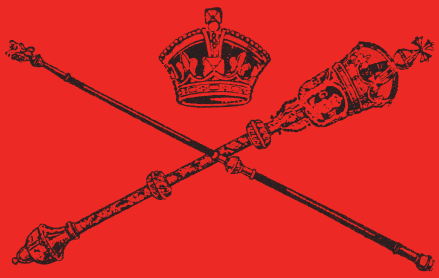

The Table

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

VOLUME 79
2011

£15.00

The Table

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

EDITED BY
NICOLAS BESLY

VOLUME 79
2011

THE SOCIETY OF CLERKS-AT-THE-TABLE
IN COMMONWEALTH PARLIAMENTS
HOUSE OF LORDS
LONDON SW1A 0PW

ISBN 978-0-904979-36-9
ISSN 0264-7133

CONTENTS

THE TABLE
The Journal of The Society of Clerks-at-the-Table in Commonwealth Parliaments

EDITORIAL

The May 2010 general election in the United Kingdom produced the first coalition government since World War II. This has had profound implications on the executive, on party politics and on the House of Commons. It has also affected the House of Lords. Whereas in the Commons the bringing together of the Conservative and Liberal Democrat parties was necessary to obtain a Government majority, in the Lords the coalition parties together also have more peers than the Labour party (though, accounting for Crossbench peers and others, they have no overall majority). This means there is no other party that the official opposition can join with in the division lobbies to have a good chance of defeating the Government in the Lords. In the absence of such arithmetical power, the first few months of the new Parliament saw the opposition in the Lords use a series of procedural mechanisms on certain items of legislation, to varying degrees of effectiveness. Tom Mohan, Clerk of Public and Private Bills at the time, recalls them in his article.

In the wake of the expenses saga that engulfed the House of Commons in Westminster in spring 2009 a committee (known as the Wright Committee after its chair, Tony Wright) was established to reform the workings of the House. It made a series of recommendations, largely directed at increasing the power of backbenchers and reducing executive dominance of the House. One of the core proposals was the creation of a Backbench Business Committee, to allow those not on the Government or opposition frontbenches to decide the business of the House when it is not considering Government business. The House agreed in principle to the creation of the committee before the general election in May 2010, and soon after the election the new House formally established it. Andrew Kennon, the first clerk of the committee, explains how it operates.

Charles Robert, a Principal Clerk at the Canadian Senate, is a regular contributor to *The Table*, for which the editor is very grateful. In this edition he discusses a ruling of the Northwest Territories Court of Appeal about whether the Legislative Assembly is required to publish *Hansard* and broadcast its proceedings in both French and English. The court ruled that deci-

sions on those matters were within the privilege of the Legislative Assembly to determine its own proceedings, and that the privilege overruled the requirement in an Act of the Assembly for dual language publication and broadcasting. The article analyses the court's reasoning and questions whether the verdict was correct.

Kamal Mansura, Secretary to the National Assembly in the South African Parliament, and Francois Basson, Procedural Officer at the National Assembly Table, discuss an attempt by the Minister of Defence and Military Veterans in South Africa to decline to make available to a committee of the National Assembly important papers necessary for the committee's consideration of a bill. The authors consider the Speaker's intervention in the dispute between the committee and the minister, which was viewed as a dispute by proxy between the legislature and the executive.

The final article in this edition concerns an attempt by the chair of the Equality and Human Rights Commission to discuss with members of the Joint Committee on Human Rights at Westminster the contents of a draft report which was expected to criticise him. The joint committee thought his intervention could amount to a contempt in that it may have been an attempt improperly to influence members' parliamentary duties, and recommended that the issue be referred to the Houses' respective Privileges Committees. The case is interesting not least because the fact that any contempt would have been committed before a joint committee meant it was not straightforward how each House should deal with the matter. Moreover, the members of the joint committee were not all of one mind about the individual's behaviour. In addition, the likelihood that he would be criticised in the report raised questions as to whether he should have had an opportunity to comment on it prior to publication. Christopher Johnson, clerk of the Privileges Committee in the House of Lords, details the saga.

In addition to the aforementioned articles this edition contains updates from various Commonwealth jurisdictions, and the results of the comparative study on the timetabling of bills and closure motions. The editor is grateful for all contributions and hopes they make for enlightening reading.

MEMBERS OF THE SOCIETY

Australia Senate

Cleaver Elliott retired as acting Deputy Clerk. **Richard Pye** was promoted to Deputy Clerk.

Christopher Reid and **Bronwyn Notzon** were appointed as Clerk Assistant (Committees) and Clerk Assistant (Procedure) respectively.

John Baczynski was promoted to Director, Senators' Services (formerly known as Deputy Usher of the Black Rod).

Northern Territory Legislative Assembly

Captain David Horton retired as Deputy Clerk of the Legislative Assembly in June 2010. **Michael Tatham** commenced duties as Deputy Clerk on 28 June 2010.

Tasmania House of Assembly

The Deputy Clerk, **Peter Bennison**, was awarded the Medal of the Order of Australia (OAM) in the Queen's Birthday Honours List of June 2010 for *inter alia* services to the Tasmanian Parliament.

Western Australia Legislative Assembly

Dr Julia Lawrinson resigned as Sergeant-at-Arms on 25 June 2010.
Isla Macphail was appointed Sergeant-at-Arms and took up the position on 5 July 2010.

Alberta Legislative Assembly

Louise Kamuchik, Clerk Assistant and Director of House Services, retired in December 2010.

British Columbia Legislative Assembly

Craig James, Clerk Assistant and Clerk of Committees, was appointed Acting Chief Electoral Officer for the Province of British Columbia, effective 6 June 2010. The appointment is expected to continue until 1 September 2011 when Dr Keith Archer, the candidate unanimously recommended by the Special Committee to Appoint a Chief Electoral Officer, will take up his official duties.

Manitoba Legislative Assembly

Bev Bosiak, Deputy Clerk, retired on 31 December 2010.

Québec National Assembly

In September 2010, **François Côté** retired and **Michel Bonsaint**, former Associate Secretary General for Parliamentary Affairs and Procedure, took office as the new Secretary General of the Assembly. **Ariane Mignolet** is now Director of Parliamentary Affairs and Procedure.

India Lok Sabha

Shri P.D.T. Achary, Secretary General, Lok Sabha, 2005–10, demitted office as Secretary General, Lok Sabha, on 30 September 2010. **Shri T.K. Viswanathan** assumed office as Secretary General, Lok Sabha, in place of Shri P.D.T. Achary.

Uttarakhand Legislative Assembly

Shri Mahesh Chandra, Secretary, Legislative Assembly and a member of the Society since the inception of the Uttarakhand branch, was promoted to the post of Principal Secretary, Legislative Assembly, from 27 January 2010.

United Kingdom House of Commons

Robert Wilson, Principal Clerk of Select Committees and Deputy Head of the Committee Office, retired in October 2010, having joined the House in 1967, and was appointed OBE in the 2011 New Year's Honours List.

Philippa Helme, previously Head of the Office of the Chief Executive, was promoted to Deputy Head of the Committee Office with effect from 1 October.

United Kingdom House of Lords

Lieutenant General Sir Frederick Viggers, KCB, CMG, MBE retired as Gentleman Usher of the Black Rod and Serjeant-at-Arms in October 2010. He was replaced by **Lieutenant General David Leakey, CMG, CBE**, who took up post on 1 February 2011.

COALITION GOVERNMENT IN THE HOUSE OF LORDS – SOME PROCEDURAL CHALLENGES

TOM MOHAN
Head of Human Resources, House of Lords[1]

Introduction

The general election held on 6 May 2010 resulted in the formation of the first coalition government in the United Kingdom since the Second World War. The first few months of the coalition's term of office saw an unusual flurry of procedural incidents in the House of Lords, as the Labour party—in opposition for the first time since 1997—tested its muscles. This article summarises some of the more unusual procedural incidents.

Hybridity (1): the Local Government Bill [HL]

The first Lords division of the new Parliament took place on Tuesday 8 June 2010. Lord Howarth of Newport (Labour) moved that the Local Government Bill be referred to the Examiners; the Government opposed the motion and narrowly lost by 154 votes to 150. The bill had been due to receive a second reading that day, but in view of the referral to the Examiners the second reading was postponed.

The Examiners are officers of the two Houses—usually the clerks of private bills—who are charged with considering whether (in the case of petitions for private bills) private bill standing orders have been complied with. In the case of hybrid bills, they have to decide whether a bill is hybrid or not, and if so whether the applicable private bill standing orders have been complied with.

A hybrid bill is one which affects "specific private or local interests in a manner different from the private or local interests of other persons or bodies of the same class". In practice, hybrid bills are extremely rare, and are usually only used for providing parliamentary authority for the construction of major infrastructure projects of national importance.

The question of whether other public bills are hybrid is quite often raised informally, but rarely leads to any proceedings on the floor of the House. The

[1] Tom Mohan was Clerk of Public and Private Bills in the House of Lords from 2002 to 2011.

Government always consult the Public Bill Offices of both Houses before public bills are introduced and, if the clerks raise any doubt about *prima facie* hybridity, the provisions in question are dropped or rewritten before introduction, to avoid the risk of the bill being delayed by the complex procedures and uncertainty of timetable which a finding of hybridity would entail. The most significant feature of hybrid bill procedure is that it involves a select committee stage in both Houses, during which counsel and witnesses are heard on behalf of the promoters and objectors to the bill.

The Local Government Bill, although brief, was highly politically contentious. It was intended to revoke two statutory instruments, agreed to in the final days of the previous administration, which would have created unitary local authorities in two cities, Exeter and Norwich.

Lord Howarth's argument that the bill was hybrid was based on the contention that the provisions in the bill would have affected Norwich and Exeter City Councils differently to other local authorities. In support of his arguments, he alluded to the opinions of a Queen's Counsel and a Parliamentary Agent (a solicitor specialising in private legislation).

