and the other persons had to be registered voters in a polling district in such a constituency.

Further, the same Act amended Subsection (2) of Section 26 of the principal Act which, before the amendment, merely provided that an election petition be tried in open court.

The amendment provided that an election petition be tried in open court by a High Court composed of three puisne judges.

3. STANDING ORDERS

AUSTRALIA: HOUSE OF REPRESENTATIVES

Anticipation Rule

A point of order was raised in the House on Thursday 23 May 1986 in relation to a proposed discussion of a matter of public importance dealing with particular aspects of taxation policy. The topic had been put forward in the ordinary way by the Leader of the Opposition, and the matter was accepted by Madam Speaker. After the Deputy Speaker had announced the terms to the House and after the required number of Members had arisen in their places to support it, a point of order was taken to the effect that the proposed discussion would involve a breach of standing order 82 which prohibits the anticipation of discussion of any subject on the Notice Paper, with some qualifications. The point was made that, in this particular case, legislation dealing with the topic put forward had been introduced and at that time the bills were listed for further consideration as orders of the day. The Member therefore asked the Deputy Speaker to rule that the discussion was out of order. The Deputy Speaker said there may be some relevance in the

point of order and that he would draw the substance of it to the attention of Madam Speaker, but that he would allow the discussion to continue.

Madam Speaker made a statement on the matter after prayers on the following Tuesday. She pointed out that we have a system of matters of public importance which is quite different from that which has evolved in other major Parliaments with which we have links. In our House discussions are held almost every sitting day, and an important feature of them, in a general sense, is that they are of immediate and current public interest.

Madam Speaker said that in approving the matter the previous sitting day she was well aware of the fact that there were bills before the House that related to the matter. She continued . . .

> Standing Order 82 gives the Speaker a discretion in relation to the anticipation rule in that I have to take into account the probability of the matter anticipated being brought before the House within a reasonable time.
>
> In my view this discretion should be used in its widest sense where a matter of public importance is involved if our system is to continue in its present form. The possibility that the Bills may be debated later this week had to be weighed against the immediacy of the matter put forward for discussion. I intend to continue to exercise my discretion in respect of the anticipation rule, as it relates to matters of public importance, in a very wide sense.

Question on notice/Question without notice

A point of order was raised on 25 September 1986 in relation to a member asking a question without notice of a Minister that was similar to a question listed on the Notice Paper. (In the House of Representatives during question time all questions are 'without notice', at least in a technical sense.) The Speaker ruled that because the question on the Notice Paper had been lodged by the Member now asking the question without notice, it was quite in order.

Later on the same sitting day the member who had raised the point of order asked the Speaker to clarify the earlier ruling. In doing so the Member quoted from *House of Representatives Practice*:

> Questions without notice which are substantially the same as questions already on the Notice Paper are not permissible.

He then asked that the House receive clarification on what rules and practices were to be followed in the future.

In reply Speaker Child said that . . .

> . . . the main purpose of the practice of not permitting a question without notice to be asked which is substantially the same as one on the *Notice Paper*

> is to prevent the Member who placed the question on the Notice Paper being disadvantaged and his question being pre-empted . . .

While recognising that the point of order raised was essentially correct, the Speaker said –

> . . . it seems to me that common sense and logic dictate that the practice is not intended to apply to a Member in respect of his own question because the questions of disadvantage and pre-empting do not arise.

Speaker Child continued her reply by saying . . .

> . . . the practice grew up in a period when there were next to no questions on the *Notice Paper* and when, perhaps, the practice had more meaning and was easier to apply than it is now.

The Speaker concluded by expressing doubts as to whether the practice had anything to commend it when there are so many questions on the Notice Paper and when most questions without notice could well be out of order based on this practice. She added that she felt that Members today would not want to restrict themselves in this way, particularly as some questions may remain on the *Notice Paper* from one year to the next.

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

AUSTRALIA: SENATE

Standing Orders (Senate)

One amendment was made to Standing Orders, and three reports of the Standing Orders Committee were tabled in the Senate. The amendment of the Standing Orders related to the establishment of the Scrutiny of Bills Committee. One report (Third Report for the Sixty-Second Session – 1 May 1986) concerned a proposal for a public register of Senators' private interests. The other reports (Fourth and Fifth Reports for the Sixty-Second Session – 20 November 1986 and 30 March 1987) recommended for consideration a number of procedural changes to expedite the Senate's proceedings and allow more business to be dealt with in the time available. Details of these matters follow.

Scrutiny of Bills Committee

The Senate Standing Committee for the Scrutiny of Bills was first appointed in 1981, and scrutinises all Bills which appear in the Senate to ensure that provisions in the Bills do not unduly infringe rights and liberties or unduly delegate legislative power. Since its first appointment the Committee has been reappointed by resolution, but on 17 March

1987 a new Standing Order was adopted to establish the Committee permanently.

Private Interests of Senators

On 20 October 1983 the Senate passed a resolution that Senators should provide statements of their private interests for entry in a public register and should declare any relevant interest if participating in a debate or a vote. The resolution requested the Standing Orders Committee to consider changes in the Standing Orders which might be required to give effect to the resolution.

The Committee considered the matter on several occasions but found itself unable to make recommendations because of a fundamental disagreement among its members as to the effectiveness of the proposed register and the soundness of the proposals relating to registration and the declaration of interests contained in the resolution. The Committee agreed that the question of whether there is to be a register, and the nature of the matters contained in it, should be determined by the Senate. It suggested that a basis for discussion might be whether requirements imposed on Senators should be identical with those imposed on Members of the House of Representatives which, on 5 October 1983, passed a similar resolution and subsequently established a register.

The matter had been debated but not concluded at the time of writing, with an amendment having been moved to the Government's proposal for a register to substitute a more general requirement for declaration of interests.

Procedural Changes

The Committee recommended the abandonment of the procedure whereby amendments to leave out and insert words in a motion or a clause of a Bill are put in two separate questions. This procedure has often resulted in a 'mutilated motion', usually consisting only of the word 'That', due to a majority voting to leave out words but then failing to agree on the words to be substituted. The Committee recommended that all amendments be determined by the question 'that the amendment be agreed to'.

The following proposals arose from the Committee's consideration of proposals for changes to Senate procedures to expedite proceedings:

(1) The debate on the motion for adjournment of the Senate to be under a total time limit of 60 minutes and each Senator speaking to be limited to 5 minutes with the right to ask for an extension of time for a further 5 minutes.
(2) Notices of motion to be treated in the same way as petitions,

that is, to be handed in to the Clerk, who would read a summary of the notices of motion lodged.

(3) Proposals for matters of public importance and urgency motions to be received only on broadcast days (about two sitting days a week).

(4) Speaking time limits in ordinary debates to be reduced from 30 minutes to 20 minutes in the Senate and from 15 minutes to 10 minutes in committee of the whole.

The Committee also agreed that party whips submit to the President for consideration a proposal for the rationalisation of the allocation of time to the consideration of government bills and, that after his consideration, the President be requested to submit the proposal to the Senate.

Consideration of these proposals had not been concluded at the time of writing.

The Committee also expressed its concern that recommendations contained in its reports were often not considered by the Senate until long after the reports had been presented. It listed outstanding matters and reiterated a proposal of its First Report in 1985 that recommendations of the Committee should be entered on the Notice Paper as Business of the Senate, and thus take precedence over Government and General (i.e. private Senators') Business, as do certain other items of business.

AUSTRALIA: NEW SOUTH WALES LEGISLATIVE ASSEMBLY

In an effort to allow for more effective consideration of matters coming before the House, several procedural changes have been on trial in the form of sessional orders during the current Parliament. Many of these extend the opportunities available to private members.

Scheduling of Bills

Sessional orders have been agreed to in an effort to allow more time for consideration of a bill prior to it being debated and at the same time to eliminate procedural delays. A minister now moves the second reading of a bill immediately following its introduction to the House. It is now common for notice to be given on the morning of the day the bill is introduced. After some experimentation, the Standing Orders Committee agreed that the resumption of the second reading debate on the bill should be adjourned to a day which is five clear days ahead. These are calendar and not sitting days. Effectively it brings on the main second reading debate in the following sitting week.

A bill may be declared as an urgent bill if the minister wishes to

bring on the second reading debate earlier, and the question of urgency is then decided by the House. The declaration is often used, particularly towards the end of a period of sittings. So far this year, of the 95 bills passed, 42 have been declared urgent.

In November 1985, as a time-saving measure in the last days of the sittings, the Leader of the House successfully moved suspension of standing orders to allow a minister's second reading speech to be tabled and incorporated in Hansard. 33 bills were specified in this motion. Small numbers of the Minister's speech were made available on each occasion that the motion for the second reading of one or more of these bills was moved. The Opposition opposed the motion on the basis that it made a rubber stamp of the Parliament for the Executive. Clearly no rules of debate could be applied to a speech which was incorporated in Hansard before members were aware of its contents.

In practical terms the sheer volume of bills, speeches and explanatory notes whirling through the Chamber created short-term chaos. The procedure has not been repeated.

Time limits on private members speaking in debates have been reduced both for the House and for the Committee of the Whole. This measure had the support of all parties although some individual members opposed the changes.

Suspension of Standing Orders

After elimination of what was seen as an unnecessary procedural step, private members have a little more scope to raise matters of concern. The procedural requirement that urgency of a matter be established and agreed to before a motion for suspension of standing orders could be entertained, has been removed. The use of the suspension procedure as a means for a private member to raise a matter during question time is now on a broader footing than it was. Although the urgency of a matter is a factor which may be argued, the importance of the matter may now assume great weight in moving for suspension of standing orders. The House has not yet fully tested the latitude which on the face of the change could be allowed.

Adjournment of the House

Provision is now made for five members to speak for five minutes each on the adjournment. A ministerial reply not exceeding three minutes may be given to each matter. It is not uncommon for replies to be given consecutively by one minister following the fifth member's contribution. It is a minor grievance debate on two of the three days in each sitting week and gives greatly extended opportunities for a private member to raise a matter of concern quickly and concisely.

It was the wish of most members not to sit too late into the night and so as the new adjournment procedure takes about 40 minutes,

proceedings in the House are interrupted at 9.30 p.m. and the adjournment is proceeded with unless a minister immediately moves for an extension of the sitting.

These procedures give some assurance at least in the early stages of a period of sittings, that the House will adjourn between 10.00 p.m. and 10.30 p.m.

Petitions

Petitions are dealt with in a summary fashion by the House. The Clerk announces that petitions concerning a particular subject have been lodged by various members. While this procedure has been agreed upon by all sides of the House, some members believe that detail at least of the prayer should be given. It seems likely that the present arrangements will persist.

If a strict interpretation was given to the standing orders governing petitions, almost no petition would be admissible. For example, it is out of order for a petition to ask directly or indirectly for a grant of public money. Many petitions accepted by the House could fail on this ground alone. A review of these rules will be undertaken by the Standing Orders and Procedures Committee in the near future.

Personal Explanations

In the past, leave of the House was required before a member could make a personal explanation. As this enabled any other member to deny a member the opportunity to explain, circumstances had arisen on a number of occasions when in the heat of proceedings, opportunities to explain had been denied unwarrantably.

The Chair now grants leave after having first inquired of the member the matter which it is proposed to explain. This procedure weeds out frivolous explanations but preserves the rights of members.

Cognate Bills

Private members are now entitled to give notice of cognate bills.

No plans are evident for dramatic changes to the operation of procedure in the Legislative Assembly in the near future.

AUSTRALIA: WESTERN AUSTRALIA LEGISLATIVE ASSEMBLY

(i) Standing Order 231A – new order inserted ratifying a ruling of recent Speakers by formalising the requirement for Ministers to table on request official documents from which they are quoting.

(ii) Standing Orders Chapter 31 'Public Accounts Committee' deleted and substituted with new chapter 31 'Public Accounts and Expendi-

ture Review Committee' which strengthens the parliamentary system by enabling Parliament to adequately review the activities of Government administration especially in relation to the budgetry aspect of Government. It now enables the Committee to review and investigate, on its own initiative, the financial affairs of any statutory authority or Government agency.

BOTSWANA

The Standing Orders were amended as follows:

a) by the addition of a new Standing Order as follows –

85 F. There shall be a Select Committee to be known as the Parliamentary Structure Committee consisting of the Leader of the House as Chairman and not less than six other Members appointed at the commencement of the first session of each Parliament. It shall be the duty of this Committee to consider all structural changes to the parliamentary buildings.

b) by the addition of a new Standing Order as follows –

99. The Speaker may, at his discretion, permit the use, at any time, of photographic or radio equipment within the Assembly Chamber or any Committee room.

CANADA: HOUSE OF COMMONS

1986 AMENDMENTS AND THEIR PURPOSE

Provisional amendments

The second stage of recent reform in the House of Commons took place in February of 1986 and covers a wide range of topics involving, among other things, additional changes to the arrangement of House business, the authority of the Speaker, the role of private Members and the operations of Committees. The main purpose of these and subsequent changes to the Standing Orders in November and December of 1986 is the enhancement of the role of Private Members of Parliament and the role of the standing committees in policy, management and operational accountability.

On February 6, 1986, the proposals for provisional amendments to the Standing Orders were laid upon the Table. They were adopted on February 13, 1986 and were to be effective from February 24, 1986 until the last sitting day of 1986. However, a motion to have the current permanent and provisional Standing Orders remain in effect until April

15, 1987, was proposed and agreed to on December 18, 1986. (Canadian Commons Debates, p. 2267)

The provisional Standing Orders adopted in February 1986 included the following changes:

Divisions

The new rules have eliminated prolonged bells calling Members for a recorded division. Bell ringing is now limited to a maximum of 30 minutes for all recorded divisions on non-scheduled votes. For scheduled or deferred votes the bells ring for 15 minutes. The rule expands the practice of deferring recorded votes called on Fridays (S.O. 13).

Speaker

The authority of the Speaker to maintain order in the House has been considerably augmented. The Speaker is empowered to name and order the withdrawal for the balance of the sitting day any Member who disregards the authority of the Chair; no motion for suspension is required (S.O. 16). Another function of the Speaker which has been more clearly stated in the revised rules concerns the responsibility to select motions in amendment at the report stage of bills. Guidelines to assist the Speaker in this task are now incorporated into the Standing Orders in the form of a 'Note' to S.O. 114(10).

Routine Proceedings

The agenda of House business has been rearranged. At the beginning of a sitting, the House now goes through the items of Routine Proceedings before taking up any Government business (S.O. 19). The list which comprises these proceedings has been expanded to include reports from interparliamentary delegations and petitions. The interparliamentary delegations are required to report to the House within ten sitting days of their return to Canada and the Member presenting the report is allowed to make a succinct oral presentation of its subject-matter (S.O. 101,102). As for petitions, the new rules stipulate that they must be certified as procedurally correct in form and content by the Clerk of Petitions before they can be presented in the House. The prayer must 'appear on every sheet, if it consists of more than one sheet of signatures' and every petition must 'contain at least twenty-five signatures from persons other than those who are Members of Parliament'. As well, the Government is obliged to respond to every petition referred to it within forty-five days (S.O. 106). In addition, the rules regarding Statements by Ministers have been amended to permit the time lost to government business to be made up primarily by extending the sitting through the lunch hour (S.O. 19).

Questions, Returns and Reports

Each Member is entitled to a maximum of four written questions at any one time and, further, the Member can request the Government to provide an answer within 45 days (S.O. 64).