Rebutting Lord Howarth's propositions, the Minister (Baroness Hanham) quoted extensively from a letter by the Clerk of Public and Private Bills, which set out in some detail how the clerks in both Houses approach questions of hybridity. In particular, the letter explained that it is not enough for a private interest to be affected by a bill for it to be hybrid. The crucial question is whether the private interest is affected differently from other private interests in the same class. Lord Howarth's argument appeared to ignore the fact that the bill was, in fact, only concerned with a very narrow class of public authorities ("those councils which have made proposals—as yet un-implemented—for unitary status") and dealt with all of them in the same way. The letter concluded—

> "The class of bodies affected by the bill is clear, and all members of that class are treated equally, so we [the Public Bill Office] do not think that any hybridity arises."

Despite this advice, Lord Howarth persuaded the House that the legal opinions (which the House had not seen, and which were not quoted in any detail in the debate) introduced sufficient doubt about whether or not the bill was hybrid to make a reference to the Examiners desirable to clear the matter up.

The House's decision then led to considerable activity behind the scenes. This was the first time since the 1970s that a government public bill had been referred to the Examiners against the wishes of the government. In view of the

fact that the Lords Examiner was also Clerk of Public and Private Bills, and had therefore already expressed his views, the first step was to appoint additional Examiners. In addition to the second Examiner, Simon Patrick (Clerk of Bills in the Commons), two additional appointments were made for the purpose of hearing the case: Allan Roberts (Counsel to the Chairman of Committees in the Lords) and Peter Davis (Counsel for Domestic Legislation in the Commons). Once the additional Examiners had been appointed in both Houses on 14 June, the Examiners issued a guidance note and fixed the date for the examination (23 June 2010). In the meantime, the Government appointed a Parliamentary Agent to work with Parliamentary Counsel and the bill team and to present the Government's case.

"Memorials" (i.e. statements of objection, arguing that private bill standing orders had not been complied with) were deposited by Exeter and Norwich City Councils, and a written statement was deposited by the Government. Before the Examiners could consider the case, however, the ground shifted rather dramatically. The orders which the bill was to revoke were subject to judicial review, and were quashed in the High Court on Monday 21 June, on the basis that the consultations leading up to them had been defective. In the light of this, the two memorials were withdrawn on the day before the examination.

The examination still took place on 23 June, but it was shorter than anticipated, as the only arguments presented came from the Government. The Examiners issued a certificate on 23 June that the bill was not hybrid, and a statement of their reasons was published on 29 June.

The delayed second reading took place on 30 June 2010. There was little meeting of minds between the parties, either on the politics of the bill or on the procedures which had been followed. The reference to the Examiners was criticised by the Minister as "a somewhat dubious delaying tactic",[2] while the Opposition spokesman argued that "... this was neither a spurious concern nor a delaying tactic. It is right that due process has been followed."[3] Nonetheless, the bill was given a second reading and subsequently received Royal Assent on 16 December 2010.

Hybridity (2): the Parliamentary Voting System and Constituencies Bill

The successful referral of the Local Government Bill to the Examiners seemed to encourage the opposition to try again, on one of the coalition's major

[2] HL Deb, col 1798.
[3] HL Deb, col 1802.

constitutional bills. The Parliamentary Voting System and Constituencies (PVSC) Bill had two main purposes. One—giving effect to Liberal Democrat commitments on electoral reform—was to provide for a referendum, to be held in May 2011, on whether the voting system for the House of Commons should change. The other—stemming from the Conservative party's manifesto—was to reduce the number of seats in the Commons from 650 to 600. The respectability of combining these two elements was the subject of a separate procedural motion (see below) but the issue of hybridity was raised on the parliamentary constituencies provisions of the bill.

The bill made provision for redrawing the boundaries of parliamentary constituencies, to ensure that each constituency contained the same number of voters. The only exceptions to this were two existing constituencies containing two groups of Scottish islands, which would retain their existing boundaries, and smaller numbers of voters, in recognition of the practical problems faced by MPs concerned in getting to their constituents. The opposition argued that excepting some constituencies would create unfairness, which (in their view) led to potential hybridity. They again produced legal opinion in support of their claim.

The debate, on 15 November 2010, was heated, and the Public Bill Office advice that the bill was not *prima facie* hybrid was quoted and debated at length. The clerks took the view that the bill could not be hybrid because the right to vote was not a "private right", and as such did not fall within the rights protected by private bill standing orders. As no private rights were engaged, questions of "class" or "adverse effect" did not arise. This view was supported by senior legal members of the House, including Lord Mackay of Clashfern (a former Lord Chancellor) and Lord Lloyd of Berwick (a former Law Lord). The motion to refer the bill to the Examiners was defeated by 224 votes to 210.

Attempting to split a Commons bill: the Parliamentary Voting Systems and Constituencies Bill

As observed above, the PVSC Bill reflected two distinct priorities within the coalition government: reducing the size of the Commons and electoral reform. Baroness McDonagh considered that the inclusion of these distinct topics was objectionable, and tabled a motion as follows—

> "That it be an instruction to the Committee of the Whole House to which the Parliamentary Voting System and Constituencies Bill has been committed that they divide the Bill in two so as to separate the provisions relating to the parliamentary voting system from those relating to constituencies."

This motion was debated on 30 November 2010, immediately before the committee stage of the bill was due to start. Baroness McDonagh argued that, because the bill contained two topics, it was "impossible to scrutinise".[4] This argument was countered by the Leader of the House, Lord Strathclyde, who pointed out that the Labour party, when in government, had presented a Constitutional Reform and Governance Bill which contained 13 topics.

Aside from the propriety of drafting bills on more than one topic, and the practical difficulties which that might (or might not) create, Baroness McDonagh's motion raised interesting procedural difficulties. The bill was a Commons bill, and to date the Lords has never split a Commons bill into two separate bills.

Instructions to committees that they should split bills starting in the Lords are precedented, and cause no practical difficulties. But splitting a bill which had already passed the Commons into two separate bills would lead to some delicate issues when the bills were returned to the Commons. One of the fundamental principles at the "ping-pong" stages of legislation is that the first House should be able to reject all of the propositions of the second House, and return the bill to the form in which it had left the first House. Splitting a bill into two separate entities would not easily be reversible by the Commons, unless the bills were returned to the Commons at the same time, and as a single "package".

The clerks' advice was that Baroness McDonagh's motion was in order—a similar motion had been debated and defeated in 1919. But the clerks also advised that, unless such a motion were moved with Government support, and with an agreed handling strategy for the ping-pong stages of the bill, the only way to ensure coherent proceedings at the ping-pong stages would have been to return one bill, not two, to the Commons. So, even if the two bills had proceeded through the Lords on different timetables, they would have had to be considered as a single entity in the Commons.

This advice was accepted by the opposition. As Lord Falconer of Thoroton said—

> "… if the Bill were split, it would nevertheless have to come back together again before it went to the Commons. In those circumstances there is no purpose in a split unless the Government agree to a split which allows the two Bills in the hypothetical split to go at separate paces. It seems obvious that the Bills should go at separate paces, because one [the part dealing with a referendum on voting systems] has the drop-dead deadline of 5 May whereas the other, which is much bigger, will take longer.

[4] HL Deb, col 1373.

> The Front Bench's position is that we support the principle of a split but recognise that this Motion cannot achieve it. We will therefore not support it in any vote."[5]

The motion was withdrawn, so the propriety of dividing a Commons bill in the Lords remains undecided.

Money bills and Commons financial privilege

Money bills are bills which are certified by the Speaker of the House of Commons, for the purposes of section 1(3) of the Parliament Act 1911, as bills which contain only provisions relating to the raising or spending of public money. The Speaker's certificate is "conclusive for all purposes" (in the words of section 3 of the Act).

The Lords has strictly limited powers in respect of money bills—if such bills are not passed by the Lords within one month, they are automatically presented for Royal Assent. By convention, the Lords does not normally go into committee on such bills, and to that end the Government usually moves a formal Business of the House motion in advance of the second reading of money bills to suspend standing order 46 to allow the remaining stages of the bill to be taken formally on the same day as second reading.

On 29 November 2010 such a formal motion was due to be considered in respect of the Savings Accounts and Health in Pregnancy Grant Bill. In a highly unusual move, the opposition spokesman, Lord McKenzie of Luton, tabled an amendment to the Business of the House motion. The amendment would have amended the Government's motion to state that—

> "it is desirable that the Savings Accounts and Health in Pregnancy Grant Bill should go through its legislative stages in a timetable which allows this House to scrutinise the provisions of the Bill and allows both Houses to pass the Bill without recourse to enactment under section 1 of the Parliament Act 1911".

In a highly-charged debate, the supporters of the opposition motion argued that the House was being muzzled, and being denied the right to consider the social security policy underlying the bill purely because of the "technicality" that it involved money. Lord Grenfell said "I am totally convinced that this is not a money Bill and it is disgraceful that it is being presented as such".[6] He went on to suggest that a joint committee of the two Houses should consider

[5] HL Deb, col 1377.
[6] HL Deb, 29 November 2010, col 1276.

the criteria for certification as a money bill. Other speakers attempted to probe the mechanism for certification, and the point at which the Speaker of the Commons took the decision to certify a bill as a money bill.

Despite the criticisms, the amendment to the procedural motion was defeated, and the bill proceeded along the normal course of a money bill, with no committee stage, and reached the statute book without further incident.

Similar protests were made about the Commons' use of financial privilege to reject Lords amendments to other bills. In particular the Identity Documents Bill (which abolished the previous Labour government's scheme for the introduction of identity cards) roused the opposition. In the Lords, the opposition had won votes which provided for compensation for identity card holders. These amendments were rejected by the Commons without debate. There was no financial resolution authorising any expenditure arising from the bill, so the amendments breached "fundamental financial privilege" and under the terms of Commons standing order 78(3) could not be debated. In a bad-tempered debate it was suggested (incorrectly) that the Commons reasons represented an extension of the doctrine of financial privilege, and more generally that the government were sheltering behind financial privilege instead of addressing the policy implications of the amendments. This led to a further procedural row, as the opposition tried to elicit more information about the legal advice on which the minister was relying. This debate led to a division on a motion that consideration of the Commons reasons be adjourned.[7]

Prompted by the arguments over money bills and financial privilege, the Lords' Constitution Committee produced a short report on these matters for the information of the House.[8]

Conclusion

The Leader of the House was on more than one occasion strongly critical of the opposition's approach. On 29 November 2010 he said—

> "There is a feeling from this side of the House of, 'Here we go again'. The Opposition are clearly set on continuing their procedural mischief-making. A clear pattern has emerged. Back in June we had a Motion to refer the Local Government Bill to the Examiners, two weeks ago we had a similar Motion on the Parliamentary Voting System and Constituencies Bill, today we have an unprecedented Motion on a money Bill, and tomorrow yet

[7] HL Deb, 21 December 2010.

[8] 10th report, session 2010–12, HL Paper 97.

another unprecedented procedural Motion appears on the Order Paper.

A few weeks ago I asked from this Dispatch Box whether the party opposite wanted to be a serious party of opposition, or whether it wanted to see the kinds of procedural ploys, wheezes and games that we see again today. The answer is becoming increasingly clear—the party opposite would prefer to manufacture time-wasting debates than to get on with the important business of the Public Bodies Bill on today's Order Paper. They want to make this place like another place: a House that spends hour after hour on procedural debate. I have to tell the noble Lord that this vision for the House is not shared by the majority of noble Lords."[9]

When the House returned after the Christmas recess in January 2011 the opposition's appetite for procedural challenges and innovations seemed to have waned. But the debates over the Government's flagship PVSC bill continued. The committee stage turned into a war of attrition, lasting 17 lengthy days, including an all-night sitting on 17–18 January 2011. Inevitably, tempers frayed as the bill proceeded, and other members of the House in their turn used rare procedural motions, such as the closure, in an attempt to speed things up. The bill finally reached the statute book on 16 February 2011.

At the time of writing (February 2012) the 2010–12 session is drawing to a close. Commons financial privilege remains a controversial topic, particularly in the context of the Government's Welfare Reform Bill, which makes significant changes to the social security system. Financial privilege has been debated several times in the Lords, and the clerks of both Houses have issued public statements about the operation of financial privilege, which are available on the UK Parliament website.[10] Several other controversial bills are still completing their passage through the Lords. It remains to be seen whether the end of the session will see further procedural incidents, and whether the Lords will continue to display their willingness to challenge and debate both the advice of the Lords clerks and the positions taken up by the Commons.

[9] HL Deb, col 1271.

[10] http://www.parliament.uk/business/news/2012/february/commons-financial-privilege/, http://www.parliament.uk/documents/lords-information-office/Note-on-HC-financial-privilege-Welfare-Reform-Bill-2012-02-13.pdf

HOUSE OF COMMONS BACKBENCH BUSINESS COMMITTEE[1]

ANDREW KENNON
Principal Clerk of the Table Office, House of Commons, Westminster

One significant change in the new Parliament elected in May 2010 has been the 35 days (or more) allocated for business to be chosen by the Backbench Business Committee.

The origins of the Backbench Business Committee lie in the report of the Wright Committee. Set up to reform the House after the expenses scandal in 2009, the Committee recommended that "a Backbench Business Committee be created ... comprised of between seven and nine members elected by secret ballot of the House as a whole, with ... party proportionality [reflecting] the House". For some this was a stepping stone towards a House business committee, similar to that in the Scottish Parliament.

Perhaps the Committee's most useful recommendation was that "No Standing Order should constrain the inventiveness of colleagues in the next Parliament".[2]

Elections

In accordance with the new practice in the House of Commons, the chair of the Committee was directly elected by the House. There was some surprise that Natascha Engel, a Labour (opposition) backbencher first elected in 2005, defeated the widely respected former Deputy Speaker, Sir Alan Haselhurst, a Conservative (government) MP of many years standing, by 202 votes to 173. The Committee comprises eight Members—conveniently small for making decisions but too small to ensure the representation of minor parties. In the current House, the party breakdown reflecting the composition of the House as a whole gives the Conservatives four, Labour three and the Liberal Democrats one. The Committee operates almost exclusively by consensus. It has only had one division so far, and no decisions have been taken on party lines. But the absence of minor parties has been an area of political delicacy,

[1] This article was originally published in the magazine for the Commonwealth Parliamentary Conference 2011.

[2] *Rebuilding the House: Implementation* (HC 372), published 15 March 2010.

with the chair of the Committee going to great lengths to assure the two dozen or so members representing six small parties or independents that their representations will carry equal weight with other members.

Unlike other select committees, the full membership of the Backbench Business Committee is also directly elected by the House. This is complicated by the party and gender requirements (at least two men and at least two women). Of the three parties represented on the Committee, the places for two of the parties were filled without contested elections—and these also satisfied the gender requirement. Nonetheless the whole House was able to vote in the election between three Labour MPs for two places. A subsequent by-election for both Labour places (following promotions to shadow positions) was uncontested. In the first election all those elected were relative newcomers, having themselves only been first elected to the House in 2005—with one from the new intake of 2010.

Choosing business

The Committee's main task is to select subjects for debate on the days provided for backbench business each year. These days are not set out in advance for the whole session, unlike the days set aside for private members' bills. Like the 20 Opposition days, they are set aside, one at a time a few weeks in advance, from the Government's business plan. The Backbench Business Committee therefore usually gets two or three weeks notice of a particular day in the chamber. Part of the allocation is made up of at least 16 half-days not on the floor of the House but in the parallel sitting in Westminster Hall. This means that now all Thursdays in Westminster Hall are either for Backbench Business or for debates on select committee reports.

The Committee meets once a week—at lunchtime on a Tuesday—in public and on the record to hear representations from members for time to be allocated for debate on a specific subject. This meeting has variously been described as the "Dragon's den" and "Natascha's salon". At any one meeting the Committee will probably have no more than one day in the chamber to allocate and possibly a half day or two in Westminster hall. So demand usually exceeds supply, which helps the Committee reach decisions. Members tend to ask those applying for debates how many other members would take part in debate and what other opportunities have been taken to debate the issue.

The Committee has been keen to see substantive motions rather than general debates on the floor of the House—with general debates held in Westminster Hall. It is a long time since private members' motions have been

debated in the House. There were days for such motions—chosen by ballot—until the Jopling reforms of sitting hours in the mid-1990s re-allocated the time for general debates on the adjournment. Although members are used to tabling Early Day Motions which are very unlikely to be debated, the practice of drawing up a motion which may be subject to amendment and vote had not always been simple.

While it is often said that Early Day Motions are never debated, some of the motions chosen for debate on backbench business days did in fact originate as EDMs—for instance the debate on 10 March 2011 on UN Women. The Committee has taken note of the Early Day Motions which have received most support in the form of added names but there have been few cases of MPs trying to bring their EDM to the Committee for debate on the floor of the House. There has been one example of an EDM being listed on the order paper as relevant to a debate in Westminster Hall.

One delicate matter with which the Committee has had to contend is support among other members to schedule business which may lead to a vote on a Thursday afternoon. Members often expect to be on their way back to their constituencies by then and successive governments have chosen in the past to put on non-contentious business that day. That is why the day of the week most often allocated to the Backbench Business Committee is Thursday. One school of thought holds that backbenchers ought to be at Westminster on Thursday afternoon anyway. Another school recognises the competing constituency commitments. Sometimes the Committee has scheduled a debate on a substantive motion with a possible vote at about 4.00 pm followed by a general debate ending without a vote at 6.00 pm. Either way, the number of members willing to stay and debate on Thursdays—both in the House and concurrently in Westminster Hall—has been impressively high.

The figure of 35 days reserved for backbench business in the session starting in May 2010 was drawn from the recommendation of the Wright Committee. That Committee looked at the number of days traditionally devoted to set-piece debates on certain subjects and added them up—five days on defence, two before EU Council meetings, one on Welsh Affairs, one on Public Accounts Committee reports, etc. The Backbench Business Committee said it would start from the presumption that, for the first session, there would continue to be debates on these subjects. In practice, the demand from backbenchers for debates on other subjects and a shortage of direct representations to the Committee for debates on these regular subjects has caused a shift of emphasis, not without some unhappiness. For example, just before Christmas each year there used to be two debates on the floor of the House on the forthcoming EU

Council and on fishing. In 2010 members representing fishing communities were allocated a three-hour debate in Westminster Hall instead; and the Backbench Business Committee, not having received substantial representations from members, did not allocate any time for a general debate prior to the EU Council.

The definition of what should count as backbench business has also proved a problem. The standing order sets out the items which are not backbench business: Government legislation, opposition days, private members' bills, etc. But it remains open to the Government to find days of general debates on matters of their own choice. Problems have arisen about such items as reports from the Standards and Privileges or Procedure Committees—the sort of thing which would have been loosely called "House business" in the past, though that term is more an indication of whether the Government would put a whip on than of the nature of the business. Both the Committee and the Government business managers have been wary about setting precedents in this experimental period.

New practices

One innovation has been providing an opportunity for the chair of a select committee to present a report on the floor of the House. This has been done as an experiment, as the first item on a backbench day. The chair moves a procedural motion to take note of the publication of the report. Other members then take part by intervening on the chair. After 15 minutes, the question is put and agreed without a division.[3] Ideally the Committee would like proceedings to take place in the same format as a ministerial statement, with others asking questions, but this may require changes to the standing orders.

An adaptation of existing practice has been the arrangements for the last sitting day before a major recess—four times a year. These used to comprise a series of speeches by backbenchers on any subject of their concern with a reply at the end from the Deputy Leader of the House. This has always been a useful outlet for members to air constituency issues when there is no other opportunity. The Backbench Business Committee asked for members to give advance notice of their subjects so that they could be grouped together by department. This then gives rise to a mini-debate to which ministers from the relevant departments provide an answer. The final part of this debate remains general with a reply by the Deputy Leader of the House.[4]

[3] For example, see 10 March 2011.