Statements by Members

The time allotted to Members for statements has been reduced from 1½ minutes to 1 minute each (S.O. 21).

Private Members' Business

According to the new rules, a draw is scheduled at the outset of a session and from time to time thereafter as necessary to establish an order of precedence for up to twenty items of private Members' Business (S.O. 31). Of these twenty, as many as six can be designated 'votable' by the new Standing Committee on Private Members' Business. All items listed in the order of precedence are debated in sequence with one item called for each occasion of private Members' Business. At the conclusion of the hour's debate, a 'votable' item will drop to the bottom of the order of precedence and will be debated again when it reaches the top. This can happen for a maximum of 5 hours, at which time the item must be voted on by the House (S.O. 36). All legislative items adopted at second reading will be studied by a committee and when reported back to the House will be debated for two hours for both report stage and third reading. This period falls over two separate days, and debate on the second day can be extended by five hours (S.O. 40).

Up to 20 Members can now support an item, either a bill or a motion, as seconders (S.O. 35) and the time allowed for individual speeches has been reduced from 20 minutes to 10 (S.O. 55). Private Members' Business is suspended until an order of precedence is established and the 'votable' items selected (S.O. 37) and any item once considered and not disposed of at the end of the time provided for its consideration is removed from the *Order Paper* (S.O. 42).

Committees

The standing committees have been substantially reorganised. Most now correspond more closely than before to existing government departments. Moreover, their membership has been reduced. Most standing committees have 7 or 11 members, rather than 15 as before. Parliamentary secretaries are no longer entitled to sit on committees related to the department of their Minister (Note to S.O. 89). The standing committees are authorised to study all matters concerning the department to which they correspond. Such matters include applicable statute law, program and policy objectives, all expenditure plans, and any other topic which the committee deems fit (S.O. 96). Temporary

substitutions on standing committees must be made from a list of five members submitted by each originally selected committee member within five days of the committee's organizational meeting. If a Member neglects to provide such a list, his or her name is struck from the list of members of the committee (S.O. 94).

A liaison committee, composed of the chairman of each standing committee and a Member of the House who is the chairman or vice-chairman of each joint committee, coordinates the budgetary requirements of the committees by distributing the block of funds allocated by the Board of Internal Economy to support the activity of committees, subject to ratification by the Board (S.O. 92).

Legislative committees are composed of not more than thirty Members. A list of these Members must be reported by the Striking Committee after first reading. The Chairman of a legislative committee must designate a Member of the committee to be acting Chairman in the event the Chairman is unable to act in that capacity. A subcommittee on agenda and procedure may be delegated organisational powers by a legislative committee, subject to the full committee's approval (S.O. 93).

Interim spending authority may be granted to standing, special and legislative committees by the Board of Internal Economy until a budget has been presented by the Committee to the Board. The Board must file with the Clerk an annual financial report on the individual expenditures of each committee. This report is appended to the *Votes and Proceedings* (S.O. 97).

Business of Supply

Some modifications have also been made to the business of supply. The new rules provide the full membership of the House with the opportunity to debate the Main Estimates. The Leader of the Opposition is entitled to extend the time available to a standing committee for studying the estimates of one department or agency up to an additional ten sitting days, by proposing a motion to that effect within a specified time before May 31 (S.O. 82).

Emergency Debates

Under the new rules emergency debates are to conclude no later than midnight (S.O. 29) unless a motion is proposed and adopted to extend the sitting (S.O. 9).

Delegated Legislation

The Standing Joint Committee on Regulations and Other Statutory Instruments may submit a report recommending the rescission of a statutory instrument (S.O. 44). The motion for concurrence in the report is given priority and called at the request of a Minister of the

Crown (S.O. 47). One report of this sort may be presented per sitting and it will be deemed adopted if no action is taken within 15 sitting days of notice appearing on the *Order Paper* (S.O. 48). The debate lasts up to one hour and Members are permitted only 10 minutes to speak to the motion. If a recorded division is required, it is deferred until no later than 6 o'clock p.m. that day (S.O. 49). Consideration of a motion for concurrence in the report takes place on Wednesday at 1 o'clock p.m. (S.O. 51).

Order in Council Appointments

Standing Committees have 30 sitting days to review the nomination or appointment of a candidate by Order-in-Council to a non-judicial post once the Minister has tabled the appropriate document and designated the committee that is to study it (S.O. 103). The committee may call the nominee or appointee to appear before it for a period not exceeding 10 sitting days (S.O. 104).

Registry of Travel

Members are now obliged to register with the Clerk of the House all visits made outside of Canada in their capacity as Members when any costs of their trip are borne by an outside association or group (S.O. 105).

Further Amendments

On November 7, 1986, the House further amended the Standing Orders regarding the number and method of selecting replacement members on committees, and respecting changes to the membership of standing and standing joint committees. (Canadian Commons *Debates*, pp. 1202–3)

On December 18, 1986, the House adopted other provisional changes to the Standing Orders which included the following:

1) Extension of the membership of standing committees for the remainder of the session or until the last sitting day of December 1987, whichever comes first.
2) For the remainder of the session, the list of Members of a legislative committee is to be prepared and reported after second reading, not later than the following Thursday, and will be deemed to be adopted. The Government House Leader will, after consulting the other House Leaders, establish the order in which the legislative committees are to consider bills. No committee is to sit at the same time as another committee sitting on a bill from or affecting the same department or agency. The legislative committees are to have priority over other committees while the House is sitting and other committees will have priority when the House is adjourned. (Canadian Commons *Debates*, pp. 2266–7).

3) With the permission of the Members involved, the Speaker may effect an exchange of positions in the order of precedence of private Members' Business when 24 hours' written notice has been received from a Member who cannot be present when his/her item is scheduled, provided that the items are not 'votable'. If such an exchange cannot be arranged, the House will continue to consider the business before it prior to private Members' Hour, provided that the sitting may not be extended and that any division on a debatable motion be deferred. (Canadian Commons *Debates*, p. 2267)

CANADA: QUEBEC

No new edition of the *Standing Orders* of the National Assembly was published in 1986, but S.O. 118 was updated on March 11th.

It reflects the new Cabinet, formed in December 1985, and reorganises the names and fields of competence of the standing committees. [The words in italics are new].

118. The Assembly has eight standing committees in addition to the Committee on the National Assembly. Their names and fields of competence are as follows:

(1) Committee on Institutions:
Presidency of Executive Council, Justice, Intergovernmental Affairs, the Constitution *and Consumer Protection*;

(2) Committee on the Budget and Administration:
Finance, the Budget, Public Accounts, Government Administration, the Public Service, *Privatization, and Supply and Services*;

(3) Committee on Social Affairs:
The Family, Health, Social and Community Services, the Status of Women, *Relations with Citizens, Manpower* and Income Security;

(4) Committee on Labour and the Economy:
Industry, Commerce, Tourism, Labour, Technology, and Energy and Resources;

(5) Committee on Agriculture, Fisheries and Food:
Agriculture, Fisheries and Food;

(6) Committee on Planning and Infrastructures:
Local Communities. Planning, Transport, Public Works, the Environment, Recreation, Fish and Game, and *Housing*;

(7) *Committee on Education:*
Education, *Science* and Vocational Training;

(8) Committee on Culture:
Culture, Communications, Cultural Communities and Immigration.
(*1986.03.11*)

HONG KONG

Standing Order 14 was amended to include provision for Members to address the Legislative Council on subsidiary legislation laid on the table of the Council at that sitting or at any of the three sittings immediately preceding that sitting.

INDIA: RAJYA SABHA

The last edition of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha) was brought out in February 1982 incorporating the amendments which were recommended by the Committee on Rules in its Second and Third Reports and agreed to by the House in a somewhat modified form at its sitting held on 24 December 1981. The Committee on Rules considered further suggestions at its various sittings. The Committee presented its Fourth Report to the House on 19 March 1986 making its recommendations on various suggestions placed before it. The Committee recommended amendments to Rules 25, 28 and 29 and the addition of a new chapter, namely XVIIC, for the reasons stated below.

Rule 25: Under the pre-revised Rule 25, Private Members' Bills introduced and in respect of which no further Motion had been made or carried were arranged in groups in the order of their dates of introduction and the relative precedence within each group was determined by draw of lot. Further, not more than 10 Private Members' Bills in the order of priority in respect of which notices of next motions had been received were included in the list of Private Members' Business for a particular day. This procedure used to cause a lot of dissatisfaction amongst Members as they had to wait for years before their Bills could be taken up for discussion in the House. At times, Bills came up for discussion after a lapse of 3 to 4 years and in some cases did not come up at all, as the sponsors of such Bills had ceased to be members in the meantime.

The Committee felt that some procedural change was necessary to improve the existing procedure in respect of Private Members' Bills. Accordingly, the Committee recommended amendments in sub-rule (3) of Rule 25, so that instead of Bills being balloted, as was the procedure earlier, the names of Members in charge of the Bills would be balloted and the Members securing the first ten places in the ballot would be

asked to choose their Bills. Further, no Member would be allowed to take up more than one Bill for consideration in the same session, so that more and more Bills could come up for discussion in the House on the initiative of Private Members.

Rule 28: As per the procedure contained in pre-revised sub-rule (2) of Rule 28, in the case of a Private Members' Bill, the debate on which was adjourned *sine die*, it was necessary for the Member concerned to give a notice for resumption of the adjourned debate and such a notice also had to go through the process of ballot. The Committee felt that it was not necessary for such a Bill to undergo the process of ballot and such Bill would have precedence over other Bills. The Committee, accordingly, recommended suitable amendment in Rule 28.

Rule 29: Similarly, an amendment of a consequential nature was carried out in sub-rule (4) of the Rule 29, in order to make the procedure smooth and orderly.

In addition to this, the Committee recommended incorporation of a new Chapter in the Rajya Sabha Rules relating to the House Committee, as it noted that the House Committee which had been in existence since the very inception of Rajya Sabha had not been provided for in the main corpus of the Rules and saw no reason to exclude the House Committee from the Rules.

The recommendations of the Committee, as contained in its Fourth Report, were agreed to by the House at its sitting held on 14 May 1986, without any change, on a Motion moved by a Member of the Committee, as per provisions of Rule 220. The amendments, as recommended by the Committee and agreed to by the House came into force with effect from 1 July 1986.

No new edition of the Standing Orders (Rules of Procedure) was brought out during the year 1986.

ISLE OF MAN: TYNWALD

The Standing Orders of Tynwald were amended to take account of the abolition of the Selection Committee and the transfer to Executive Council of its functions in making recommendations for the membership of Departments etc.

NEW ZEALAND

Amendments to the Standing Orders

Following the major revision of the Standing Orders which took place in 1985 (see Table LIV, pp. 178–181) the Standing Orders Committee throughout 1986 monitored the effect of the changes and, towards the

end of that year, presented a report to the House recommending further amendments. These amendments were adopted by the House and came into force on 20 November 1986. The following is an outline of the most significant of these amendments.

Arrangement of the Sitting

As a result of the 1985 reforms, the House had been sitting on three days a week (Tuesday, Wednesday and Thursday) from 2.00–5.30 pm and 7.30–11.00 pm. There was considerable dissatisfaction among members about the regular 11 pm conclusion to each sitting. However, there was little unanimity as to how the weekly sittings should be arranged. Some members favoured reinstating Friday as a regular sitting day, while others wished to shift the regular sitting hours to an earlier period of the day with the House rising in the early evening.

In the event, the Committee recommended a minimal amelioration of the regular late finishing hour by altering the time for the conclusion of each sitting from 11.00 pm to 10.30 pm. It is doubtful whether, on a long-term basis, an acceptable timetable for the weekly sittings has been devised.

A further concern arising from the 1985 amendments was that the shift in the balance between the proportion of time spent on private members' as opposed to Government bills had gone too far. Prior to 1985, private members' bills had had very little opportunity to proceed because of lack of time. Research carried out in 1986 showed that the proportion of the House's time spent on private members' bills under the new arrangements had risen from 5% of the total time in 1983, to 15% in 1986, while that on Government bills had fallen from 34% to 28%.

The Committee was agreed that, while a correction of the 1983 balance was necessary, these figures revealed that the House had gone too far and that not enough time was available for consideration of the Government's legislative programme which is both qualitatively and quantitatively far more important than private members' legislation. To correct this it is now provided that private members' bills will only take precedence of Government bills on alternate Wednesdays instead of on each Wednesday.

Questions

Notices of questions have hitherto only been accepted on a sitting day. This has had two unfortunate consequences. When a sitting has been extended and the following day's sitting has been lost, there was no provision for questions to be lodged on that day. Thus the House has either had no questions on the next sitting day but one (when those questions would otherwise have been due for answer) or leave of the House has had to be taken to dispense with the requisite period of

notice. A further disadvantage is that questions for answer on the first two sitting days following an adjournment had had to be lodged before the House adjourned and had thus lost their topicality before they were answered.

To overcome these results, the Standing Orders now permit questions for oral answer to be lodged on non-sitting days. Questions for answer at a Tuesday sitting may be lodged by the previous Thursday, those for Wednesday by the previous Friday, and those for Thursday by Tuesday, in each case regardless of whether or not that previous day is a sitting day. In addition, questions for written answer may be lodged on any day on which the House sits. So if a sitting continues into the following day and that day's sitting is lost, written questions will still be able to be lodged on that day.

A further change involving questions is to permit questions for *written* answer to be addressed to the Speaker. Previously no question could be addressed to the Speaker other than on a point of order. However, with the passing of the Parliamentary Service Act 1985 (see *Table* LIV, p. 99) the Speaker, as ex officio Chairman of the Commission set up under that Act to provide administrative services to the House and its members, has assumed a wide range of responsibilities outside his traditional areas of concern.

To reflect this new role, questions addressed to the Speaker about matters of administration for which the Speaker is responsible, are now permitted.

Select Committees

Perhaps the most important long-term change effected in 1985 was the creation of a new select committee system whereby committees are able to initiate investigations into the administration and policy of Government departments and other public bodies which they 'shadow'. The full effects of these developments have not yet become apparent, but the 1986 amendments do develop further the procedures concerning select committee scrutiny of the executive.

It is now provided that, in respect of any recommendations addressed to the Government in a select committee report, the Government shall, within 90 days of the presentation to the House of that report, table a paper responding to those recommendations. Such a comparatively short time limit will, it is hoped, ensure that the response is available while the subject is still topical and the requirement for a response will prevent select committee reports being totally ignored by the Government. These responses will be printed as parliamentary papers and will be available for debate in the House when the House considers the select committee's original report or holds a debate on a related subject.

(Contributed by the Clerk of the House of Representatives, New Zealand)

UNITED KINGDOM: HOUSE OF COMMONS

[*Note: All Standing Orders relating to Public Business were re-arranged and re-numbered on 12 November 1986. References to Standing Orders are to their new numbers.*]

(i) S.O. No. 91 (Special standing committees).
Under this new S.O. (formerly a sessional order) special standing committees with power to take oral evidence may be appointed for the consideration of specific bills.

(ii) S.O. No. 28 (Powers of chair to propose question).
This new S.O. is intended to prevent the making of inordinately long speeches when no question is before the House or committee and accordingly no closure can be moved. Consequential amendments were made to S.O. No. 61 (Committal of bills) and No. 93 (Public bills relating exclusively to Scotland).

(iii) S.O. No. 36 (Majority for closure or for proposal of question) and No. 89 (Procedure in standing committees).
Amended so as to require a qualified majority for the proposal of the question under S.O. No. 28.

(iv) S.O. No. 35 (Closure of debate).
Amended so as to remove the power of closure upon the words of a clause or schedule, which has fallen into disuse.

(v) S.O. No. 75 (Third reading).
Amended so as to provide for motions for third reading always to be debatable motions.

(vi) S.O. No. 17 (Questions to Members).
Amended so as to provide for questions tabled for written answers on a day on which the sitting was lost to be deemed to be questions for written answer on the next sitting day.

(vii) S.O. No. 20 (Adjournment on specific and important matter that should have urgent consideration).
Amended so as to provide for applications for emergency debates to be limited to three minutes.

(viii) S.O. No. 52 (Consideration of estimates), No. 53 (Questions on voting of estimates, etc) and No. 131 (Liaison Committee).
Amended so as to provide for not more than one day allotted for the consideration of estimates to be taken in the form of two half days.

(ix) S.O. No. 126 (Select Committee on the Parliamentary Commissioner for Administration).

Amended so as to provide for the Committee to consist of 9 Members.

For (i)–(viii) above, see Votes and Proceedings, 27 February 1986, pp. 345–50 and H.C. Deb. (1985–86) 92, cc. 1083–1136.
For (ix) above, see Votes and Proceedings, 25 March 1986, p. 463.

UNITED KINGDOM: HOUSE OF LORDS

Standing Order 38 was amended. It has been the practice of the House that motions for debate take priority on the Order Paper on Wednesdays. Standing Order 38, however, merely stated that on other days, Public Bills, Measures and Affirmative Instruments had priority over all save Starred Questions, Private Business and the Business of the House or the Chairman of Committees. The amendment of 20 February 1986 specifically gives Motions precedence on Wednesdays, over Public Bills, Measures and delegated legislation.

ZAMBIA

Standing Order No. 78 of the 1986 edition of the Standing Orders of the House was amended to enable the House to approve the Estimates of Expenditure as quickly as possible. It was observed that the delays experienced in the process of approving Estimates were a result of the tendency by some Members to make lengthy speeches; the introduction, during the consideration of the Estimates, of work unrelated to the Budget; and the extension of the debate on the Motion of Supply which delays the start of the actual consideration of the Estimates.

The new Standing Order No. 78 reads as follows:

'78.(1) On the motion to go into Committee of Supply on the annual Estimates of Expenditure, a general debate on matters of administration or administrative policy may take place. On all other financial motions, the debate shall be strictly confined to the subject matter of the motion: Provided that on one such motion during a meeting of the Assembly other than that in which it was resolved to go into Committee of Supply on the annual estimates of expenditure, time shall be provided for one general debate on matters of administration or administrative policy.

(2) In debate on a motion to resolve into Committee of Supply, the Minister moving the motion shall not be limited in the length of his speeches either when moving the motion or replying to the debate,

but the speeches of all other members shall be limited to twenty minutes.

(3) The debate on the motion to go into Committee of Supply on the annual estimates of expenditure shall not exceed three allotted days:

Provided that, on motion made after notice, to be decided without amendment or debate, additional time not exceeding two allotted days may be allowed for the debate.

(4) On the interruption of business on the last allotted days, if the debate is not previously concluded, a Minister shall fix a day for the resumption of the debate in order that a Government reply may be made. On the day so fixed, when that reply has been delivered, Mr Speaker shall proceed to put all such questions as may be necessary to determine the decision of the House on the motion to go into Committee of Supply and, if the motion is agreed to, shall leave the Chair without question put.

(5) . . . . . .

4. GENERAL

AUSTRALIA: SENATE

Governor-General's Messages on Appropriation Bills

The first sentence of section 53 of the Australian Constitution provides:

'Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate.'

Section 56 of the Constitution provides:

'A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.'

It is clear that a Bill which may not be initiated in the Senate would require a Governor-General's message to be passed by the House of Representatives. In the past where there has been dispute about whether an amendment moved in the Senate infringed the rule contained in the third paragraph of section 53:

'The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people',

the Government has sought to establish that the amendment should take the form of a request by advising that a Governor-General's

message would be necessary if the amendment were passed by the House of Representatives.

Senator Macklin, an Australian Democrat, in debate on the Trade Practices Revision Bill 1986, pointed out that a message had been brought into the House of Representatives in connection with the Bill, and claimed that this was part of a strategy to persuade the Australian Democrats that it was a 'money Bill' and to discourage them from moving amendments. The Trade Practices Revision Bill did not contain any appropriation of money, nor did the Trade Practices Act which it amended; the money necessary for expenditure under the Trade Practices Act is appropriated by the annual appropriation Bills. There was a clause in the Bill which enlarged the category of proceedings in respect of which, under the Principal Act, financial assistance might be granted by the Attorney General. The funds necessary for this assistance were not appropriated by the Bill or the Act, but are contained in annual Appropriation Bill No. 1, and when the relevant section of the Principal Act was passed no message was produced. It seemed clear, therefore, that a message should not have been brought into the House of Representatives in respect of the Bill. In response to Senator Macklin, Senator Evans, the Minister representing the Attorney-General, said that the introduction of the message represented an 'abundance of caution' on the part of the Office of Parliamentary Counsel (the government drafting office). Senator Macklin asked why any caution at all was required, since the requirements of sections 53 and 56 of the Constitution are not justifiable. Senator Evans then conceded that the Bill was not an appropriation Bill and that the message should not have been produced.

This incident demonstrated that either the government's advisers are remarkably careless in carrying out constitutional procedures, or governments will go to remarkable lengths in order to try to outwit the Senate.

Disallowance Motions

A ministerial statement was made in the Senate indicating that certain export inspection orders under the Export Control Act, which were the subject of a disallowance motion still before the Senate, had been repealed and replaced by new orders. The disallowance motion had been debated and adjourned. It is believed that this was the first time that delegated legislation was repealed while a motion to disallow that legislation was before the Senate. The new orders were tabled on the same day, and on the following day notice of motion to disallow some of the new orders was given and the order of the day for the adjourned debate on the motion to disallow the repealed orders was discharged.

The new disallowance motion was subsequently passed. Fortunately, it was possible for the Senate to disallow the provisions to which it

objected without disallowing the order which repealed the previous orders. If the repealing order had been disallowed this would have had the effect of reviving the repealed orders, which the Senate regarded as more objectionable than the new orders. Under the statute only whole orders may be disallowed. Had the repeal and the substitution of the new orders been effected in a single order the Senate would have had to choose between the old and the new orders, because it is unlikely that once the old orders had been revived by disallowance the Senate could disallow them in turn. This reveals a technical weakness in the statutory scheme for disallowance. A number of such technical problems has been pointed out by the Regulations and Ordinances Committee, and a private Senator's Bill has been introduced to deal with them.

Standing Appropriations Abolition Bill

In recent years it has become a matter of some concern that the greater part of the expenditure of Australian federal governments is authorised by special appropriations, which are of unspecified amounts and which do not come up for annual scrutiny and renewal by the Houses. In the debate on the Loans Bill in 1985, the Minister for Finance stated that 70% of all Commonwealth expenditure was authorised by these special appropriations. In other words, the bulk of government expenditure escapes proper parliamentary scrutiny and control.

Senator Vigor, an Australian Democrat, introduced a Bill which would abolish all special appropriations and require that the money for Acts now containing special appropriations be appropriated annually. It is unlikely that this Bill will be taken up by any government, and it may now be too late to shut the stable door.

Witnesses before Committees

On 19 November 1986 the Senate passed, by way of an amendment, an important resolution concerning witnesses before Senate committees. On the motion of Senator Teague, an amendment was made to the motion to take note of the seventh report of the Standing Committee on Education and Arts to assert the Senate's view that the approach of the Australian Broadcasting Corporation (ABC) to the Committee's inquiry was incorrect, that ABC witnesses should have answered questions put to them in the Committee, and that witnesses before a Senate committee have an obligation to answer questions within the terms of reference of the committee. Officers of the ABC had declined to answer questions put to them in the Committee because they claimed the questions related to broadcasting programming decisions.

This is not the first time that a disinclination on the part of ABC officers to answer questions before Senate committees has been the subject of Senate resolutions. In 1971 the Senate had occasion to remind

the ABC and other statutory corporations of their obligation to co-operate with Senate committees, and that resolution was reaffirmed on a number of occasions, each occasion following difficulties with witnesses from the ABC.

On this occasion the resolution requested the Education and Arts Committee to consider whether further investigations were required in the light of the Committee's evidence and answers given by ABC witness before Estimates Committees. This was a reference to the fact that questions similar to those asked in the Education and Arts Committee where answered in Estimates Committee proceedings.

AUSTRALIA: HOUSE OF REPRESENTATIVES

The Election of a New (Lady) Speaker

On 11 February 1986 Mrs Joan Child became the first woman to be elected Speaker of the House of Representatives.

The position of Speaker became vacant as a result of the resignation of the Hon. Dr H. A. Jenkins, who resigned as Speaker and as a Member on 20 December 1985 and was subsequently appointed Australia's Ambassador to Spain.

Mrs Child was first elected to the Federal Parliament in 1974 as the Member for Henty (Vic). She was the first female Australian Labor Party candidate to be elected to the House of Representatives, and only the fourth woman to be elected to the House. In 1975 she lost the seat in the landslide defeat of the Whitlam Labor Government. In 1980 Mrs Child regained the seat and has retained it ever since. On 28 February 1984 Mrs Child became the first woman to be elected to the position of Chairman of Committees in the House of Representatives, thus becoming the Speaker's deputy.

Registration and Declaration of Members' Interests

The system of registration of Members' Interests commenced in the House of Representatives on 30 June 1986 by which date all Members of the House were required to lodge statements of their registrable interests and the interests of which they were aware of their spouses and dependent children. Since the commencement of the system, the House has amended its requirements so that Members need provide complete statements of interests once only at the commencement of each Parliament (previously the requirement was for the annual registration of interests) but the requirement to notify any alteration in interests within 28 days of the alteration occurring has been retained.

(*And see* article in *The Table*, Vol. L III (1985), pp. 29–35)

Petitions for Committee Records to be Produced in Court

On 15 November 1985 Mr B. Brassil, Solicitor for the Aboriginal Legal Service, New South Wales, petitioned the Australian House of Representatives to grant leave for the release of documents tendered to the House of Representatives Standing Committee on Aboriginal Affairs by the Legal Service and Mr G. Burke during its Baryulgil Community Inquiry. Mr Brassil also sought leave to refer to the committee's report and to have an officer of the House attend the court to produce the report and to give evidence in relation to the conduct of the inquiry which led to the report.

On 5 June 1986 the House referred to the Standing Committee on Aboriginal Affairs the question of whether the House should grant leave to a petitioner to serve a subpoena for the production in a court of the documents referred to in Mr Brassil's petition.

During the committee's consideration of this question a further petition was presented to the House on 14 October 1986 from Mr G. Nutman, a solicitor acting on behalf of Marlew Mining Pty Limited, seeking leave of the House for the release of documents tendered to the committee by Mr G. Burke to a court in which proceedings had commenced to determine the question of ownership of the documents.

The committee's original inquiry concerned the effects on Aboriginal people who had lived and worked at Baryulgil, a small town in northern New South Wales, of the operation of an asbestos mine nearby. As well as assessing these effects, the committee was asked to recommend measures to improve the health and welfare of Aboriginal people affected by the mining operation at Baryulgil and consider the adequacy of existing compensation provisions to assist people who may have been affected.

The committee presented its report on the petitions and the House reference on 25 November 1986.

In its consideration of the matter the committee sought responses from the witnesses who had tendered, during the Baryulgil Community Inquiry, the documents which were the subject of the petitions. These responses indicated that the witnesses consented to the release of the documents and the committee's view was that the protection of the witnesses in relation to their evidence did not affect the decision to release the documents. The committee also sought the advice of the Attorney-General about the issues before it. The Attorney-General's conclusion, in brief, was that there was no reason why the documents should not be released to a court hearing the proceedings referred to in the petition presented by Mr Brassil or any other proceedings in which they could be tendered as evidence.

The committee recommended to the House that it grant leave to petitioners or their legal representatives to issue and serve subpoenas

for the production to a court of the documents referred to in the petitions.

On 26 November 1986 the House resolved that, in response to the two petitions which had been presented to it, the House grant leave to the petitioners to issue subpoenas for the production of the documents in a court and for officers of the House to attend the court and produce the report of the committee and give evidence in relation to the conduct of the inquiry.

On 28 November 1986 Mr Brassil served a subpoena on the Clerk of the House for the production to the Supreme Court of New South Wales of the documents referred to in his petition. The documents were delivered to the Supreme Court on 5 December 1986 in response to the petition.

Information Systems: Procedural Developments

Previous notes (refer *The Table* 1984, 1985 and 1986, vols LII, LIII and LIV, pages 88–91, 140–1 and 169–71, respectively) have provided a broad overview of planned information systems developments for the House, the framework in which they are carried out and progress on particular projects. This article outlines progress in automating activities related to the procedural or Chamber support functions of the department. Of particular interest is software developed to:

- improve the management of questions on notice;
- record and monitor the passage of Bills through the Houses; and
- maintain procedural records and rulings extracted from *Hansard* and the *Votes and Proceedings*.

The underlying objectives of improving efficiency and increasing the effectiveness of existing operations must be at the heart of any decision to proceed with the introduction of information systems. The department is very conscious not to computerise just for the sake of computerisation, but rather considers each application on its merit. Previously, with the exception of a rudimentary system using a word processor, all procedural information was generally held on card indexes or manual registers.

Software had now been developed by departmental staff for the 3 activities mentioned above, and the information is stored on computer for immediate update and retrieval. Searches on a particular subject matter or to certain criteria that took hours can now be done in seconds.

Inquiries of a more complex nature, such as to ascertain the average number of days taken for Ministers to respond to questions, previously required staff to be devoted to the task for considerable periods, whereas with the benefit of computers this information can be provided in minutes. To produce such reports on a regular basis without the assistance of computers would require substantial additional staff.

In addition to the above benefits, the developments offer a more controlled update and distribution process for those records which are compiled and distributed. The meticulous process of updating manual registers and index cards no longer becomes a chore, although it needs to be remembered that the computer does not automatically extract the information – that remains, and always will remain, a task for the experienced parliamentary officer. As information is entered on the systems being developed it becomes immediately available to all authorised users connected to the computer system. The manual distribution of updated lists and reports etc. may become a thing of the past, however the capability to produce paper copies for those who feel uncomfortable or unfamiliar operating computer terminals or who simply prefer hard copy will remain.

(*The above items were contributed by the Clerk of the Australian House of Representatives*)

NEW ZEALAND

Select Committee Staff

The New Zealand House of Representatives is reorganising the staffing of its new select committees. A new structure will be introduced on 1 August 1987.

In August 1985 a new select committee system was established (refer *The Table*, Vol. LIV, p. 178). A major feature of the restructuring was the establishment of 13 'subject' select committees with wide investigatory powers.

The Standing Orders Committee report recommending establishment of the new committees noted that the effectiveness of its proposal to extend the functions of select committees would depend substantially on the availability of suitable staff, both advisory and secretarial. Complementary developments in select committee staffing were foreshadowed.