[4] For example, see 21 December 2010 and 5 April 2011.

One of the consequences of backbench business is that within a single debate there is more time for backbenchers because the minister and the opposition shadow only speak once. In a general debate in the past, there would be frontbench speeches from both sides both at the beginning and the end. After some experimentation, the usual practice now is for the backbench member who is in charge of the debate to speak first and the minister to speak at the end of the debate, preceded by the opposition shadow. This is because members generally prefer to speak before the minister so that the latter's comments reflect what has been said earlier. Debates are sometimes arranged differently, with the minister speaking earlier in the debate, especially if the Government has something substantive to say. It has also become normal practice for the member in charge of the debate to speak for a couple of minutes at the end.

The debate ends, as with other proceedings, with a decision by the House. In some cases there have been votes, in others the motion has been agreed without division. Amendments have been tabled and some selected. At an early stage the Government tabled an amendment to a backbench motion to leave out all the effective words—as it would on an Opposition day—and the Speaker did not select that amendment. Since then the Government have been more cautious, sometimes choosing to allow a motion with which they slightly disagree to be passed without a vote.

Staff

The staff supporting the Committee are drawn from the Table Office, without any additional resources. The Principal Clerk of the Table Office acts as the procedural adviser, while the day-to-day organisation is carried out by a senior clerk, supported by one administrative assistant. Although the weekly committee meetings do not require a substantial amount of paper, the task of organising the debates on backbench days requires a significant time commitment.

The Committee set out its provisional approach in a special report in July 2010.[5] Its website lists the decisions taken and these are also set out in future business section of the daily order paper.[6]

[5] Backbench Business Committee, 1st Special Report (2010–11): *Provisional Approach: Session 2010–11* (HC 334).

[6] <http://www.parliament.uk/business/committees/committees-a-z/commons-select/backbench-business-committee/>

Conclusion

Backbench business has been experimental, not least because the members were only appointed for one session rather than the whole Parliament and the operation of the Committee is to be reviewed after that first session. More recently, however, Government spokesman have re-affirmed the commitment in the coalition Government's programme to move to a House business committee in the third session of the current Parliament—i.e. in about 2013. The general feeling seems to be that this innovation has made a difference, and a positive one at that. The new procedure seems popular with members, with both debating time over-subscribed and a healthy stream of members appearing at the weekly meetings with substantive propositions for debate.

FALLING SHORT: HOW A DECISION OF THE NORTHWEST TERRITORIES COURT OF APPEAL ALLOWED A CLAIM TO PRIVILEGE TO TRUMP STATUTE LAW

CHARLES ROBERT*
Principal Clerk, Senate of Canada

A recent decision of the Court of Appeal of the Northwest Territories raises some important questions about conflicting interpretations of statute law and legislative privilege and the role of the courts in settling the conflict.[1] The particular case involved, in part, the requirement under the Official Languages Act[2] (OLA) of the Northwest Territories to publish the records and journals of the Legislative Assembly in both French and English. The case also dealt with broadcasting the Assembly's deliberations and the availability of the broadcasts in a French version. The trial judge had held that the publication of *Hansard* and the broadcast of proceedings, when the Assembly decides to produce them, should be done in both languages. For its part, the Court of Appeal determined that the publication of *Hansard* and the broadcast of proceedings are within the scope of parliamentary privilege and that this privilege was not abrogated by the OLA. The court also decided that since privilege was not subject to the Canadian Charter of Rights and Freedoms, it had no authority to review the Assembly's decisions about language.

The Court of Appeal accepted much of the trial judge's interpretation of the obligations imposed on the Legislative Assembly by the OLA, but overturned the result on the basis of parliamentary privilege. This article argues that, in reaching this conclusion, the Court of Appeal made several errors in both fact and law. This paper explores the history of the case and the approaches taken by the two courts, suggesting that the decision of the Court of Appeal went too far in not recognising the limits of privilege and, at the same time, underplayed the extent and application of clear, unambiguous statute law.

* The opinions expressed in this article are those of the author. The author acknowledges the assistance of Jonathan Shanks in the preparation of this paper.

[1] *Northwest Territories (A.G.) v. Fédération Franco-Ténoise*, 2008 NWTCA 06, leave to appeal to S.C.C. refused [Fédération Franco-Ténoise].

[2] R.S.N.W.T. 1988, c. 0-1.

Though the case certainly deserves to be explored, any review of the judgment will have no practical impact on the consequences that flowed from the decision. The Supreme Court of Canada declined to hear the case after an application for leave to appeal was filed by both the appellants and the respondents. Consequently, the decision of the Court of Appeal stands as the final word in this case. The Legislative Assembly is now exempt from certain obligations of the OLA that expressly apply to it. Nevertheless, this article is not a meaningless, theoretical exercise. The rationale developed by the Court of Appeal in reaching its conclusions and rejecting the findings of the trial court repeated some flawed arguments used in the past and risks adding some others as well. Without a thorough review of the decision made by the Court of Appeal, it is possible that the approach developed in its ruling could be used again in a similar case in the future.

The focus of this analysis will be in the context of the actual decision involving language rights, but its impact goes well beyond these particulars. The questions raised by this case contrast the right of a legislative assembly to control its own debates or proceedings, a recognised privilege, with the obligations of the courts to support and maintain a law that puts in place obligations touching the operations of the assembly. While tradition and precedent would suggest that the courts be deferential to the assembly, where third-party rights are involved or where there are other constitutional values to be sustained, the court may need to follow a different course.[3] This is not a question of the court reviewing the exercise of a privilege, but whether the court can provide an appropriate and enforceable means to define or delimit the scope of the privilege.

Since the incorporation of the Canadian Charter of Rights and Freedoms into the Canadian Constitution in 1982 there have been a significant number of court cases contesting the scope and exercise of parliamentary privilege.[4] These cases have represented serious challenges for the courts. The decision of the NWT Court of Appeal is by no means unusual in this regard. While parliamentary privilege is acknowledged to be an important benefit that enables legislative bodies to control their debates or proceedings effectively, its con-

[3] *Harvey v. New Brunswick (A.G.)*, [1996] 2 S.C.R. 876 at para. 71.

[4] See, for example, *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1. S.C.R. 319; *Harvey v. New Brunswick (A.G.)*, [1996] 2 S.C.R. 876; *Ainsworth Lumber Co. Ltd. v. The Attorney General of Canada and Paul Martin* (2003), 226 D.L.R. (4th) 93 (B.C.C.A.); *Samson Indian Nation and Band v. Canada*, [2004] 1 F.C.R. 556; *Telezone Inc. v. Canada (Attorney General)*, 69 O.R. (3d) 161 (C.A.); *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667; *Gagliano v. Canada (A.G.)*, [2005] 3 F.C.R. 555; *Canada (RCMP) v. Canada (A.G.)*, 2007 FC 564; *Dreaver v. Pankiw*, [2007] F.C.J. No. 1633 (FCA) (QL); *Arthur c. Gillet*, 2007 QCCA 470; *Knopf v. Canada (Speaker of the House of Commons)*, [2008] 2 F.C.R. 327 (C.A.).

tours as a part of the law are not always well understood by the courts. This is evident from the inconsistent and unsatisfactory decisions made by several courts and tribunals. There are now, for example, at least four conflicting court decisions with respect to summoning parliamentarians as witnesses to testify in court.[5] In other cases, a labour tribunal in British Columbia used privilege to deny the right of Legislative Assembly staff to form a union[6] and, in another dispute, the right of the court to review the dismissal of an employee was challenged on the basis of privilege even though the firing involved an allegation of discrimination based on a physical handicap.[7] The ability of courts and tribunals to address these matters properly depends on improving their understanding of parliamentary privilege. One way this can happen is to engage in careful analysis of the decisions made by the courts like the one delivered by the NWT Court of Appeal.

All is not bleak. The Supreme Court of Canada has provided some solid guidelines for understanding legislative privilege and how it can be accommodated in this Charter era. Of the three cases decided by the Supreme Court since 1982, one in particular has been especially useful in clarifying some of the fragmented jurisprudence on parliamentary privilege in Canada. This is the *Vaid* case, decided in 2005. The decision involved alleged discrimination in the treatment of an employee of the House of Commons: a driver working for the Speaker. Justice Binnie, writing for a unanimous court, set out some general propositions, as well as the procedures courts should follow when faced with a claim of privilege.

There are other reasons, independent of these court decisions, that explain why the subject of privilege is a difficult one. Parliament has not comprehensively codified parliamentary privilege, as has been done at the federal level in Australia.[8] Nor have Canadian parliamentarians engaged in sustained reflection about the nature and extent of their privileges, as has been done by their British counterparts.[9] Although it is recognised that parliamentarians require

[5] *Ainsworth Lumber*, *ibid.*; *Samson Indian Nation and Band*, *ibid.*; *Telezone*, *ibid.*; *Arthur*, *ibid.*

[6] *British Columbia (Legislative Assembly) (Re)*, [2003] B.C.L.R.B.D. No. 202.

[7] *Scott v. Office of the Speaker of the Legislative Assembly and Larsen*, 2005 BCHRT 550. See also *Thompson v. McLean* (1997) 37 C.C.E.L. (2d) 170 (Ont. Ct. Gen. Div.).

[8] Parliamentary Privileges Act 1987 (Austl.).

[9] There have been three major studies of privilege in the United Kingdom: U.K., Parliament, Report from the Select Committee on Parliamentary Privilege (1967); U.K., Parliament, Third Report from the Committee of Privileges (1976–77); and, U.K., Parliament, Report and Proceedings of the Joint Committee on Parliamentary Privilege (March 1999), online: <http://www.publications.parliament.uk/pa/jt/jtpriv.htm>. At para. 45 of *Vaid*, *supra* note 4, Justice Binnie noted that the Joint Committee was chaired by a Law Lord and wrote that "[w]hile the British Joint Committee Report may not yet have been formally adopted by the U.K. Parliament,

some immunity from the general law in order to fulfill their legislative and deliberative functions, there is not always agreement on precisely what privileges are required. Until there is some codification of privilege or a comprehensive study of privilege in the Canadian constitutional context, the courts will have to fend for themselves, working through cases with the risk that the results will not always be fully satisfactory. The lack of codification and of a general understanding of parliamentary privilege in Canada has contributed, at least in part, to the difficulties faced by the Court of Appeal in grasping and properly evaluating all the factors of this case so as to balance the conflicting claims of privilege and the obligations of the statute.