The new select committees have been serviced by two streams of staff – committee clerks who provided administrative and clerical services to committees, and advisory officers who provided independent professional, technical and procedural advice.

The provision of secretarial services by committee clerks continued a system that had existed for many years. These staff comprise persons retired from the public service or other relevant background. Recruitment is on a sessional basis.

Advisory services have been significantly increased over the pre-1985 two person advisory group. All 14 major permanent committees and other ad hoc committees have a suitably qualified officer at their

disposal. Advisory officers assist committees in respect of all their functions preparing background papers, liaising with relevant departments and witnesses, summarising written and oral evidence, and drafting select committee reports to the House.

Operating the committee clerks and advisory officers as two separate services increasingly proved unsatisfactory because of the lack of clear lines of responsibility and delegation.

This problem has been exacerbated by the substantial increase in committee business. Parliament now meets over 10 months of the year and select committees meet all year round. The new staffing arrangement recognises these problems and the need to provide a fully independent and professional service to select committees by integrating the administrative/secretarial and the advisory functions in a structure with a single principal officer. New positions are created which replace existing positions.

The new Select Committee Office will have the following staff:

Director (1)
Senior Committee Secretaries (3)
Committee Secretaries (11)
Assistant Committee Secretaries (7)

All positions will be full-time permanent positions. The Director is responsible to the Clerk of the House for managing and co-ordinating the professional, administrative and secretarial services to select committees, for managing select committee staffing resources, for developing policy relating to select committees, and for providing procedural advice to committees. Each of the Senior Committee Secretaries will act as secretary to a designated committee and be responsible for other administrative, organisational and supervisory functions. The Committee Secretaries also will provide secretarial, administrative and professional services to a designated committee. Assistant Committee Secretaries, working to two committees, will assist in providing such services. As in the past, there is provision for specialist advisors to be appointed as and when required.

Members Appearing as Counsel before a Select Committee

A question which arose during proceedings before the Privileges Committee in 1986 was the right of members of Parliament to appear as counsel before a select committee. The matter was raised because a member appearing before the Committee sought to be represented by two lawyer members of Parliament (one of whom was a former Attorney-General).

The Committee accepted the statement in *Erskine May* (Twentieth Edition, p. 150) that a member of Parliament is not permitted to practise as counsel before the House of Commons or any of its committees.

It noted, however, that this proposition was stated as a consequence of the rule that the House would treat as a contempt the receipt of a fee by a member for professional services connected with proceedings in Parliament. It seemed to the Committee that the rule against members appearing as counsel operated in the context of a member having a pecuniary interest in so acting. In the case before the Committee, neither member was to receive a fee for his services.

The Committee concluded that in these circumstances there was nothing to prevent a member appearing as counsel provided the Committee was prepared to accept the member's appearance. For their own protection, the rule against receiving a fee should, the Committee said, be drawn to the attention of any member proposing to act as counsel before a Committee. (Report of the Privileges Committee, 1986, I.15.)

(*The above two items were contributed by the Clerk of the New Zealand House of Representatives*)

Imperial Appeal, the debate on the Privy Council, 1833–1986 by David B. Swinfen, (Manchester University Press, £35.00)

This short (268 pages), comprehensive but sadly expensive account of the waning of the Privy Council's Commonwealth jurisdiction makes a welcome addition to the mostly elderly books on the Judicial Committee of the Privy Council.

Mr. Swinfen concentrates on the political debate over the right of appeal from the superior courts of the Dominions and the growth of opposition within the emergent Commonwealth countries to the jurisdiction of the Privy Council. The book, he says, is to be read primarily as a contribution to the political and constitutional history of the Empire – Commonwealth over the past 150 years. It is not intended to offer a full history of the Committee or to be a full analysis of its jurisprudence.

After outlining the history of the Privy Council's appellate jurisdiction, the author recounts the 19th century debate in Canada about abolition of the appeal and the proposals principally from Australia at the turn of this century for an Imperial Court of Appeal. He then examines, with particular reference to the Irish Free State and Canada, the principal issue in the inter-war years, culminating in the Statute of Westminster 1931, whether or not a Dominion had the constitutional right and legal power to withdraw the appeal by means of domestic legislation. Finally he discusses the gradual decline of the Committee's jurisdiction after the Second World War and the possible creation of a Commonwealth Court, and resigns himself to the observation that: 'A long and vital chapter in the history of a great judicial institution is about to be closed'.

It is interesting to find how, as early as the 1870's, there was fierce debate within Canada about the appeal, an important feature of which was the claim that the Judicial Committee consistently interpreted the British North America Act in favour of provincial against dominion powers. Mr. Swinfen believes that the significance of the claim may have been exaggerated and the real problem may have been balancing Canadian ideas of dominion autonomy against British perceptions of imperial unity. Some, however, were in no doubt about the need to dispense with the appeal, viz. the judge of the Western Province who expressed himself in 1920 to be:

> '. . . pleased to be able to say that at last I have of late noticed a disposition on the part of our fellowcountrymen to abandon the attitude of abject mental servility towards everything that emanates

> from Downing Street . . . and I hope before long that the "crawling Canadians" (as I style these menial objects) will give place to the "Hundred Per Cent" Canadians, who ought to rule the destiny of our native land'.

Not everyone evidently shared that view. For example, the Chief Justice, Sir Charles Fitzpatrick had told the Canadian Bar Association in 1914 'that in no dominion had greater services been rendered by the Judicial Committee than in Canada . . . so far as Canada is concerned, I think I may safely say that, among lawyers and judges qualified to speak on the subject, there is but one opinion, that where constitutional matters are concerned, an appeal to the Judicial Committee must always be retained'. Perhaps the Winnipeg Free Press put it best in 1937 when it observed that abolition of the appeal should not be unnecessarily delayed since 'when it comes it will make no whit of difference in the feelings of Canadians towards Great Britain any more than the other constitutional developments have done'.

At the same time as pressure was growing in Canada for abolition of the appeal a Royal Commission in the State of Victoria was drawing attention in 1871 to the Privy Council's delay in hearing both civil and criminal appeals and recommended the establishment of an Australian High Court. Although a draft bill in 1897 purported to abolish the appeal, it was not until 89 years later that the Australia Act 1986 finally disposed of the last vestiges of the appeal from the States Supreme Courts.

Australians, as Mr. Swinfen shows, were to play a leading part in the early years of this century in the debate for an Imperial Court of Appeal in place of the existing dual jurisdiction of the Privy Council and the House of Lords, thus avoiding the anomaly of having two courts of final appeal with the possibility of a conflict of decision between them on some important point of law. In 1901, the Australian delegate to the Imperial Conference, Mr. Justice Hodges, said it would be 'a wonderfully strong court, and command the admiration and respect not only of the whole British race, but of every race in the British dominions'. Mr. Swinfen concludes that though such a court would have been a tangible step towards the achievement of imperial unity and equality of status between the Dominions and Britain, and though it came to nothing, the debate about it did help to clarify views and contributed to the formulation of the concept of dominion status at the Imperial Conference of 1926.

There then follows a detailed and lengthy analysis of the pressure from the Irish Free State (perhaps the most interesting chapter) for outright abolition of the appeal in the 1920's.

> 'Basically the Irish aim was for independent nationhood, and they were unimpressed by arguments that Dominion status was the best

guarantee of their freedom. Irish opposition to the continuation of the appeal, therefore, can be interpreted as part of this desire for complete judicial as well as national sovereignty for Ireland. The important point to grasp is that this was not for Irish leaders a matter of abstract constitutional theory, but of real practical political importance. The Irish objected to the imposition of dominion status because they feared that it would only serve to perpetuate British interference in their country's affairs.'

If the 1920's witnessed the Judicial Committee's zenith, it has, as the author points out, 'been an unconscionable time adying'. The Statute of Westminster did not result in the immediate withdrawal from the system of all the Dominions. The reason may be found in a speech of Sir Robert Menzies (then the Federal Attorney-General) commenting in 1937 on the Canadian bill to abolish appeals:

'The appeal to the Privy Council is one of the few remaining formal links between the various parts of the British Commonwealth of Nations. Consequently, it is of great value in a period in which there is a tendency in some quarters to emphasise elements of separation and to give insufficient weight to elements of union.

Above all, appeal to the Privy Council means that we preserve some broad uniformity of legal decision on matters of law which are common to the whole Empire, such as the Common Law and the general principles of Equity. I, as a lawyer, think that uniformity of that kind is of very great value in preserving a reasonable degree of certainty in the law. . . .

I think, on the whole, that in the last 30 years the decisions of the Privy Council on general questions of law have given very great satisfaction to lawyers in all parts of the British world.'

Any book on the Judicial Committee of the Privy Council would be incomplete without a reference to India and Pakistan. Here they are to be found providing strong opposition to the proposal for a Commonwealth Court at the Law Conference at Sydney in 1965 because, as Mr. Swinfen points out, their conception of the role of the judiciary was incompatible with that inherent in a Commonwealth Court. The Chief Justice of India, Mr. Gajundragadkar, explained for example:

'Since India won freedom, Indian legislatures have been ceaselessly working to bring about social and economic justice in the country, and in the attempt by the legislatures to make laws with a view to solving the problem of poverty and unemployment they are always trespassing on fundamental rights. . . . Every time we in India are called upon to consider the various constitutional effects of legislative enactments, . . . we ask ourselves is it a reasonable invasion required

for the public good. These are issues which would be alien in English courts, but they are peculiar to the written Constitution of India.'

Mr. Swinfen's book can be warmly recommended. It is amply, but unobtrusively, annotated and the breadth of the quotations gives added colour to what might have been a mere catalogue of the well known arguments for and against the appeal to Her Majesty in Council.

(*Contributed by D. H. O. Owen, Registrar, Privy Council Office, London*)

Labour People, by K. O. Morgan (Oxford University Press 1987, £12.50)

Dr. Kenneth Morgan is an Oxford historian with an unusually intimate knowledge of the Labour Party who has written an eminently readable book. It is a fair history of the Party as seen through the personality of its major protagonists, though the present reviewer rather doubts Dr. Morgan's thesis that 'a Party that came into being as a protest against the excesses of individualism can go to extreme lengths to perpetuate the cult of personality.'

Nevertheless it contains refreshingly uninhibited biographies of most of the outstanding Labour figures of the last 80 years. He is at his best with descriptions of the old founding fathers – Keir Hardie, Ramsey MacDonald and the Webbs, and with the dominant figures of Attlee, Bevin, Cripps, Bevan and Gaitskell in the chapter 'Years of Power'.

His reading is prodigious, he seems to have read every major book relevant to his thesis; all the works of Keynes, Harold Laski, Hugh Dalton and the men he calls the planners – Douglas Jay, Evan Durbin and Hugh Gaitskell, that remarkable group of Dalton's protegés who were so influential in the planning of the post-war Labour Government. It is curious however that, except in the introduction, he makes practically no mention of Professor R. H. Tawney, C. A. R. Crosland and R. H. S. Crossman, probably the outstanding Labour intellectuals of the period. The rôle of the trade unions is also rather inadequately explored. There is only a passing reference to the dominating trade union leaders like Will Lawther, Arthur Deakin and Tom Williamson. There were personalities indeed! Who can ever forget who heard and saw Will Lawther at the Morecambe Party Conference bellowing to the left-wing protestors: 'We pay the piper and *we* call the tune'.

He is at his best with the professional politicians; his description of the rather unfathomable Prime Minister, Clement Attlee is highly perceptive. He gives high praise to his approach to the problems of the Empire, describing him as a liberator and the architect of the new Commonwealth. But he is harsh about Attlee's political judgement

describing his handling of the crisis between Aneurin Bevan and Hugh Gaitskell over health charges as the most disastrous example of Attlee's failure to lead and holding him responsible for the 'break between Bevan and his colleagues which did immense harm to the Party for the next decade'. He believes that Attlee had only slight economic insight, and moreover saw his Party in the most colourless egotistical terms, yet that his talents 'enabled him to transform his beloved country into a welfare democracy and the old Empire into a free multi-racial Commonwealth'.

His assessment of Attlee is perhaps the most striking of his personal judgements, though he is closest and warmest to the passionate, celtic Aneurin Bevan in his most vivid portrait. 'This stormy petrel had a magic all his own . . . At the Ministry of Health he was to prove himself not only a prophet but a great constructive pioneer . . . combining strong socialist principles with rare creative gifts of practical statesmanship'. He stresses Bevan's toughness and empiricism and his determination to achieve a socialist society through the use, always, of democratic parliamentary power.

His view of Hugh Gaitskell is much coloured by 'Gaitskell's deliberate political sacrifice of Bevan'. Further he regards Gaitskell's devotion to the American alliance above all other considerations, including the real economic disadvantages that the rearmament programme would bring for inflation, and the balance of payments, as a disastrous misjudgement. As Chancellor of the Exchequer his first Budget 'rested on political conviction rather than on economic rationalism'.

Perhaps the most readable chapter of the book is the brilliant description of Stafford Cripps which is a discerning, ironic and balanced view of a highly contradictory and idiosyncratic personality. Against Churchill's mocking judgement of the austere Cripps as 'there but for the grace of God goes God' he maintains that Cripps' time at the Treasury was a 'triumph of will and one extraordinary man's indomitable spirit and sense of moral purpose'.

The book's most controversial and interesting chapter is on Ernest Bevin as Foreign Secretary and it deserves careful reading. It stresses how overwhelmingly powerful Bevin was in the Cabinet until shortly before his death. Even Attlee as Prime Minister deferred to him and gave him a free hand in foreign affairs generally, though never on India. Dr. Morgan sees Bevin as a Cold War warrior. His policies were based on stern, unrelenting hostility to the Soviet Union, a lack of sympathy with European countries, socialist or otherwise, and on 'a long term policy of high defence expenditure, military conscription in peacetime, and even the covert commitment to Britain's possession of nuclear weapons on an independent basis'. Above all on a lasting commitment to a military and economic alliance with the United States which, however, rested on an inherently fragile economic base. The

review of the details of Bevin's policies is penetrating and rightly emphasises that as 'the most powerful trade-unionist alive' he had a far wider role within the Government than simply that of Foreign Secretary, with results that lasted, for good and ill, for long years after his death.

The reader will find Dr. Morgan's portrayals of the giants of the past more vivid than those of later years but he has an interesting view of Harold Wilson's government. While criticising Wilson's final loss of credibility as Prime Minister he emphasises the changes in the 'quality of life' which his era brought about. He rightly stresses that 'the arts flourished under Jenny Lee; the Open University was launched; the Ombudsman was created to protect individual liberties; capital punishment was at last abolished and penal reform taken seriously . . . race and community relations vigorously fostered. It was in many ways a highly civilised era in our history.' That is worth saying, as is also the most severe essay in the book, that on Tony Benn. He is rather less interesting on present day personalities.

The title of Dr. Morgan's book 'Labour's People' is an exact description of what the reader will find. Perhaps the author's obvious fascination with and love for the British Labour Movement will make it too reverential for an unsympathetic reader. But it is not uncritical and, as this reviewer has tried to show, it is deeply and acutely observed. Dr. Morgan's uniquely intimate knowledge will be of real value to students of his subject and the bibliography in the appendix is quite superb.