The decision of the Court of Appeal regarding the alleged failure of the Legislative Assembly to provide sufficient services in French was part of a much larger ruling on the scope of language rights in the NWT based on the OLA, which was enacted by the NWT in 1984.[10] The Act affirmed that English and French were the official languages of the NWT having "equality of status and equal rights and privileges."[11] These provisions mirror those found in ss. 16–20 of the Charter. In addition, the OLA sought to promote the protection of aboriginal languages within the NWT. Both efforts were supported financially by the federal government.

The implementation of French-language services under the OLA proved difficult for the NWT government, and various remedial efforts and renewed commitments did not achieve any significant improvement.[12] In October 2001, the Fédération Franco-Ténoise and others launched a wide-ranging action for damages and other relief, alleging breaches of language rights under the OLA and the Charter. Respondents in the case included the Commissioner of the NWT, the Speaker of the Legislative Assembly of the NWT, the Languages Commissioner of the NWT as well as the Attorney General of Canada.

With respect to the Legislative Assembly, the NWT OLA provides that:

"7. (1) Acts of the Legislature and records and journals of the Legislative

its reasoning in these passages reflects a considered parliamentary view of the appropriate limits to claims of privilege, which seems to me also to reflect the underlying principles of the common law."

[10] The Official Languages Ordinance, S.N.W.T., 1984, s. 2 was the precursor to the OLA. Parliament had originally intended to achieve official bilingualism through a federal statute—Bill C-26, which was introduced in 1984. This was not well received in the territory and the NWT was permitted to enact its own official languages guarantees. However, Parliament still legislated to ensure that the NWT OLA could not be amended without the approval of Parliament.

[11] *Ibid.*

[12] A detailed history of the OLA is found in the decision of the trial judge: *Fédération Franco-Ténoise v. Canada (A.G.)*, 2006 NWTSC 20 (unofficial English translation) [Trial Decision].

> Assembly shall be printed and published in English and French and both language versions are equally authoritative.
> […]
> (3) Copies of the sound recordings of the public debates of the Legislative Assembly, in their original and interpreted versions, shall be provided to any person on reasonable request.
> […]
> **11.** (1) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any head or central office of a government institution in English or French, and has the same right with respect to any other office of that institution where
> (a) there is a significant demand for communications with and services from the office in that language; or
> (b) it is reasonable, given the nature of the office, that communications with and services from it be available in both English and French."

The decision by the trial judge, Madam Justice Moreau, addressed the specific issues relating to the range and level of French-language services offered at the Legislative Assembly, both those internal to the Assembly and those offered externally to the public.

Of the internal documents, two are especially important, the *Votes and Proceedings* and *Hansard*. The *Votes and Proceedings*, or its equivalent in other jurisdictions, the journals, is traditionally the official document of a legislative body. The trial judge noted, however, that the *Votes and Proceedings* had an intermittent publishing history. Between 1992 and 1996 it was (with the exception of one session in 1992) printed in both languages; however, publication ceased altogether between 1996 and 2005. Therefore, by default, the consistent source document for information about the work of the Assembly, including the record of votes, was *Hansard*. Printed under the authority of the Speaker as an almost verbatim transcript of deliberations, *Hansard* was published only in English. The Assembly maintained that since it was not an official document, *Hansard* did not fall within the ambit of section 7.

To determine the status of *Hansard*, the trial judge examined the meaning of the terms used in section 7(1) ("records and journals of the Legislative Assembly" and "*archives, comptes rendus et procès-verbaux*") and concluded that "whatever the origins of *Hansard* may be, it currently constitutes an *official record* of the work of the Assembly."[13]

A similar approach based on statutory interpretation guided the trial judge's

[13] *Ibid.* at para. 759. [Translation.]

review with respect to the obligation to broadcast in both languages. Section 11(1) of the OLA states that "any member of the public in the NWT has the right … to receive available services from any head or central office of a government institution in English and French". The practice of the Assembly was to have a 90-minute portion of the Assembly's debates or proceedings televised the same night and twice the next day in two of the other official languages, in turn, on an equal basis. This meant, in effect, that a French broadcast was heard only once a week since it was grouped with the nine aboriginal languages.[14] The trial judge concluded that the Legislative Assembly is the head office of a government institution for the purposes of the OLA, with the consequence that broadcasting must be done equally in both English and French.

In an amended statement of defence, the NWT Legislative Assembly claimed parliamentary privilege "with respect to the entire issue of the management, monitoring and distribution of the Assembly's internal procedures and documents."[15] This argument was dealt with in two paragraphs of the trial judgment. With respect to *Hansard*, the trial judge held that:

> "… the Assembly itself adopted the OLA NWT with no conditions or restrictions on the application of s. 7. Therefore, if privilege applies, the Legislative Assembly has circumscribed it. ... Although privilege may apply to the Assembly's choice of manner of maintaining its record of daily activities, when it decides to produce *Hansard* in English as an official report, it must also produce it in French."[16]

Similarly, with respect to broadcasting, the trial judge explained that:

> "once the Assembly decides to broadcast the debates, or authorizes the broadcast by other entities in English, the principle of substantive equality comes into play and mandates an equivalent broadcast in French."[17]

Two questions were before the Court of Appeal with respect to the obligations of the Legislative Assembly: "Did the trial judge err in concluding that the OLA required the broadcasting of the Legislative Assembly debates and the publication of *Hansard* in French? Did she err in concluding both matters were not subject to legislative privilege?"[18] The answer to the first question was generally no. The Court of Appeal agreed with the position taken by the trial judge

[14] "The result is that French has standing equal [not to English but] to the Aboriginal Languages for the purpose of the broadcasts of the debates." *Ibid.* at para. 495.

[15] Trial Decision, *supra* note 12 at para. 761.

[16] *Ibid.*

[17] Trial Decision, *supra* note 12 at para. 763.

[18] *Fédération Franco-Ténoise*, *supra* note 1 at para. 48.

in her assessment of the official nature of the documents and the application of s. 7 with respect to them. The Court of Appeal also agreed that s. 11 of the OLA imposed an obligation to broadcast equally in both languages.

As to the second question, the Court of Appeal was prepared to accept, as an underlying proposition, that legislative privilege could trump these requirements of the OLA. Acknowledging that this was a complex question and "not free from doubt" and regretting that so little argument was devoted to this point, the Court of Appeal proceeded to elaborate its own arguments. It relied, in part, on the shared understanding between the appellants and respondents in the case with respect to the nature and scope of legislative privilege and did not ask any serious questions about possible limitations. The Court of Appeal appeared to make several errors in both fact and law in establishing its position and understanding of legislative privilege. The court's views on explicit abrogation and its consequences do not provide sufficient justification for its finding that privilege overrides the obligations imposed on the Legislative Assembly by the OLA.

One reason why the Court of Appeal gave a seemingly unsatisfactory answer to the second question was that it did not follow the guidelines established by the Supreme Court in *Vaid*. It did not identify the actual legislative privilege involved and the relationship of that privilege to the obligations of the OLA. Instead, it relied on a generic assessment, based on "strong authority", that decisions relating to publishing and broadcasting "are generally subject to privilege as being part of the publication of proceedings and the control of internal proceedings."[19] The court was not assisted in its work by the decision of the Fédération Franco-Ténoise to respond to the Assembly's claim of privilege by arguing that there was a privilege but it had been abrogated by the OLA. All of this led the court not to ask questions about the specific privilege being claimed and the proof for its existence. According to *Vaid*, the onus for proving a specific privilege should rest with the claimant, in this case the Legislative Assembly. Furthermore, in considering the claim, *Vaid* requires that it be measured against necessity, the foundation for all parliamentary privileges. This necessity is not simply historically based, but must also be considered according to contemporary circumstances. This approach would have been particularly useful in understanding the privilege affected by this case and assessing it in the context of Canada's longstanding constitutional policy on the recognition of the equal status of English and French as official languages.

The fundamental purpose of any parliamentary or legislative privilege is to provide protection against outside interference that is unwarranted and

[19] *Fédération Franco-Ténoise*, *supra* note 1 at para. 286.

intrusive, or that would impede the Legislative Assembly in controlling its debates or proceedings. Therefore, it seems unreasonable to invoke privilege to disable, and render meaningless, a law which the Assembly itself adopted relating to its administrative operations. The OLA contains a preamble which makes clear the involvement of the Legislative Assembly in achieving the recognition and use of the official languages as well as the nine aboriginal languages of the NWT. The preamble expresses the desire to establish English and French as official languages with equal status, rights and privileges. It asserts a belief in the benefit of legal protection and acknowledges that preserving the use of official languages is a "shared responsibility of language communities, the ***Legislative Assembly*** and the Government of the Northwest Territories."[20] Given the stated purpose of the OLA, the Court of Appeal should have made an effort to explain why, in light of the complaint of the Fédération Franco-Ténoise, the Legislative Assembly's choice to produce the documents in the way it did was entitled to the protection of privilege.

Despite ample evidence and several court decisions with respect to the constitutional value of official languages and their importance in the federal Parliament and certain provincial legislatures, the Court of Appeal did not address these issues. This is also evident by the court's interpretation of the passage of the Legislative Assembly and Executive Council Act[21] in which the Assembly claims to possess the same privileges as the House of Commons.[22] According to the court, this statutory assertion by the Assembly of its privileges was in effect at the relevant time during the initial trial. However, the subsection in question was only adopted by the Legislative Assembly in October 2006 and brought into force in October 2007, 18 months after the decision of the trial judge.[23] More significantly, the court does not review the legal foundation for the Legislative Assembly's statutory claim to privilege. While there may be questions about whether a territory has the same right to claim privilege as a province, any claim to inherent privilege by the Legislative Assembly would, like other legislatures, be dependent on necessity. This was confirmed by the NWT Supreme Court in 1999 in the case of *Morin v. Northwest Territories*.[24]

[20] Official Languages Act, *supra* note 2, preamble [emphasis added].