(Contributed by the Baroness Llewelyn-Davies of Hastoe, Opposition Chief Whip in the House of Lords 1973–74, Government Chief Whip 1974–79, Principal Deputy Chairman of Committees 1982–86)

Patterns of Parliamentary Legislation by Denis Van Mechelen and Richard Rose, (Gower Publishing Group, 1986, pp. 102, £16.50)

This is a handbook (funded by a grant from the Economic and Social Research Council) the purpose of which is to provide 'a variety of quantified analyses of patterns of Acts of Parliament in the United Kingdom'. Statistical tables provide copious material dealing *inter alia* with the number of Acts, departmental origin of Acts, their territorial scope, their objectives, and their repeal and consolidation, for each Parliament since 1945, with an interpretative chapter for each set of tables.

The language of the interpretative chapters is not always easy to follow. Some sentences have to be re-read several times to be sure of the authors' meaning. Others are banal.

While the chapter dealing with the non-controversial nature of much

legislation uses the accompanying tables to elucidate comparatively little known facts in an area of general interest, much of the other material is of more limited value. The value of the statistics upon which depends the worth of the interpretation is not always apparent.

There are curious lapses: the implication that income tax is a permanent tax, and the suggestion that an annual Expiring Laws Continuance Act is still passed, are both odd in a scholarly work. In describing the legislative process, neither the tables nor the interpretation state whether or not hours spent in Standing Committee have been included.

It may be that some other commentator on the process of legislation may find the statistics of use, although it is a sad but general experience that the statistics available are never the statistics one needs.

This book is obviously the product of much labour. But it is a work by academics for academics. Neither Members of Parliament, nor those others involved in the process of legislation, nor practitioners in the law, are likely to find much use for it.

(Contributed by J. H. Willcox, Principal Clerk of Public Bills, House of Commons, Westminster)

Peers, Politics and Power: The House of Lords 1603–1911, edited by Clyve Jones and David Lewis Jones. (Hambledon Press, 1986. pp. 557. £25)

A review of *Peers, Politics and Power: The House of Lords 1603–1911* has to begin by stating what the book is not. In spite of its title it is not about the development of the House of Lords over three centuries. Nor is it a book for the political observer or the casual reader. It is instead a source book for historians of the House of Lords.

The House of Commons has been well worked over by academic historians and, for the aspiring researcher, the field has lost some of its undoubted attractions. A lack of virgin territory or new sources has persuaded students of British parliamentary history to turn their attention to the House of Lords, a comparatively fresh subject because of past neglect. This approach has obvious merits. There has been plenty of interaction between the Houses over the centuries, so that, apart from the opportunity to break new ground, the historian may uncover new influences in the development of the Commons and the Constitution. The number of borough and even county seats which were controlled by members of the Lords before 1832 is a case in point.

This interest in the Lords has shown itself in the form of numerous essays on disparate topics over the past twenty years. For the post-mediaeval period there have been few monographs. So the editors of *Peers, Politics and Power* – Clyve Jones, an assistant librarian at the

Institute of Historical Research in the University of London, and David Lewis Jones, deputy librarian in the House of Lords Library – have collected together 24 essays from printed sources and assembled them into one volume 'to provide the reader with a selection of the most important recent writings on the history of the House of Lords.' To these they have added an extensive bibliography of 187 sources for their period 1603–1911. The focus is on political history; articles about the procedure of judicial business of the House have been excluded.

As a reference work the book achieves its purpose well. University libraries, in particular, on both sides of the Atlantic should find it useful. But the title may mislead the unwary. The most that can be said of the essays, as a collection, is that they provide a series of snapshots of the Lords. They do not give a continuous picture. The editorial matter is unexciting, and while it is no doubt difficult to supply a common thread between so many disconnected items, no thread is offered. The essays remain disconnected. This fact is accentuated by the appearance of the essays: the originals have been reproduced by a photographic process and retain the differing typefaces of their first publication. Thus they range from the generously large print of Irish Historical Studies, through the elegance of the Scottish Historical Review, to the small and cramped typefaces of articles from the Bulletin of the Institute of Historical Research and the Historical Journal.

The incongruity of the typefaces is not a serious obstacle and no doubt the economics of publication would otherwise have been prohibitive. Indeed the quality of presentation of the volume is good. While facsimile reprints of single works are now commonplace, it is no small achievement to bring together so many essays from different sources. Given the small quantity of original material, it is surprising to find a conspicuous misprint repeated for 25 pages at the head of an article on 'The Liberal Leadership and the Lord's Veto' [sic], conjuring up visions of divine intervention in the affairs of H. H. Asquith. Surely also the cover of the book should of all colours not have been green. Still, the whole work is good to handle.

What of the essays themselves? The interest is variable and yet extensive. Beginning with 'The Nature of Opposition in the House of Lords in the Early Seventeenth Century: A revaluation' by Professor J. S. Flemion of San Diego State University, and ending with 'The "Judas Group" and the Parliament Bill of 1911' by Professor C. C. Weston of the City University of New York and Patricia Kelvin, archivist for the General Synod of the Church of England, the book has six contributors from the United States, one from Canada and nine from the United Kingdom. Subjects featuring prominently include parliamentary management, the Scottish and Irish Representative Peers, division lists, and the lead-up to the Parliament Act 1911.

On the whole only a few of the essays justify the book's title – essays

such as 'Salisbury and the Lords, 1868–95' by C. C. Weston, a graphic account of constitutional theory under development, as the Lords with a Conservative majority grappled with the Liberal proposal to disestablish the Irish Church. Too often the essays suggest an obsession with division lists. While this is understandable because the lists offer new source material, it carries the risk that minutiae will overtake matters of more importance. This type of preoccupation is specially obvious in the emphasis on the sixteen Scottish Representative Peers in the late eighteenth century, a group which attract researchers because they are small and well-defined, but which scarcely deserve the prominence they receive.

The most revealing use of division lists is that of Professor W. C. Lowe from Iowa, in 'Bishops and Scottish Representatives in the House of Lords, 1760–1775', who disputes the commonly held view that eighteenth century bishops were automatic supporters of the Government. Professor Lowe shows how often the bishops did not support the Government. His thesis is reasonable, more so than the traditional view which requires one to believe that the bishops changed their allegiance as often as the ministries of the 1760s changed; it strains credulity to believe that the Vicar of Bray had managed to gain preferment to every see of the Church of England.

The same article exposes the mistake of treating a class of Peers – in this case the Scottish Representative Peers – as a monolithic block of like-minded individuals, who could be expected to vote together. Even this essay, whose purpose is to show that the Peers did not stick together, starts from the premise that consistency and cohesion are plausible. But this premise, which characterises several essays, is highly suspect. It may be a product of twentieth century experience of party politics and the custom of groups to vote together in accordance with the decisions of their Whips. It would be surprising if such groups were homogeneous in everything. They remained individuals. Presumably for many then, as now, membership of the House of Lords was incidental to other pursuits. In spite of the lure of patronage, there were those like the Earl of Stair in 1774 who described himself as an individual looking to 'disinterested principles' rather than as a follower of Rockingham or Chatham; or like the Duke of Atholl who commented in 1770 that 'There's faults on all sides and every day's experience convinces me that planting trees is a more agreeable and more honest business than either supporting or opposing Ministers'.

Of more interest to the modern reader than the minutiae of the Scottish Peers is the essay on 'Peerage Creations, 1750–1850' by M. W. McCahill from Brookes School, Massachusetts. This covers much of the same ground as the Scottish essays, of which one was written by the same author, but extends to the more general quest for peerages, and therefore seats in the Lords, which was apparent in England,

Wales, Scotland and Ireland. Relatively few peerages were created in the early years of the eighteenth century but this was followed, after 1776, by a 'hectic scramble for peerages'. The demand was fuelled by envy, with men who might otherwise have been content with their position being tempted to apply for peerages by the galling spectacle of others' good fortune. As Sir Archibald MacDonald remarked in 1786 'By making one Peer, two enemies are made, and twenty claimants'. The new recruits included not only the traditional landed magnates but also men with a record of achievement in the service of the Crown, indicating the emergence of a new breed of professional politician, and incidentally giving a foretaste of the modern House of Lords. At the same time a major shift took place in the bestowal of peerages, which prior to the 1780s were primarily royal favours and thereafter became increasingly the gift of Ministers. George IV for instance not only accepted, if grudgingly, candidates referred to him but also took care to consult his Prime Minister before honouring even close friends.

Another essay contains an illuminating description of the emergence of the office of Leader of the House of Lords. Successive administrations in the eighteenth century found it at first desirable, and then essential, to manage the business of the Lords and to put over the Government's position effectively. The position of Leader was slower to evolve in the Lords than in the Commons for the simple reason that there were more Ministers of the first rank in the Lords. With only one senior Minister in the Commons, it was natural for him to speak regularly on behalf of the Government. This role was shared by several Lords Ministers and the position of manager developed less easily. A recognisable manager, normally the Secretary of State for the northern department, took on the role from early in the eighteenth century, the first firm evidence of this dating from 1717. The interest of this article is increased by the fact that its author is Sir John Sainty, a former Private Secretary to the Leader of the House of Lords and now Clerk of the Parliaments.

Among the remaining articles, three look at the Parliament Act 1911 from a non-traditional point of view: the leadership divisions of the Liberal and Conservative parties are well exposed. There is a fascinating account of the Hamilton Affair 1711–12, describing the contention between the 16 Scottish Representative Peers, who had newly joined the House of Lords at the Union of Scotland and England, and their English counterparts. It is intriguing that such a dispute, which included a resolution debarring Scottish Peers the right to sit in the Lords even with a new Great Britain peerage, could have been thought for a time to threaten the fledgling Union. Other essays of more variable quality touch on Charles I's Lords; the Defeat of the Occasional Conformity Bill under Queen Anne; and the disqualification of the Duke of Queensberry from voting in the election of Scottish Peers in 1708. These

last essays make greater demands on the reader's prior knowledge of contemporary history than the rest, and are generally less successful.

(*Contributed by P. D. G. Hayter, Clerk of Committees, House of Lords*)

Cabinet, by Peter Hennessy (Oxford, Basil Blackwell, 1986. £19.50 hardback, £7.50 paperback)

Eleven is not a bad number for a committee: enough to get a wide cross-section of views and yet not so many that argument replaces decisions. Above that number the problems of the Chairman grow at the same rate as the membership. Either several members have to take a vow of silence or the meetings go on a long time. Decisions don't come easily.

So what chances has a committee of twenty-two? Not much, one would think. Yet that is the size of the much-prized British Cabinet, the subject of a new study by Peter Hennessy, called simply *Cabinet*. As Sir Frank Cooper, a recently retired Permanent Secretary in Whitehall, is quoted as saying 'It's amazingly difficult to discuss anything serious in a group of twenty-two, twenty-three men and women . . . We've got a very unhealthy and in my view largely obsolescent political system'. And the path is not made any smoother when a small group of those members speak for the Treasury and the word of the Treasury is law. David Howell MP, who was Secretary of State for Energy in Mrs. Thatcher's first administration, claims that the Cabinet no longer sorts out clashes between the Treasury and other Government departments because 'on the whole the spirit of the '79 Government and, indeed, as far as I can make out the '83 Government, has been, "No, don't bother me with facts, the Treasury's figures are settled. Good afternoon"'.

Whatever its faults, however, the Cabinet is a fascinating subject. It fascinates politicians for whom it is the ultimate goal, the test whether they have made it to the top or not. It fascinates the political scientist and the civil servant on account of its complexity and its vital role in getting things done. It fascinates the press and the public, as any secret institution does, just because it is secret, and when secrecy is combined with power, the attraction is irresistible. Peter Hennessy's book lives up to its subject.

The book is based on numerous interviews with former Prime Ministers, Cabinet Ministers and senior civil servants, including five interviews which were broadcast on BBC Radio 3 in 1985 under the title *The Quality of Cabinet Government*. There is a thought-provoking chapter on government, including Parliament, seen through the eyes of 'parachutists', that is political advisers and specialists dropped into the

Cabinet system from the outside world. Full use is made of recently declassified papers from the Attlee, Churchill and Eden administrations. Overall the approach is anecdotal and heavily dependent on the Lobby system of unattributable quotes. The secrecy surrounding the Cabinet makes this unavoidable, and the atmosphere of tales told out of school is heightened by a sources list which is dominated by two words – 'Private information'. The revelations are partial. They were bound to be. But they give a good impression of being comprehensive.

The whole work is also stimulating in style and content. The author's preface reveals an admiration for language which has bite and is 'free of the Teflon factor, the non-stick quality of so many works on undergraduate reading lists'. *Cabinet* shares these virtues. It makes full use of the aphorisms of the author and his sources, and these are both entertaining and witty, even if from time to time they tend to stop the narrative rather than to carry it onwards.

Peter Hennessy's themes are broadly two. First there is the notion that Cabinet Government is a putty-like concept, infinitely malleable and elastic. Secondly it provides the arena where Ministers battle with the increasing burdens of government and devise their own ways to avoid being swamped by them. To illustrate these themes, he shows how over forty years the simple model of Cabinet and Cabinet Committees has been in a constant state of flux, shifting in response to new people and new situations. At the same time he captures beautifully the flavour of both the Cabinet system and the Cabinet Office by reproducing a large part of Questions for Procedure of Ministers, the Cabinet's own book of rules in their 1952 version. Little has changed in the elegant prose style or the basic content of this document in its modern version.

A quick review highlights prime ministerial methods from 1945 to 1979, mostly slanted towards assessing whether the Prime Minister of the day was overloaded or not. This prelude leads on to a chapter about Mrs Thatcher's administrations from 1979 to 1986, in which plenty of disaffected politicians and civil servants are quoted to support the view of Mrs Thatcher 'as Queen Boadicea driving a chariot of conviction politics through the conventions of collective Cabinet government.' Strong evidence suggests that the Cabinet itself discusses less than in any other pre-war administration, and that the discussions are clearly influenced by the Prime Minister's forceful style of leadership and by her alignment with the Treasury.

But maybe this only serves to justify Peter Hennessy's themes. Putty is known to keep out the wet; and Mrs Thatcher has survived the overload of eight years in office remarkably well. Other Prime Ministers have kept decisions away from Cabinet or even from Cabinet Committees when it suited them. For example a chapter on Cabinets and the Bomb shows that in the history of nuclear weapons major decisions

have consistently been taken by Conservative and Labour governments without the Cabinet's involvement. The cornerstone of Cabinet government is the principle of collective responsibility. As long as decisions are taken in the name of the whole Government *and* the whole Government is prepared to stick by them, the Cabinet system is working. As long as the Government can keep Parliament happy and can get decisions taken, the Cabinet system is working well. For all its defects, this 'obsolescent' political system will be a long time a-dying.

(*Contributed by P. D. G. Hayter, Clerk of Committees, House of Lords*)

Public Expenditure and the Select Committees of the Commons by Vilma Flegmann (Gower Publishing Company, 1986)

This brief study covers the 1979–83 Parliament, and is based on documentary analysis, attendance at select committee meetings and interviews with both Members and senior civil servants.

After a sketch of the pre-1979 arrangements for the scrutiny of public spending (principally the Expenditure Committee), and an account of the birth of the new generation of departmentally-related select committees in 1979, Mrs Flegmann turns to some specific issues arising from the early years of departmental select committee activity. The principal findings of relevance to her main theme are perhaps not surprising. Committees collectively expressed a preference for policy inquiries rather than those related to expenditure. Individually, committee Members' conclusions were much the same. Fewer than a fifth of those interviewed had much interest in public expenditure, and only the same proportion looked on scrutiny of the Public Expenditure White Paper as useful. Other statistics seemed even more depressing – only 10 p.c. of Members interviewed saw it as their duty to examine the Estimates, and about the same number were aware of the Financial Management Initiative in government departments. Departmental interviewees echoed Mrs Flegmann's concern at this state of affairs.

The final section of the book is devoted to analysis and prescription. It is not denied that more financial information has been extracted by committees than might otherwise have come to light, and the House has begun to take modest advantage of its availability on the three days now set aside by Standing Order for specific consideration of the Estimates. The quality of government decision-making is thought to have benefited from the work of select committees, and backbench expertise and solidarity have been enhanced. Some things might with profit have been done differently – departmental select Committees might have been required to consider the relevant Estimates for example. The list of recommended changes is substantial. If the House

of Commons is to live up to expectations (in the author's phrase) all departmentally-related committees must have the right to appoint Sub Committees, which only three out of fourteen may do under the present Standing Order. The Sub Committees might look at finance. Alternatively, a new Estimates Committee might be set up in parallel to the fourteen. A revised Nationalised Industries Committee (or an extension of the Public Accounts Committee) is wanted. Estimates days should increase to eight as was originally recommended, and the Chair ought to pay stricter attention to the rule of relevance, so that they do not slip back into the old pattern of general political discussions.

The conclusions reached are subject to fundamental criticism in two aspects. Mrs Flegmann's study 'was undertaken after some early indications that the monitoring of expenditure did not appear to be the major item on most committees' agenda, even though it was expected and hoped that it would be' (p. viii). As a result of this *a prioristic* approach, the House is being told how it should express its concern for public affairs and criticised when Members do not necessarily agree. Moreover, the solutions to the problem which are put forward are substantially institutional. How it is imagined that (for example) an across-the-board power to appoint Sub-Committees will achieve what the author looks for, given the attitude of Members to scrutiny of expenditure as reported by Mrs Flegmann, is by no means clear.

Secondly, though the book was published in 1986 (and there are a few references to events in 1984–85) the story which it tells is out of date. Much has happened since the 1979–83 Parliament, little of it foreshadowed by Mrs Flegmann and much of it invalidating the gloomy analysis she presents. The number of select committees which regularly take evidence on the Public Expenditure White Paper, the Estimates, or Departmental documents of an even more detailed character has increased substantially. The attention of Committees has been engaged by improvements in the data presented to them – performance measurements, better indicators of output and so on – and by steps taken to relate the information documents like the PEWP to the control documents such as the Estimates. Moreover, this is not a development which descended *ex machina* on select committees: some of them participated actively in the changes which successfully made the scrutiny of public expenditure more accessible and more relevant. A review such as Mrs Flegmann's undertaken after the *next* Parliament may have something constructive to say. But this study was begun too soon, and failed to see that Members themselves were solving the problems identified in a more satisfactory manner than was thought likely.

(Contributed by W. R. McKay, Principal Clerk of Financial Committees, House of Commons, Westminster)

Capitalism and Apartheid by Merle Lipton (Wildwood House, 1986, paperback £8.95)

'Until recently, much of the argument about South Africa has been couched in terms of whether economic forces, usually described as "rational", would prevail over "irrational" political and ideological forces such as race prejudice and Afrikaner nationalism. However, the issue is now widely perceived as being a political struggle between different sets of economic interests, rather than a battle between archaic political and progressive economic forces'.

It has often been said that the South African experience stands Marxism on its head. Instead of economic forces dominating political and social development, ideology is held to have taken precedence over economic self-interest. Thus, for example, evidence is quoted of the inefficiency inherent in a labour market divided horizontally, so protecting low-skilled workers because they are white, whilst jettisoning potentially skilled workers because they are black. The migrant character of mining and agricultural labour has been compared with the handicaps experienced by slave labour. Its inefficiency contributed to the abolition of slavery as much as any missionary zeal. Or again, the artifical restriction of the South African consumer market through depressed purchasing power for the majority community is held to restrain the opportunities for profit-making amongst white capitalists.

Merle Lipton is not satisfied with this somewhat glib analysis of South African society. Nor does she accept the counter arguments devised by 'communists' and others who would try and force the politico-economic evidence into a Marxist strait-jacket. Those who over the past quarter century have used convoluted arguments to prove that apartheid is a logical consequence of the capitalist system and is sustaining that system are shown here to be just as partial as the critics of Marxism. In Merle Lipton's eyes apartheid is neither the simple product of capitalism nor its antithesis. As a thorough scholar, she shows that there are varied interests amongst South Africa's capitalists. Traditionally the farmers and mining companies have sought migrant labour, although the pattern is changing with mechanisation. The industrialists, however, have needed skilled labour. They have therefore favoured settled labour forces. At the same time, white unions in the former two occupations, especially those weighted by poor whites, have sought job reservation on colour lines. In industry there has been greater desire for integration, both to maximise profits for employers and to raise wages.

Merle Lipton puts it this way: 'The standard question in the debate about South Africa – whether economic growth shores up or erodes apartheid – is too crude and needs reformulation. The first question is; what kind of economic growth? If it is growth based on cheap, unskilled labour (as in white agriculture until the 1960s or mining until the 1970s)

then it could co-exist with apartheid and even benefit from it. But growth requiring skills and a domestic market (as has long been the case in manufacturing and commerce) does not require, and has difficulties in coexisting with, apartheid. Secondly, there was no simple correlation between economic and political power in South Africa; capitalists often did not get their way in conflicts with the supporters of apartheid, who might still succeed in retaining some aspects of it, particularly in the political field'.

This debate is directly relevant to the current situation in South Africa. There has been a confused argument over the last few years as to whether the Botha government is genuinely attempting reform or simply using cosmetic tactics in order to appease the international community. Merle Lipton's book is essential reading for a rational understanding of this crucial issue. She presents five alternative options. Either capitalism and apartheid can be retained; or white domination can be combined with less capitalism, with an increase in the state sector; or capitalism can be reduced or abolished under black domination; or apartheid could be abandoned and replaced by a multi-racial capitalist system; or both apartheid and capitalism could be abolished and replaced by non-racial socialism.

The author makes it clear that she would prefer the fourth alternative; multi-racial capitalism. She believes that this offers a prospect of less violence than any of the others, that it alone is compatible with the revival of liberty and democracy; but that it could develop into a more egalitarian, welfare-oriented political system. Whether, given South Africa's history, this will ever become a practical possibility, is very dubious.

Whether one agrees with Merle Lipton's preference or not, the terrible events taking place in the Republic will be better comprehended by a study of her analysis. For South Africa is a volatile country, political and economic directions are complex, often contradictory. No simplistic opinion is helpful to a clear vision of what is taking place.

But Merle Lipton made one significant mistake. I have always believed, through over fifty years of studying the South African situation, that prediction for that country is fatal. Lipton added a new epilogue for the 1986 paperback edition. Almost inevitably her immediacy betrayed the scholarly and profound analysis which characterises the main body of her work.

For instance, she quotes Harold Macmillan as holding that 'unforeseen events' can destroy all planning. Maybe so; but an instant epilogue can also be quickly over-taken by events. So when the author instances the 'continued fall in the price of gold and other minerals' as critically affecting recent events in South Africa she falls into this common error. In fact, it is the rise in the price of gold over the past year which has rescued the South African economy from international pressures. If the

Western powers were serious in their assertions of their desire to end apartheid, all they have to do is to sell gold reserves, thus bringing the South African economy to its knees by reducing the price of gold. It is true that for a time in early 1986 the imposition of sanctions and disinvestment, especially from the United States, shook the South African economy to its roots. But the fall in the price of the dollar reversed that process. The price of gold has touched $450 an ounce. So long as that windfall is enjoyed by South Africans, President Botha can thumb his nose at the international community. And armed with a new mandate from his white electorate, it now seems inevitable that the minor reforms will cease, white supremacy will remain entrenched and all the violent powers of the state continue to be used against any and every form of opposition.

(*Contributed by Lord Hatch of Lusby. Lord Hatch was Director, Extra-Mural Dept., Univ. of Sierra Leone, 1961–62; Director, African Studies Programme, Houston, Texas 1964–70; Institute of Human Relations, Zambia Univ., 1980–82*)

The Bishops: A Study of Leaders in the Church Today by Frank Longford (London, Sidgwick & Jackson, £12.95)

The idea behind this book is a very good one indeed. Lord Longford has interviewed a number of the most prominent bishops in the Anglican and Roman Catholic Churches in the British Isles. Accounts of these interviews, supplemented by introductory and concluding remarks by the author, provide an insight into how the leaders of the two churches see their role in British political and social life.

The concentration on the two British (and Irish) churches with full episcopal hierarchies has real historical and theological significance. Historically what sets the two churches apart is that both derive their authority from the continuity of episcopal authority handed down from St Peter, and through him from Christ. For the Anglican Church it is important that the Elizabethan Archbishop Parker was consecrated by four 'Protestant bishops' who had been installed in the reigns of Henry VIII and Edward VI. One of the major stumbling blocks to unity between the churches is the refusal of the Roman Catholic Church to accept Anglican Orders because of what are seen as shortcomings in Anglican worship in the sixteenth century. In Roman Catholic eyes the continuity was broken in the Anglican Church; only the Roman Catholic Church represents the true Apostolic Succession. After ARCIC this remains the case. This is the topic which Lord Longford tackles most consistently in his interviews, arcane though it may seem to many laymen.

Bishops are also news, however. One reason for this is that their historical prominence is second only to that of the Crown and the great aristocratic houses. They are enthroned in our greatest buildings. The senior diocesan bishops of the Church of England retain seats in the House of Lords. (What they do there is discussed in an 'Interlude' of five pages which gives the book what direct parliamentary interest it has.)

One could hardly question Lord Longford's credentials for holding informed discussions with the bishops. He was brought up in the Anglican Church of Ireland, converted to Roman Catholicism, and in the years since his direct involvement in Government and front-bench politics ended he has been prominent in promoting a number of political causes – notably penal reform and the campaign against the permissive society – with explicitly religious content.

Oddly enough the book may have more to offer those who see ours as an almost exclusively secular society than it does to active members of either church, since it may shed some light on why churchmen are taken seriously in politics. Throughout his interviews Lord Longford has kept his eye firmly on the headlines the bishops make: on their interventions in economic and social issues, abortion, the ordination of women, divorce and re-marriage, and – most arcane of all headlines – the Bishop of Durham's theological position.

The interviews do not however combine to illuminate the issues themselves. Perhaps they were not meant to do so. The space available is limited. At most the book provides a check-list of where these churchmen stand on the clearer issues. None of them likes abortion. But it is disappointing that the fundamental theological thinking of each remains dark. Lord Longford stresses that they are men of God, not politicians. His interviews might have given vivid impressions of how the basic tenets of their faith inform each bishop's stance on these topical issues. This is only rarely the case.

For the major failure of the book is that Lord Longford is not a good interviewer. One suspects that he is too accustomed to being an interviewee. As a literary form an interview should strive for total anonymity on the part of the author: the interviewee's personality should shine through his works. Lord Longford says that his book 'is not a sociological study of episcopacy, but I hope it will contribute to such a study.' It could not possibly do so. Sociologists even more than journalists have a duty and a range of disciplines designed to keep themselves out of the picture. Lord Longford's use of the formula 'he agreed with me that . . .' on the contrary makes one wonder whose concerns and phrasing are emerging more clearly in each conversation. Moreover, since Lord Longford obviously wrote up his different interviews at different times, and they are not given in the order in which

he conducted them, his use of previous conversations as starting points of discussion is rather confusing.

His attempts to use personal details to bring the characters of the bishops alive are equally unhelpful: they end up being an assessment of whether the bishop played rugby – they mostly did, though the author expresses repeated surprise at them doing such an unclerical thing – and whether they have a regional accent.

More significantly, however, Lord Longford has not separated his own opinions about the bishops from his presentation of their opinions; his assumptions about the churches silently inform all that is said. An example of this occurs in his 'Final Word':

'The present author, thirty-five years an Anglican (Church of Ireland and C. of E.), forty-six years a Roman Catholic, married to a woman also a Catholic convert who was brought up a Unitarian, should be ashamed of himself if he adopted a sectarian attitude. But I am more convinced than ever that Jesus Christ founded a Church and that the Catholic Church today is its visible continuation. I am more convinced than ever that the Holy Spirit is at work within it and that its message and its sacraments are alike of divine origin.

'It is not for me to distinguish the presence of divine grace outside the Roman Catholic Church. The Church of England bears many marks of evident sanctity, and this is not true of the Church of England alone.'

This is disingenuous. Lord Longford has pointed out by an anecdote he has twice told in his text that the Church of England considers itself a Catholic Church: it is simply not Roman Catholic. He is in fact making the distinctions he claims not to be making. The crucial distinction which he has not drawn is that because, as he does point out, the authority represented by the bishops in the two churches is different, the emphasis on individual conscience before God is different in each Church, for the layman as well as for the bishop. That is why members of the Church of England arrive at different and often diverse ethical positions. It is perhaps Lord Longford's own embracing of the discipline of Roman Catholicism which has led him to undervalue this in his weighing up of his conversations. Because of this he perpetuates popular misjudgments of such subtle theologians as the Archbishop of York – of whom he says (more than once) that 'as usual he will not let us off with a simple statement' – and indeed the Bishop of Durham.