[21] S.N.W.T. 1999, c 22.

[22] Subsection 12.1(1) of the Act reads: "In addition to the rights, privileges, immunities and powers conferred by this Act, the Legislative Assembly, its members and its committees have the same rights, privileges, immunities and powers as those held by the House of Commons of Canada, the members of that House and the committees of that House."

[23] S.N.W.T. 2006, c. 22, c. 7.

[24] *Morin v. Northwest Territories (Conflict of Interest Commissioner)*, 14 Admin. L.R. (3d) 284 (NWT S.C.).

The Court explained that since the Legislative Assembly has no entrenched constitutional status, the only privileges it has "are those as are incidental and necessary to enable them to perform its legislative functions."[25]

There is one other salient point that the Court of Appeal does not seem to recognise with respect to the NWT Assembly's claim to privilege. In attributing the privileges of the federal House of Commons to the Legislative Assembly, the Court appears to assume that these privileges are comprehensive and without qualification, and that they are identical to those of Westminster. In reality, the privileges of the Canadian House of Commons have never included control over language. Section 133 of the Constitution Act, 1867, the model for s. 7 of the OLA, has always provided for the use of French or English in debate and has mandated that the records and journals of the Senate and the House of Commons, as well as the Legislative Assembly of Québec, be published in the two official languages with both being equally authoritative.[26] As a result, if the court accepts the claim of the Legislative Assembly to the privileges of the federal House of Commons, then the OLA does not conflict with privilege. Alternatively, if the claim to privilege is founded on inherent privilege, it cannot be invoked to prevent the application of the OLA within the Legislative Assembly on the basis of necessity.

In developing its reasons, the Court of Appeal relies strongly on British authority. On one level, this is to be expected given the long history of the British parliamentary system and the extensive jurisprudence. It is also supported by the ongoing interest of the United Kingdom Parliament in privilege, as evidenced by three important studies over the last 45 years compared to no real assessment of privilege anywhere in Canada over 140 years.[27] While British privilege does provide a sound basis for understanding, the court ought to have applied this understanding of privilege within the Canadian constitutional context, which includes a written constitution, federalism and language rights. Instead, the Court of Appeal, in explaining why the OLA does not apply to the Legislative Assembly despite the clear language of the law, looks to British authorities and an outdated court case. This approach is based on a notion of abrogation that requires a specific reference to the privilege if, in a statute, it is to be qualified or limited in any way. The Court of Appeal holds that ss. 7 and 11 of the OLA do not meet this test and, therefore, the privilege has not been surrendered. The court proceeds to elaborate this reasoning without consider-

[25] *Ibid.* at 18.

[26] Charles Robert, "Parliamentary Privilege in the Canadian Context: An Alternative Perspective Part I: The Constitution Act, 1867" (2010) *The Table*, vol. 78 at 32–47.

[27] *Supra* note 9.

ing, apparently, that in adopting this position, it has rendered s. 7 meaningless.[28] The explanation for this principle of abrogation is based squarely on the 1870 judgment of the Law Lords in the case of the *Duke of Newcastle v. Morris*,[29] a case the Supreme Court of Canada pointedly criticised as out of step with statutory interpretation, as the Court of Appeal acknowledged.[30]

There are several problems with the way the Court of Appeal interpreted and used the *Duke of Newcastle* case. The first is the principle of abrogation that it supposedly established. According to the court, "At common law a recognized privilege is not abrogated unless by express words in the statute."[31] However, this is not what the Law Lords stated in their decision. The actual proposition is that a privilege established through common law can only be abrogated by express provision. This is quite different. This interpretation is based on the accepted notion that common law on whatever subject can only be abolished, repealed or annulled if the statute law that displaces it is clear in this intent. If a privilege is recognised by other than common law, a change to its status or scope can be explicit, but this is not always the case; it can also be by implication.

There is one striking example of a statutory privilege which has been implicitly altered through a relevant statute. It happened with the adoption of a law by the British Parliament in 1871, one year after the *Duke of Newcastle*. Chapter 83 of the General and Public Statutes for that year provides committees of the House of Commons with the power to swear in witnesses.[32] This power had long been sought by the committees charged with examining controverted elections and applications for divorce. This Act provides that anyone found guilty by a court of giving false evidence before a committee would be liable to the penalties for perjury. However, the only way such a conviction could be secured was through the use of the committee testimony in court. This, in turn, involves an implicit exception to Article IX of the Bill of Rights, the freedom of speech privilege which prohibits any debates or proceedings of Parliament being questioned outside its walls.

The decision of the Court of Appeal overlooked another important element

[28] See generally Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ont.: LexisNexis, 2008) at 309.

[29] (1870), 4 A.C. 661 (H.L.); 23; Law Times Reports 569.

[30] Justice Binnie held that "the 'presumption' suggested by Lord Hatherley 135 years ago is out of step with modern principles of statutory interpretation accepted in Canada." *Vaid*, *supra* note 4 at para. 80.

[31] *Fédération Franco-Ténoise*, *supra* note 1 at para. 288.

[32] An Act for enabling the House of Commons and any Committee thereof to administer Oaths to Witnesses (U.K.) 34 & 35 Vict. (c. 84).

of the *Duke of Newcastle*. This aspect of the decision was also not mentioned by the Supreme Court in its comment with respect to statutory interpretation. The Duke of Newcastle, a bankrupt peer, challenged two provisions of the law of bankruptcy based on privilege. He claimed that he was liable neither to imprisonment nor to the seizure of his property. The Law Lords agreed that his immunity from imprisonment remained in force. As a privilege founded in common law, it had not been abrogated through the recent iterations of the bankruptcy law of 1849 and 1861. This finding is the source of the reference misused by the Court of Appeal to the effect that a "privilege which had been established by common law … should be held to be a continuous privilege not abrogated or struck at unless by express words in the statute."[33] However, the property of the Duke was subject to seizure for the benefit of creditors as sanctioned by the law relating to "all debtors". On this basis, the Law Lords agreed that the Duke was subject to the seizure of his property. As Lord Hatherley, the Lord Chancellor, explained it: "To restrict its meaning [the term "all debtors"] would be contrary to all the principles of construction."[34] Lord Westbury concurred when he remarked how extraordinary it would be to think that when an Act of Parliament speaks of "all debtors", it did not intend to include among the debtors those having privilege of Parliament.[35]

To reinforce its view on the explicit abrogation or waiver of privilege, the Court of Appeal referred to three different statutes as examples. Two are from the UK and one from Saskatchewan. As the court acknowledged, none of these statutes actually pertain to legislative privileges—they were cited for the purpose of demonstrating "how an intention to abrogate privilege can be expressed."[36] In fact, none of them actually abrogate or repeal anything outright. Rather, they are exceptions meant to carve out areas where a still existing privilege will not apply.[37]

The examples used by the Court of Appeal hardly exhaust the possibilities. On the contrary, they provide further evidence of the limited approach taken by the court with respect to parliamentary privilege and its recent history. In

[33] *Duke of Newcastle v. Morris*, *supra* note 29 at 668.

[34] *Ibid.* at 671.

[35] *Ibid.* at 674.

[36] *Fédération Franco-Ténoise*, *supra* note 1 at para. 293.

[37] The two British examples cited by the court are the apparent consequence of a notorious court decision of 1935, the case of *Graham-Campbell ex parte Herbert*. Its damaging impact has been felt for too long, as the UK Joint Committee on Parliamentary Privilege acknowledged in the criticism of the case in its 1999 report. See Charles Robert, "An Opportunity Missed: The Joint Committee on Parliamentary Privilege, Graham-Campbell and Internal Affairs" (2006) 74 *The Table* 7.

fact, there are two instances of British statutes involving complete abrogation of a privilege as well as a third creating an exception to another privilege. All were adopted within the last 30 years. The two outright repeals of privilege concern the loss of immunity of parliamentarians from court proceedings related to insolvency and the abolition of exemption from jury service as of right.[38] A third example, waiving the application of a continuing privilege, was the statutory provision made to section 13 of the Defamation Act 1996 allowing a person, either a parliamentarian or a witness, to waive parliamentary privilege in certain limited cases involving defamation proceedings before a court.[39] Like the Act of 1871 respecting oaths, this last example affected the privilege of freedom of speech guaranteed in the Bill of Rights.

The Court of Appeal not only ignored the instances of U.K. statutes abrogating privilege, it also overlooked the widespread practice in Canada of legislating with respect to parliamentary processes, the control over debates and proceedings (a recognised category of privilege), which oblige the Houses of Parliament and numerous provincial legislative assemblies to undertake specific actions, often within limited timeframes. There are dozens of laws that contain these sorts of provision, some of them quite detailed and specific. For example, the User Fees Act,[40] adopted in 2004, outlines a procedure that deems proposed user fees referred to a committee of the Senate or the House of Commons, and deemed reported—recommending that the proposed fee be approved!—if not studied within 20 sitting days. Similar procedures are spelled out in the 2003 Act amending the Statutory Instruments Act (disallowance for regulations)[41] by putting in place a disallowance procedure applying to both the Senate and the House. Another standard practice is statutorily mandated parliamentary reviews of legislation.[42] These acts all clearly concern proceedings in Parliament, yet none of them are taken to conflict with privi-

[38] Insolvency Act 1985 (U.K.) (c. 65) and Criminal Justice Act 2003 (U.K.) (c. 44).

[39] (U.K.) (c. 31).

[40] S.C. 2004, c. 6.

[41] S.C. 2003, c. 18.