(*Contributed by Douglas Slater, a Senior Clerk in the House of Lords*)

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XIX. EXPRESSIONS IN PARLIAMENT, 1986

Allowed

'absurd statement' (Bermuda)
'baby' (Can Com Deb, 33rd Parlt, 1st Session, p 10644)
'backstabber' (W Aust Parl Debs, p 562)
'barbarian' (NSW PD, p 6212)
'big blabbermouth' (Tasm H A, 27.11.86, p 4665)
'blabbed blab' (Alberta Leg Ass Hans, 13.8.86, pp 1059–1060)
'blatantly misleading' (Can Com Deb, 33rd Parlt, 1st Session, p 12340)
'bloody disgrace' (NSW PD, p 1693)
'bring back Sauve' (Can Com Deb, 33rd Parlt, 1st Session, p 13322)
'clown prince' (Tasm H A, 24.7.86, p 2382)
'conned' (Can Com Deb, 33rd Parlt, 1st Session, p 14223)
'covering one's ass' (Can Com Deb, 33rd Parlt, 1st Session, p 13305–6)
'crippled Government' (Gujaret, 17.2.86, vol 11)
'deceit' (Gujarat, 27.1.86, vol 10)
'discriminate against people according to the colour of their skin' (NSW PD, p 2174)
'drunken bum' (Tasm H A, 23.4.86, p 1458)
'ferret; you look like a' (Tasm H A, 23.4.86, p 1350)
'figabooing' (Can Com Deb, 33rd Parlt, 1st Session, p 11520)
'filibuster' (Alberta Leg Ass Hans, 9.7.86 and 13.8.86, pp 450–451, 457, 1062)
'financial ignoramus' (NSW PD, p 7431)
'grafter' (Aus N Terr, 20.8.86, p 2284)
'gutter politics' (Can Com Deb, 33rd Parlt, 1st Session, pp 11568, 11570)
'ham fisted clot' (Tasm H A, 22.7.86, p 2211)
'he can start slinging a bit of mud and I will sling more. The more he slings the more I will throw . . ., I have been at it for years' (Tasm H A, 29.10.86, p 4070)
'honourable member for Coffs Harbour with controversial views' (NSW PD, p 5384)
'hypocrisy' (Can Com Deb, 33rd Parlt, 1st Session, p 12159)
'hypocrites' (Can Com Deb, 33rd Parlt, 1st Session, p 11894)
'I am talking to the butcher, not the maggot on the block' (Tasm H A, 30.10.86, p 4143)
'I have heard a lot of nonsensical so-called facts' (Ont, 18.12.86, p 4266)
'I have never knocked off 2,000 copies of an Australian National University handbook' (NSW PD, p 5369)
'I remind the Leader of the Opposition that the Corporate Affairs

Commission's investigation into the company with which he was associated recommended that he be prosecuted' (NSW PD, p 6728)
'I would rather be in the sewers of Launceston than in the sewers of Parliament House . . . you can do that in your retirement' (Tasm H A, 29.10.86, p 4071)
'idiot' (Bermuda
'improper, amoral or unparliamentary behaviour of the Leader of the Opposition' (NSW PD, p 4469)
'integrity' (Can Com Deb, 33rd Parlt, 1st Session, p 11367)
'irresponsibility' (Alberta Leg Ass Hans, 28.8.86, p 1382)
'it is time the Government stopped trying to prop up the Minister for Corrective Services and gave the residents of Bega Valley shire a chance to regain justice in rating' (NSW PD, p 6122)
'little weasel' (Tasm H A, 23.4.86, p 1350)
'loud-mouthed fatso' (Tasm H A, 23.4.86, p 1470)
'moral bankrupt and an intellectual pigmy; a' (Tasm H A, 15.10.86, p. 3472)
'nevertheless, my integrity compares more than favourably with his' (NSW PD. p 5359)
'one of the jerks sitting next to him: Not that jerk, the one over there' (Can Com Deb. 33rd Parlt, 1st Session, p 11840)
'political thuggery' (Can Com Deb, 33rd Parlt, 2nd Session, p 1735)
'pommy soccer larrikin. . . .: carry on like a' (Tasm H A, 22.10.86, p 3899)
'Pontius Pilate' (Can Com Deb, 33rd Parlt, 1st Session, p 11663)
'Pull your head in, for God's sake. What a stupid thing to say' (NSW PD, p 1693)
'racist comment' (Can Com Deb, 33rd Parlt, 1st Session, p0 10040–1, 12312)
'racist' (NSW PD, p 2173)
'Reprehensible' (NSW PD, p 7953)
'Res ipsa loquitur' (the facts speak for themselves) (Can Com Deb, 33rd Parlt, 1st Session, p 13923)
rubbish' (Bermuda)
'rudely interrupted' (NSW PD, p 3115)
'shifty' (Alberta Leg Ass Hans, 23.7.86, pp 717, 722)
'sir, he is like a blowfly at a picnic, isn't he?' (Tasm H A, 30.10.86, p 4143)
'snide, sotto voce comments' (NSW PD, p 1338)
'sobering up' (Can Com Deb, 33rd Parlt, 1st Session, p 12809)
'taken the opportunity to leak discussion judiciously' (NSW PD, p 4616)
'terrorist' (Can Com Deb, 33rd Parlt, 1st Session, p 12614)
'the Hungarian drink waiter' (Tasm H A, 27.11.86, p 4659)
'The Premier has never told us who paid for his visit to Harvard.

Perhaps we should check out who paid his expenses' (NSW PD, p 5028)
'the constant breach of the ethics and practices of select committees' (NSW PD, p 2318)
'the solicitor's name is Richard Charles Mochalski MP, member for Bankstown, and he failed to declare his holdings of shares in Expo Oil in three successive pecuniary interest returns to this Parliament' (NSW PD, p 5790)
'this is the battle of Fort Sumter. The secession has begun. Where are your troops gathering, sir?' (NSW PD, p 155)
'truly, this Liberal Party of New South Wales in every sense is the mule of Australian politics, without pride of ancestry or hope of posterity' (NSW PD, p 3579)
'twisting the truth' (Can Com Deb, 33rd Parlt, 2nd Session, p 2198)
'we have an extraordinary situation that a press campaign is being run regularly by several members of the Opposition based on information they could gain only by dint of their membership on select committees' (NSW PD, p 7982)
'when will the Minister start telling the whole truth' (Can Com Deb, 33rd Parlt, 1st Session, p 14008)
'which was the deliberate misreading of a statement' (Ont, 24.6.86, p 1901)
'whining, carping, whingeing speech; what a' (Tasm H A, 24.7.8, p. 2395)
'you sewer rat; go back to your sewer' (Tasm H A, 30.4.86, p 1703)

Disallowed

'(member) wants to have us live in the gestapo State that he obviously supports' (NSW LC Deb, 28.4.86, p 2875)
'(the member) has always been an Uncle Tom in his attitude to ethnic affairs' (NSW LC Deb, 30.4.86, p 3400)
'a collection of dummies' (Aus N Terr, 11.11.86, p 846)
'a complete lie' (Bermuda)
'a crooked deal' (W Aust Parl Debs, p 4139)
'a farce' (Gujarat L A, 28.2.86, vol 12)
'a form of legislative terrorism' (Yukon Hans, 8.12.86, pp 176, 186)
'a lie' (Aus N Terr, 11.11.86, p 774)
'a security risk' (Lok Sabha, 24.3.86, col 376)
'Afghans who giggle and interject' (Vict L A Hans, 8.10.86, p 1112)
'all Honourable Members on the Government side of the House are participants in corruption' (Vict L A Hans, 20.3.86, p 499)
'an Arse' (Vict L A Hans, 2.10.86, p 930)
'and you get back to the gutter' (Vict L A Hans, 19.3.86, p 428)
'any of the hoons on the backbench' (Aus N Terr, 18.6.86, p 182)

'ask her to get out of the House, if she does not know the etiquette' (Lok Sabha, 30.4.86, col 313)
'autocratic' (Alberta L A, 20.8.86, pp 1223–1225)
'barbarian man-eater' (Lok Sabha, 26.2.86, col 272)
'bastard' (HC Deb (1985–86), 102, c 1314)'bleeding heart judges' (N Z Hans, 1986, vol 474, p 4199)
'bloody' (Vict L A Hans, 12.3.86, p 99)
'bloody' (Zambia Hans, vol 70, 272, 1667)
'bluffing' (Lok Sabha, 3.4.86, col 272)
'bollocks' (HC Deb (1985–86), 91, c 399)
'boot licker' (Lok Sabha, 14.8.86)
'brains of a cabbage' (Aus N Terr, 13.11.86, p 987)
'buffoonery' (Lok Sabha, 5.8.86)
'bugger up the ABC' (Australian Broadcasting Corporation) (Aus N Terr, 13.11.86, p 970)
'buggers' (Qld, vol 300, p 1724)
'bull' (Lok Sabha, 26.2.86, col 272)
'bullshit' (Can Com Deb, 33rd Parlt, 1st Session, p 11900)
'bums' (N Z Hans, 1986, vol 473, p 3367)
'by force of habit' (Gujarat L A, 21.8.86, vol 19)
'by the pigheaded attitude of the Premier' (Ont, 19.6.86, p 1616)
'canine species' (Lok Sabha, 16.4.86)
'cannibal' (Lok Sabha, 26.2.86, col 272)
'carping, whingeing crap' (Aus N Terr, 25.3.86, p 2457)
'Castro' (Vict L A Hans, 30.10.86, p 1769)
'chameleon' (Gujarat L A, 30.8.86, vol 19)
'cheap notoriety and publicity that . . . (member) . . . sought' (NSW LC Deb, 25.2.86, p 260)
'cheap political points' (Alberta L A, 30.7.86, p 875; 17.9.86, p 1743)
'cheap' (Zambia Hans, vol 70, 2548)
'cheating' (Lok Sabha, 3.4.86, col 272, and 30.4.86, col 311)
'chicken' (NSW Pd, p 6600)
'childish talk' (Lok Sabha, 2.5.86)
'clowns on the front bench' (Aus N Terr, 11.11.86, p 917)
'comrade' (Zambia Hans, vol 70, 2311–2)
'congenital idiot' (Aus N Terr, 27.11.86, p 1558)
'corrupt' (Qld, vol 302, p 3514)
'corrupt' (Qld, vol 303, p 38)
'courage' (Can Com Deb, 33rd Parlt, 2nd Session, pp 1973–5)
'covering up for bloody Porky' (Aus N Terr, 20.8.86, p 445)
'cowardly' (Can Com Deb, 33rd Parlt, 2nd Session, p 1272)
'cowboys' (Aus N Terr, 13.11.86, p 1052)
'crazy lunatic' (Aus N Terr, 19.11.86, p 1198)
'crook' (Can Com Deb, 33rd Parlt, 2nd Session, p 246)
'crooks' (Zambia Hans, vol 70, 2627)

'cunning' (Qld, vol 301, p 2375)
'cur' (NSW PD, p 6723)
'dacoits' (Rajya Sabha, 7.5.86)
'deceitful Minister' (Vict L A Hans, 8.4.86, p 837)
'deceiver' (N Z Hans, 1986, vol 473, p 3424)
'deeds' (Gujarat L A, 28.8.86, vol 19)
'deliberately confuse' (Can Com Deb, 33rd Parlt, 1st Session, p 13959)
'deliberately misleading' (Can Com Deb, 33rd Parlt, 2nd Session, p 1705)
'deliberately misled' (Can Com Deb, 33rd Parlt, 1st Session, pp 10514, 13738, 13722–3, 13865)
'deliberately/wilfully misleading' (Can Com Deb, 33rd Parlt, 1st Session, pp 10514, 13531, 13955)
'delinquent' (NSW PD, p 6369)
'dictator' (Lok Sabha, 7.5.86)
'dirty buggers!' (Aus N Terr, 19.6.86, p 232)
'disgraceful conduct' (Vict L A Hans, 13.11.86, p 2153)
'disgusting' (Can Com Deb, 33rd Parlt, 2nd Session, p 1006)
'double dealer' (Gujarat L A, 28.1.86, vol 10)
'double dealers' (Gujarat L A, 30.8.86, vol 19)
'double standards' (Lok Sabha, 29.7.86)
'double-talk from the Speaker's chair' (Can Com Deb, 33rd Parlt, 1st Session, p 10335)
'drivel' (Aus N Terr, 27.8.86, p 650)
'dumb backbenchers' (Vict L A Hans, 21.10.86, p 1260)
'educated wank' (Aus N Terr, 19.11.86, p 1146)
'either a mad man or his brain is not working' (Rajya Sabha, 1.12.86)
'equally culpable' (NSW PD, p 2325)
'every Jim and Jack' (Zambia Hans, vol 70, 2207–8)
'evil' (Qld, vol 301, p 2375)
'fabricated' (Alberta L A, 22.7.86, p 712)
'false statement' (Can Com Deb, 33rd Parlt, 1st Session, pp 13902–3)
'fascist' (N Z Hans, 1986, vol 473, p 3849)
'fascist' (NSW PD, p 2604)
'father's firm' (Gujarat L A, 12.8.86, vol 18)
'father's forehead' (Gujarat L A, 1.9.86, vol 20)
'Father's property' (Gujarat L A, 17.3.86, vol 15)
'foolish talk' (Lok Sabha, 2.5.86)
'fraud' (Can Com Deb, 33rd Parlt, 1st Session, p 13722)
'futile discussion' (Gujarat L A, 6.8.86, vol 17)
'genocidal tyrant' (Lok Sabha, 24.3.86, col 366)
'greedy and ungracious' (Vict L A Hans, 11.9.86, p 191)
'grub' (Vict L A Hans, 2.10.86, p 930)
'gutless' (Bermuda)
'Gutter Inspector' (Gujarat L A, 28.1.86, vol 10)

'has no self-respect' (Gujarat L A, 27.2.86, vol 12)
'he consistently misrepresents the position of our party' (Ont, 10.7.86, p 2306)
'he is a big tout of the State Government' (Lok Sabha, 24.11.86)
'he is a bit thick' (NSW PD, p 7423)
'he is a Marxist capitalist' (Lok Sabha, 24.11.86)
'he is out to sell everything for the sake of his Chair' (Lok Sabha, 27.2.86, col 326)
'he is repeating a libellous assertion that appeared in the Toorak Times' (Vict L C, 29.10.86, p 835)
'hero' (Gujarat L A, 21.1.86, vol 9)
'his barbarous action has to be penalised by democratic means' (Rajya Sabha, 1.12.86)
'honourable member's business dealings and his activities as a shonkie business representative' (NSW PD, p 5881)
'how desperate can a man be for his 30 pieces of silver?' (HC Deb (1986–87), 107, cc 793 and 1071–3)
'hue and cry' (Gujarat L A, 8.8.86, vol 17)
'hypocrisy' (Can Com Deb, 33rd Parlt, 2nd Session, p 211)'hypocrisy' (HC Deb (1986–87), 106, c 1207)
'hypocrite' (N Z Hans, 1986, vol 474, p 4370)
'I am pissed off' (Lok Sabha, 7.3.86, col 308)
'I didn't go to school to learn to tell lies like you do' (Tasm Hans, 22.7.86, p 2199)
'idiot' (Lok Sabha, 8.5.86)
'ignorant' (Zambia Hans, vol 70, 2859)
'impeachment' (Lok Sabha, 2.12.86)
'incompetent' (Qld, vol 300, p 1690)
'intriguing and malicious' (Rajya Sabha, 1.12.86)
'is deceitful' (Ont, 15.10.86, p 2478)
'It (the charge-sheet) reads like an ugly fiction full of half-truths, lies and falsehoods' (Rajya Sabha, 21.2.86)
'It costs you about $60,000 a year to travel, so you cannot speak about me' (NSW LC Deb, 24.4.86, p 2714)
'it is a lie' (Vict L A Hans, 21.10.86, p 1281)
'It is a lie; you are a liar' (NSW PD, p 740)
'It is bloody 10 o'clock and I want to go home too' (Aus N W Terr, 18.6.86, p 181)
'it is unusual for him to be alive' (NSW PD, p 2542)
'it strikes me that the member, I have to be careful how I phrase this, does a taffy pull with the trust' (Ont, 15.10.86, p 2493)
'just like bonded labour' (Lok Sabha, 5.5.86)
'keep quiet because you do not know anything' (Zambia Hans, vol 70, 869–10)
'keeping an eye on the press' (Gujarat L A, 30.1.86, vol 10)

'larrikin' (Vict L A Hans, 2.10.86, pp 958–9)
'larrikinism' (NSW PD, p 380)
'left-wing commo' (NSW PD, p 3110)
'liar' (Can Com Deb, 33rd Parlt, 1st Session, pp 10093, 11723, 11745–6, 11766–7, 11784, 11840, 11899, 12754m 13476)
'liar' (N Z Hans, 1986, vol 470, pp 1397, 1398, vol 474, p 4383)
'liar' (Vict L A Hans, 30.9.86, pp 702–3)
'liar' (Vict L A Hans, 9.10.86, p 1247)
'Libyan Consul General in this House' (Vict L A Hans, 8.5.86, p 2035)
'lie to this House' (NSW PD, p 1813)
'lie' (Can Com Deb, 33rd Parlt, 1st Session, pp 10826, 11415, 11948, 12047, 12227, 13268, 13902–3, 14151)
'lie' (Lok Sabha, 19.3.86, col 181, and 18.7.86)
'lie' (N Z Hans, 1986, vol 469, p 303; vol 470, p 1324)
'lied' (Can Com Deb, 33rd Parlt, 1st Session, p 11523)
'lied' (HC Deb (1985–86), 103, c 162)
'lies' (Can Com Deb, 33rd Parlt, 2nd Session, p 2266)
'lies' (N Z Hans, 1986, vol 472, p 3092, vol 474, p 4620)
'lies' (Qld, vol 299, p 162)
'like a bloody pre-schooler' (Aus N Terr, 28.8.86, p 707)
'lunatics like the honourable minister' (Aus N Terr, 11.6.86, p 2757)
'lying Government' (Gujarat L A, 20.8.86, vol 18)
'lying' (Can Com Deb, 33rd Parlt, 1st Session, pp 13478–9, 13738, 13744, 14242, 14244, 14356, 14371)
'lying' (N Z Hans, 1986, vol 469, p 519)
'mad dog' (Lok Sabha, 26.2.86, col 272 and 16.4.86)
'Madhav-meal' (Gujarat L A, 21.3.86, vol 16)
'magan medium' (Gujarat L A, 25.2.86, vol 12)
'matters coming before the Retail Trade Industrial Tribunal are prejudged' (NSW PD, p 6788)
'McCarthyist vendetta' (Vict L A Hans, 20.3.86, p 465)
'member gets drunk at lunchtime' (NSW LC Deb, 24.4.86, p 2713)
'Minister of something or other' (Can Com Deb, 33rd Parlt, 2nd Session, p 73)
'Ministers were crying aloud' (Gujarat L A, 30.1.86, vol 10)
'miserable cur' (Vict L A Hans, 21.10.86, p 1278)
'miserable cur' (Vict L A Hans, 4.12.86, p 2853)
'mislead' (Can Com Deb, 33rd Parlt, 1st Session, pp 11513, 131201)
'misleading' (Alberta L A, 9.9.86, p 1543)
'mob of shysters' (Qld, vol 303, p 82)
'Mr Chamberlain spoke from his hip pocket' (Vict L C, 22.10.86, pp 608–9)
'muckraker' (Aus N Terr, 19.11.86, p 1194)
'my friend opposite, Ivan the Terrible, sees conspiracies everywhere' (Ont, 10.12.86, p 4094)

'National Socialist Premier of Queensland' (Qld, vol 303, p 883)
'neat personal excuse' (Aus N Terr, 26.3.86, p 2527)
'nincompoop' (N Z Hans, 1986, vol 473, p 3380)
'nonsense' (Lok Sabha, 5.5.86 and 22.8.86)
'not true (N Z Hans, 1986, vol 474, p 4123)
'offensive' (Can Com Deb, 33rd Parlt, 2nd Session, p 1975)
'old habit of lying' (Gujarat L A, 25.3.86, vol 16)
'old swamp gas, the Minister for the Arts in another place' (Vict L C, 8.10.86, p 437)
'on my head' (Gujarat L A, 28.1.86, ol 10)
'owl' (Gujarat L A, 22.1.86, vol 9)
'pack of hooligans' (Aus N Terr, 21.8.86, p 473)
'pawn' (Gujarat L A, 17.1.86, vol 9)
'persist' (Gujarat L A, 24.3.86, vol 16)
'perverted mind' (Gujarat L A, 20.8.86, vol 18)
'piddling little block of flats' (Aus N Terr, 20.3.86, p 2379)
'pissed off' (Can Com Deb, 33rd Parlt, 1st Session, p 12843)
'political asset' (Gujarat L A, 27.1.86, vol 10)
'political asset' (Gujarat L A, 30.1.86, vol 10)
'political corruption' (N Z Hans, 1986, vol 474, p 4783)
'political hotchpotch' (Gujarat L A, 19.3.86, vol 15)
'pompous hypocrite' (Ont, 16.6.87, p 1473)
'prostitution of the truth' (Bermuda)
'pseudo-patriots' (Lok Sabha, 15.4.86, col 362)
'psychopath' (Lok Sabha, 16.4.86)
'put a sock in it' (Aus N Terr, 28.8.86, p 729
'quit misrepresenting his position, you clod' (Ont, 18.6.87, p 1567,
'rabid, commercial and self-interested' (Rajya Sabha, 1.12.86)
'racism' (Can Com Deb, 33rd Parlt, 1st Session, p 14242)
'racist regime in South Africa' (Alberta L A, 18.7.86, p 639)
'ridiculous' (Zambia Hans, vol 70, 2547–8)
'satanic' (Zambia Hans, vol 70, 1665)
'scared' (N Z Hans, 1986, vol 472, p 2521)
'scavenger' (Zambia Hans, vol 70, 1577)
'selection of sophisticated boasters' (Gujarat L A, 21.3.86, vol 16)
'self-styled' (Lok Sabha, 27.2.86, col 326)
'senile' (Lok Sabha, 16.4.86)
'serious allegations' (NSW Pd, p 5121)
'sewer rat' (N Z Hans, 1986, vol 474, p 4364)
'shonky solicitors' (NSW PD, p 4673)
'should go back to where he came from and take his medals with him' (Vict L A Hans, 19.3.86, p 428)
'should learn to keep balance of mind' (Gujarat L A, 21.3.86, vol 16)
'shut up' (Aus N Terr, 20.8.86, p 394)
'silly' (Lok Sabha, 5.5.86)

'sit down and shut up' (Aus N Terr)
'slander' (Can Com Deb, 33rd Parlt, 2nd Session, pp 339–40)
'slandering' (Can Com Deb, 33rd Parlt, 2nd Session, p 10066)
'sleazy' (Can Com Deb, 33rd Parlt, 1st Session, p 14244)
'source of corruption' (Gujarat L A, 6.8.86, vol 17)
'spies are breeding' (Rajya Sabha, 17.3.86)
'stabbing his leader in the back' (Vict L A Hans, 11.3.86, pp 26, 32, 33)
'stupid' (Zambia Hans, vol 70, 2343)
'tail is wanting' (Gujarat L A, 2.9.86, vol 20)
'taking slings in his back pocket from FAI' (NSW PD, p 7151)
'telling lies' (Zambia Hans, vol 70, 3521)
'terrorist tyrant' (Lok Sabha, 24.3.86, col 366)
'the Boy Blunder' (Vict L A Hans, 20.3.86, p 500)
'the Government cheating the poor' (Gujarat L A, 13.3.86, vol 14)
'the half-wit from Sadadeen' (Aus N Terr, 19.3.86, p 2257)
'the head of the racketeers' (NSW PD, p 5875)
'the Hon Gentleman gets paid for saying that' (HC Deb (1985–86), 101, c 290)
'the honourable peanut' (Vict L A Hans, 9.10.86, p 1197)
'the human values are debased' (Rajya Sabha, 1.12.86)
'the member abuses the privileges of this House by raising trivia' (NSW LC Deb, 23.4.86, p 2467)
'the member is a hypocrite' (Ont, 3.7.86, p 2136)
'the member should not be so stupid, he is making an ass of himself' (Ont, 16.6.86, p 1475)
'the Minister for Hoof and Mouth Disease' (Can Com Deb, 33rd Parlt, 2nd Session, p 1451)
'the minister is lying again' (Ont, 3.7.86, p 2145)
'The Ministers of West Bengal Government utilise their official position for personal gains' (Lok Sabha, 2.5.86)
'the mug from Wanguri' (Aus N Terr, 26.3.86, p 2665)
'the widow might weep, the married might weep but the woman having seven husbands also weeps' (Gujarat L A, 17.3.86, vol 15)
'the worst Speaker we ever had' (Can Com Deb, 33rd Parlt, 1st Session, p 12312)
'they have already picked the successor, and he is only sitting a few seats down from the Minister' (NSW PD, p 5870)
'they have become plaint tools of the Centre' (Lok Sabha, 8.12.86)
'they make frequent pilgrimage to Delhi and carry out the orders of the Centre' (Lok Sabha, 8.12.86)
'this is not a market place' (Lok Sabha, 30.4.86, col 313)
'this is not a place for goondaism' (Lok Sabha, 30.4.86, col 313)
'thugs' (N Z Hans, 1986, vol 471, p 2407)
'Tinfoil Tootsie' (Qld, vol 302, p 3541)

'to act like a spoon of somebody' (Gujarat L A, 10.3.86, vol 14)
'to beget a wife' (Gujarat L A, 3.9.86, vol 20)
'to feel giddy' (Gujarat L A, 22.8.86, vol 19)
'to find fault out' (Gujarat L A, 21.1.86, vol 9)
'to kill time' (Gujarat L A, 3.9.86, vol 20)
'to throw mud' (Gujarat L A, 20.3.86, vol 15)
'tonsorial labour' (Gujarat L A, 2.9.86, vol 20)
'torture' (Gujarat L A, 28.1.86, vol 10)
'total pig ignorance of this government' (Aus N W Terr, 11.11.86, p 754)
'traitor' (Zambia Hans, vol 70, 535–6)
'tricksters' (Zambia Hans, vol 70, 3838)
'truth' (N Z Hans, 1986, vol 472, p 2568)
'turkey' (Can Com Deb, 33rd Parlt, 1st Session, p 11358–9)
'turkey' (N Z Hans, 1986, vol 474, p 4364)
'twit' (N Z Hans, 1986, vol 474, p 4547)
'two-faced' (Can Com Deb, 33rd Parlt, 1st Session, pp 10334–5, 10337)
'unscrupulous' (Alberta L A, 28.7.86, p 811)
'uproar' (Gujarat L A, 10.3.86, vol 14)
'vomit' (NSW PD, p 7980)
'vulture' (N Z Hans, 1986, vol 472, p 2795)
'we are very weak minded people' (Zambia Hans, vol 70, 869–10)
'we now have two Speakers' (Can Com Deb, 33rd Parlit, 1st Session, p 14245)
'Well, shut up' (Vict L C, 28.10.86, p 688)
'whimp' (Vict L A Hans, 24.4.86, p 1591)
'who is neither a man nor a woman' (Gujarat L A, 20.8.86, vol 18)
'will you shut up!' (Vict L C, 8.10.86, p 457)
'you are a messenger for the *Toorak Times*' (Vict L C, 29.10.86, p 835)
'you are intellectually dishonest . . . You are telling lies' (NSW LC Deb, 20.3.86, p 1295)
'you are telling lies' (NSW LC Deb, 30.4.86, p 3323)
'you are working at the behest of the Minister of Parliamentary Affairs' (Lok Sabha, 9.12.86)
'you deliberately misled Parliament' (Vict L C, 7.5.86, p 1043)
'you fool' (Aus N W Terr, 11.11.86, p 762)
'you lying little bastard' (NSW PD, p 3718)
'you nit' (Aus N W Terr, 11.11.86, p 874)
'you see, you're such a little liar' (Tasm Hans, 27.11.86, p 4607)

XX. CLERKS BECOME MEMBERS AND VICE VERSA: AN ADDITION

In volume LII (pp. 170–173) we published a revised and consolidated list of officers who have become members and vice versa. A number of additions to that list were published in volume LIII (p. 146). The following name should now be added to the list –

Roberts, John Anthony, a Clerk in the House of Lords 1960–61, became the 3rd Lord Clwyd in 1987.

XXI. RULES AND LIST OF MEMBERS

Name

1. The name of the Society is 'The Society of Clerks-at-the Table in Commonwealth Parliaments'.

Membership

2. Any Parliament Official having such duties in any legislature of the Commonwealth as those of Clerk, Clerk-Assistant, Secretary, Assistant Secretary, Serjeant-at-Arms, Assistant Serjeant, Gentleman Usher of the Black Rod or Yeoman Usher, or any such Official retired, is eligible for Membership of the Society.

Objects

3. (a) The objects of the Society are;

(i) To provide a means by which the Parliamentary practice of the various Legislative Chambers of the Commonwealth may be made more accessible to Clerks-at-the-Table, or those having similar duties, in any such Legislature in the exercise of their professional duties;

(ii) to foster among Officers of Parliament a mutual interest in their duties, rights and privileges;

(iii) to publish annually a JOURNAL containing articles (supplied by or through the Clerk or Secretary of any such Legislature to the Officials) upon Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

(iv) to hold such meetings as may prove possible from time to time.

(b) It shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon these subjects which any Member may make use of, or not, as he may think fit.

Subscription

4. (a) There shall be a subscription payable to the Society in respect of each House of each Legislature which has Members of the Society.

(b) The minimum subscription of each House shall be £20 per Member, payable not later than 1st January each year.

(c) Failure to make such payment shall make all Members in that House liable to forfeit membership.

(d) A Member who has retired from Parlimentary service may become a life Member of the Society on payment of a subscription of £25 or may become an annual Member of the Society on payment of a subscription of £3 payable not later than 1 January of each year.

List of Members

5. A list of Members (with official designation and address) shall be published in each issue of the JOURNAL.

Records of Service

6. In order better to acquaint the Members with one another and in view of the difficulty in calling a full meeting of the Society on account of the great distances which separate Members, there shall be published in the JOURNAL from time to time, as space permits, a short biographical record of every Member. Details of changes or additions should be sent as soon as possible to the Officials.

Journal

7. One copy of every publication of the JOURNAL shall be issued free to each Member. The cost of any additional copies supplied to him or any other person shall be £7.00 a copy.

Administration

8. (a) The Society shall have its office at the Palace of Westminster and its management shall be the responsibility of the Clerk of the Overseas Office, House of Commons, under the directions of the Clerks of the two Houses.

(b) There shall be two Officials of the Society, one appointed by the Clerk of the Parliaments, House of Lords, and one by the Clerk of the House of Commons, London; each Official shall be paid an annual salary, the amount of which shall be determined by the two Clerks. One of these Officials shall be primarily responsible for the editing of the JOURNAL.

Account

9. Authority is hereby given to the Clerk of the Overseas Office and the Officials of the Society to open a banking account in the name of the Society and to operate upon it, under their signature; and a statement of account, duly audited, and countersigned by the Clerks of the two Houses of Parliament at Westminster shall be circulated annually to the Members.

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XXII. MEMBERS' RECORDS OF SERVICE

Note. – **b.** = born; **ed.** = educated; **m.** = married; **s.** = son(s); **d.** = daughter(s).

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.

YUMBA, Alfred Choshi – Clerk Assistant of the National Assembly of Zambia; b. 1939; Married; Six Children; Ed. B.A. (Hons); Executive Officer, Ministry of Agriculture, 1967–69; Principal, Ministry of National Guidance, 1969; Second Clerk Assistant of the National Assembly of Zambia, 1969–73; Clerk Assistant of the National Assembly, 1973 to date; attached to the House of Commons, London, 1970; attended C.P.A. Conferences: Australia 1970, India 1975, Canada 1977, New Zealand 1979, Zambia 1980, Isle of Man 1984, Saskatchewan 1985; attended African Regional Conferences: Mauritius 1971, Kenya 1976, Zambia 1979; 68th Inter-Parliamentary Conference, Cuba 1981. Seminars for Clerks-at-the-Table and Parliamentary Officials of Commonwealth Parliaments in Eastern, Central and Southern Africa, Zambia 1982, Zimbabwe 1984, Malawi 1986; interests: gardening, dancing and reading.

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