[42] For example, the Freezing Assets of Corrupt Foreign Officials Act, S.C. 2011, c. 10, provides that:

> 20. (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act and of the Special Economic Measures Act must be undertaken by such committee of the Senate and of the House of Commons as may be designated or established by the Senate and the House of Commons for that purpose.
>
> (2) The committees referred to in subsection (1) must, within a year after a review is undertaken pursuant to that subsection or within such further time as may be authorized by the Senate or the House of Commons, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committees recommend.

lege. They were duly enacted and are subject to change by statutory amendment. The use of privilege either to challenge the validity of such laws or to avoid compliance with them would seem at the very least to be unreasonable.

Satisfied that it had adequately explained its view about abrogation and how it was essential in order to narrow the application of any acknowledged privilege, the Court of Appeal proceeded to elaborate how abrogation is related to institutional comity. In the view of the court, given the fundamental importance of privilege and the fact that "even the Charter does not have the effect of abrogating legislative privilege,"[43] the courts should be careful and deferential in regard to the legitimate sphere of activity of legislative bodies. The Court of Appeal cited passages from *New Brunswick Broadcasting* and *Vaid* as recent instances where the Supreme Court itself acknowledged this deference.[44]

This institutional comity has its parliamentary parallel in the doctrine of exclusive cognisance. The accepted view is that the exercise of an acknowledged privilege falls within the proper authority of a legislative body and is beyond the reach of the courts. The scope of privilege, however, is within the jurisdiction of the courts and they are competent to determine its boundaries. This is an aspect of the responsibility of the Court of Appeal that it did not fully appreciate when it decided that the language used in publication and broadcasting was an integral element of privilege. Despite the fact that it accepted the legal analysis of the trial judge, the Court of Appeal invoked institutional comity to reinforce and justify its reluctance to admit the explicit nature of the requirements of the OLA adopted by the Legislative Assembly. However, there are relevant statutory and judicial precedents that suggest this position is not correct, but which were not considered by the Court of Appeal. This oversight allowed the court to disregard the constitutional and quasi-constitutional importance given to the policy of official bilingualism and the recognition of the equal status and authority of French and English.

Another feature of the decision to which the Court of Appeal did not give sufficient consideration is the significance of the initial attempt by the federal Parliament to adopt legislation to establish official bilingualism for the Northwest Territories. Bill C-26, introduced in March 1984, was the model for the OLA and had the same provisions stipulating that the records and journals of the Legislative Assembly be published in both languages. Had Parliament not deferred to the NWT and allowed it to implement official bilin-

[43] *Fédération Franco-Ténoise*, *supra* note 1 at para. 294.

[44] In *Vaid*, Justice Binnie emphasised that "Courts are apt to look more closely at cases in which claims to privilege have an impact on persons outside the legislative assembly than at those which involve matters entirely internal to the legislature." *Vaid*, *supra* note 4 at para. 29.

gualism through its own legislature, the question of privilege would not have arisen. The obligation to allow both languages to be spoken in the Assembly and to publish in French and English would not be within the scope of the privilege of the Assembly, just as it is not part of the privileges of the federal Parliament and several provincial legislatures.

When Parliament was created through the Constitution Act, 1867, the Senate and the House of Commons were granted the authority to claim the privileges of the Westminster House of Commons through section 18. These privileges were implemented by law in terms that repeated the substance of section 18 with the important qualification that these privileges had to be consistent with other relevant provisions of the Constitution Act, 1867. This included, among others, section 133, which provided that either French or English could be spoken in the Houses of Parliament or the Legislative Assembly of Québec and that the records and journals of both were to be published in the two languages.

From the very beginning, the status of French and English in the Houses of Parliament was outside of the scope of any privilege possessed by either the Senate or the House of Commons acting alone and, since 1982, it is arguable that it is now beyond the authority of even Parliament alone to change.[45] This reality has a significant bearing on understanding the nature of the situation in the NWT, and it should have been acknowledged by the Court of Appeal. The court did not even evince awareness that when the Legislative Assembly enacted its claim to the privileges possessed by the House of Commons, those privileges did not include the authority to override the obligation to respect the equal status of French and English as official languages.

The binding nature of s. 133 and its use as an instrument of language policy has been confirmed by the Supreme Court of Canada in several judgments, some rendered before the introduction of the Charter and at least one after it came into force. *Jones v. Attorney General of New Brunswick*[46] established that s. 133 fixed a base level of guaranteed rights of both official languages that was not exhaustive. The next decision addressed the Charter of the French Language and the attempt by the Québec provincial government in 1977 to dispense unilaterally with s. 133.[47] This was found to be *ultra vires* because Québec did not have the right solely to amend s. 133 even in relation to the functions of the Legislative Assembly. According to the Supreme Court, s. 133

[45] Sections 41 and 43 of the Constitution Act, 1982 provide the amending formulas for matters dealing with the English or French language.

[46] [1975] 2 S.C.R. 182.

[47] *A.G. Quebec v. Blaikie et al.*, [1979] 2 S.C.R. 1016.

is "part of the Constitution of Canada and of Quebec in an indivisible sense."[48] Finally, in a case involving the Manitoba Official Language Act of 1890, which had suppressed French language rights originally assured in the Manitoba Act, 1870, the Supreme Court went further in explaining the character of s. 133.[49] Though this section of the Constitution Act, 1867 did not apply directly to Manitoba, its identical provision was s. 23 of the federal Manitoba Act of 1870. The Supreme Court found that "The requirements of s. 133 of the *Constitution Act, 1867* and of s. 23 of the *Manitoba Act, 1870* respecting the use of both English and French in the Records, Journals and Acts of Parliament and the Legislatures of Quebec and Manitoba are 'mandatory' in the normally accepted sense of the term. That is, they are obligatory. They must be observed."[50]

In both the Québec and Manitoba decisions, the Supreme Court determined that the authority possessed by each province under section 92(1) did not encompass the right of either to change s. 133 or s. 23 through the relevant provincial constitutions. In addition, because s. 133 and s. 23 guaranteed minimum language rights, there was no possibility that parliamentary or legislative privilege could provide a means to override or limit these obligations. The Supreme Court rejected an argument that was offered by the Manitoba Attorney General suggesting that the obligations imposed by s. 133 or s. 23, with respect to publishing Acts in English and French, were "only directory in the legal sense" despite their clear mandatory purpose in the grammatical sense. The court refused to accept this mandatory / directory distinction. As it explained: "Where there is no textual indication that a constitutional provision is directory and where the words clearly indicate that the provision is mandatory, there is no room for interpreting the provision as directory."[51] While the OLA of the NWT does not constitutionally entrench the right to the use of both languages, the Supreme Court's analysis of the mandatory character of s. 133 and s. 23 provides clear guidance as to how ss. 7 and 11 should be understood and interpreted. It is not a viable option for the Court of Appeal to find that the law has no meaning and that its mandatory character is without force or effect due to privilege.

There are several other statutory precedents about language use that are even more directly relevant to the situation of the NWT. The first precedent, and the most forceful one, is the official language statute of New Brunswick. Its

[48] *Ibid.* at 1025.
[49] *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721.
[50] *Ibid.* at para. 33.
[51] *Ibid.* at para. 39.

history predates the Charter and the entrenchment in it of New Brunswick's bilingual status. This pre-Charter law corresponds closely to the OLA enacted by the NWT Legislative Assembly and its application constitutes a convincing rebuttal to the interpretation developed by the Court of Appeal. Sections 4 and 5 of the Official Languages of New Brunswick Act,[52] adopted in 1969, declares, first, that either French or English may be used in any proceeding of the Assembly or its committees and, second, that all records and reports are to be printed in both languages. This law did not include any qualifying words indicating that a privilege, or any part of a privilege, was being waived or abrogated even though the Assembly certainly saw it as imposing an obligation that impacted its proceedings by allowing two languages to be spoken and by requiring without exception the printing of the Assembly's documents in both official languages. A similar obligation was imposed by the French Language Services Act of Ontario adopted in 1990.[53] While this law is not as sweeping as the OLA of New Brunswick or the NWT, it does provide that "everyone has the right to use English or French in the debates and other proceedings of the Legislative Assembly" and it requires that "all bills and Acts … after January 1, 1991 shall be introduced and enacted in both English and French."[54]

The same absence of any reference to privilege is evident in a precedent affecting a territorial jurisdiction, the Yukon Languages Act[55] adopted in 1988. This Act makes optional the availability of the Assembly's documents in French or in a Yukon aboriginal language, but it does support "the right to use English, French or a Yukon aboriginal language in any debates and other proceedings of the Legislative Assembly" in keeping with its acknowledgement that English and French are official languages with equality of status.[56]

All these examples affect the nature of control over the debates and proceedings of their respective Assemblies, a recognised privilege, yet there is no evidence that any of these statutes was viewed as being in conflict with privilege in any of the relevant provincial or territorial assemblies. On the contrary, the better view is that these statutory precedents conform to the assessment made by the NWT trial judge and that, if any privilege were involved, it was circumscribed by the decision of the respective Assembly to adopt these laws.

Aside from these court judgments and the New Brunswick, Ontario and Yukon statutes, the Court of Appeal ignored one other important and relevant

[52] S.N.B., c. 14.
[53] R.S.O. 1990, c. F.32.
[54] *Ibid.*, s. 3.
[55] R.S.Y. 2002, c. 133.
[56] *Ibid.*, s. 3.

aspect of the OLA. Though the federal government agreed to have this law enacted by the Legislative Assembly on its own authority, the federal Parliament subsequently took measures to ensure that the provisions of the OLA could not be altered, and certainly not diminished, without its approval. In 1988, the federal Parliament amended and updated the Northwest Territories Act to provide that the OLA could only be amended or repealed with the concurrence of Parliament through an amendment to the Northwest Territories Act.[57] A similar control is in force with respect to amendments to the Yukon Languages Act.

This requirement for federal approval underscores the limited jurisdiction of the NWT Legislative Assembly. It also highlights the importance of the policy to recognise the equal status of the nation's official languages as a constitutional value and objective. This reality undermines the reason used by the Court of Appeal to justify its decision not to intervene in the debates or proceedings of the Legislative Assembly. In downplaying any regard for the constitutional status of the official languages, and emphasising the autonomy of the Assembly protected by privilege, the court sanctioned a distorted claim of privilege.

In the *Fédération Franco-Ténoise* case, the decision of the NWT Court of Appeal gave too much weight to a privilege that was poorly identified, and not enough weight to language rights adopted by the Legislative Assembly itself. In the result, the court allowed the Legislative Assembly's claim of privilege to immunise the Assembly from the application of the OLA, effectively removing a minority language right deliberately enacted by the legislature and which supposedly required the concurrence of Parliament to amend or repeal. Because of the inadequate justifications elaborated by the Court of Appeal, the decision is of questionable value as a precedent to guide other courts in their consideration of privilege cases. As has been explained above, there was likely no valid exercise of privilege involved (language falling outside of the privileges that may be claimed). Even if language does fall within privilege, a proper construction of the OLA leads to the conclusion that the privilege was circumscribed. However, the fault does not rest entirely with the court. Privilege is an ill-defined area of the law that presents difficulties not just for courts, but also for parliamentarians. In Canada, privilege has never been the subject of a comprehensive review or any serious attempt at codification. Given the lack of guidance from statute or study, the risk of unsatisfactory court rulings is real. One solution is for courts to follow closely the process set out by the Supreme Court of Canada in *Vaid* for adjudicating claims to privilege.

[57] *Official Languages Act*, S.C. 1988, c. 38, s. 97. This has occurred twice, in 1990 and 1992.

Privilege is part of the law, but it is often not seen or understood within the context of the law and within the framework of the Constitution. If privilege is permitted to be invoked too broadly, there is a danger of eroding the rule of law and other constitutional values. Because of the potential of privilege to frustrate the exercise of rights, courts must be vigilant in applying their critical role of adjudicating claims to privilege. Those asserting a privilege must first prove its existence. The source and contours of privilege are different, depending on whether the privilege is claimed at a territorial, provincial or federal level. The foundation of all privilege is necessity, but even where necessity might appear to be made out, privilege does not operate independently of the statute book. Parliament and legislatures, through their enactments, may vary, limit, circumscribe or abolish privilege. Until this is recognised by the courts and parliamentarians, there remains a possibility that they will continue to fall short when addressing claims of privilege.

SOUTH AFRICA'S PARLIAMENT AND EXECUTIVE OVERSIGHT: AN ACID TEST FOR THE POWERS OF OVERSIGHT COMMITTEES

KAMAL MANSURA
Secretary to the National Assembly in the South African Parliament

FRANCOIS BASSON
Procedural Officer at the National Assembly Table

The Constitution of the Republic of South Africa, 1996 and the Rules of the National Assembly provide for oversight by the national legislature of the executive through, among others, a system of portfolio committees, each of which corresponds to a particular executive portfolio and state department. All these committees are chaired by members of the ruling African National Congress (ANC). For the most part, the portfolio committees carry out their oversight functions in a spirit of co-operation and openness towards Ministers.

However, in late 2009 a situation developed that would prove to be an acid test for the co-operative relationship between the oversight committees of Parliament and the executive.

On 15 September 2009 the Minister of Defence and Military Veterans, Ms L Sisulu, MP, briefed the National Assembly's Portfolio Committee on Defence and Military Veterans on the proposed National Defence Force Service Commission (NDFSC) ("the Commission") that would be established as a mechanism for consulting members of the defence force on their conditions of service. The Minister indicated that the establishment of a permanent Commission would require amendments to the Defence Act. A month later, the Minister introduced the newly-formed interim NDFSC to the committee.

On 18 November 2009 the interim Commission appeared before the committee presenting a preliminary report on its investigations into conditions of service in the defence force. The Commission informed the committee that it had submitted a report to the Minister, but that it was reluctant to provide it to the committee without ministerial approval or consent.

The committee raised concerns about the report not being available to it during meetings in March and April 2010. In July 2010, the Minister again appeared before the committee and explained that the reports drafted by the Commission were of an interim nature, and had first to serve before the Cabinet before they could be submitted to the committee. She undertook to

provide the reports to the committee once they had been considered by the Cabinet. The Minister also assured the committee that the information contained in the reports had no bearing on the Defence Amendment Bill [B11 – 2010] (National Assembly – sec 75) which had been tabled in Parliament on 1 June 2010 and subsequently referred to the committee for consideration and report.

Subsequently, the chairperson of the committee approached the Speaker of the National Assembly for guidance on the committee's request for the report of the interim NDFSC to be submitted to it. Press reports at the time gave the impression that Parliament's oversight role had been compromised as the Speaker had to intervene to obtain immediate access to the report on behalf of the committee.

On 26 August 2010, the Speaker released the following media statement on the matter—

> "The role of Parliament in overseeing the Executive is an important constitutional function and seeks to hold the Executive to account. Parliament has no intention of relinquishing this right and responsibility, and further, has made its strengthening a priority.
>
> Parliamentary convention maintains that while a portfolio committee is still processing a Bill, and until the portfolio committee reports on a Bill, it is inappropriate for the Presiding Officers to intervene and potentially undermine the authority granted to the portfolio committee by the House. For this reason, the Presiding Officers have up to now not involved themselves in a matter being processed by committees. As a rule, Committees should be encouraged to only seek the intervention of the presidium once they have completed their business. However, having been requested by the Portfolio Committee on Defence and Military Veterans to give guidance in this instance, the Speaker took up the issue with the Executive.
>
> Having met with the Leader of Government Business, Deputy President Motlanthe, and the Minister for Defence, Lindiwe Sisulu, Speaker Sisulu is assured that the portfolio committee will receive the report after it has been processed by Cabinet. They both expressed their commitment and respect for the authority of Parliament to oversee the Executive and their willingness to cooperate with Parliament in providing any required or requested information.
>
> We have been given the assurance that Cabinet will process the report speedily.
>
> For sake of clarity, we emphasize that, in the performance of its oversight

and legislative functions, Parliament has the power, provided by the Constitution, Rules and the Powers, Privileges and Immunities of Parliament Act, to summon any person to give evidence and to require any person or institution to produce documents. The practice has been for Parliament to invoke this measure as a last resort, preferring to rely on the cooperation of Government and other sectors.

Parliament has accepted the undertaking of the Leader of Government Business and the Minister to make the reports available to members of the committee as soon as the remaining processes have been concluded. We have taken this view to maintain and promote cooperative governance.

It is hoped that this statement brings clarity to the various issues, but most importantly, that Parliament's oversight and legislative roles were not compromised in any way."

Notwithstanding the statement above, the committee decided to suspend its deliberations on the Defence Amendment Bill pending the Cabinet's finalisation of the reports of the interim NDFSC. It communicated this decision to the House chairperson responsible for committees.

This decision led to the Speaker writing to the chairperson of the committee on 2 September 2010 emphasising that Parliament had accepted the undertaking of the executive that the reports would be submitted to the committee as soon as the remaining processes had been concluded.

The Speaker pointed out that a committee of Parliament had no power or authority to set timeframes for the Cabinet and that the Minister had assured him that there was no link between the reports and the amendment bill. This "speculation" on the part of the committee did not provide a reason for it to suspend consideration of the bill.

The Speaker also informed the chairperson that, should the committee wish to delay processing of the bill, for whatever reason, a committee report to that effect should be brought before the House.

In response to the Speaker's letter, the committee resolved to continue processing the Defence Amendment Bill. It reported to the House on 14 October 2010 that it had adopted the bill with amendments. The House agreed the bill on 26 October 2010.

ALLEGATION OF CONTEMPT IN RESPECT OF A JOINT COMMITTEE

CHRISTOPHER JOHNSON
Clerk of the Journals, House of Lords

Introduction

On 10 February 2010 the Joint Committee on Human Rights (JCHR) published its 7th report of 2009–10, *Allegation of Contempt: Mr Trevor Phillips*.[1] The report alleged that on 8 February, the day before the JCHR was to consider a draft report directly relevant to and critical of the work of Mr Phillips as chair of the Equality and Human Rights Commission (EHRC), he had spoken to and sought to influence members of the Joint Committee. The report concluded that Mr Phillips' actions "could constitute a contempt of both Houses", and recommended that they "be subject to investigation by the Privileges Committees of both Houses."

The subsequent inquiries threw up various points of interest. First, there was the nature of a contempt committed in respect of a Joint Committee—that is to say, a committee composed, in this case, of six members of each House. This in turn raised significant practical and procedural questions as to the manner in which any inquiry should be conducted. Finally, there was a more general issue of procedural fairness in respect of individuals likely to be subject to personal criticism in select committee reports.

Events leading up to the allegation of contempt

One of the key tasks of the JCHR is to scrutinise the work of the EHRC, a non-departmental public body which, since its establishment in October 2007, has had overall responsibility for monitoring and promoting awareness of human rights in the United Kingdom. In late 2009 the Joint Committee, partly in response to media reports of disagreements within the EHRC leadership, decided to develop its routine scrutiny of the Commission into a more detailed report on its record and governance.

Correspondence, which emerged as part of the later inquiry, revealed that from early January 2010 there were concerns within the EHRC about the impending JCHR report, in particular about the way in which oral and written

[1] HL Paper 56/HC 371.

evidence (some of which might be defamatory) would be handled. On 4 February, Mr Phillips discussed these concerns with senior EHRC staff, and it was agreed that he would contact members of the committee directly, in particular those whom he "knew personally", to raise these concerns. Six members of the JCHR were suggested, though in the event Mr Phillips only succeeded in speaking to three of these: Fiona Mactaggart MP, Lord Dubs and Baroness Falkner of Margravine.

Then on 6 February 2010, two days before the alleged contempt occurred, Mr Phillips received an email from an un-named member of the EHRC staff. The member of staff reported that they had been "talking to someone who had had sight of the current draft of the JCHR report". Although this person had not read the report in detail, "he had read the exec summary pretty comprehensively", and was able to convey a sense of the key conclusions—which included criticism of Mr Phillips and of decision-making within the EHRC. It appears therefore that a leak occurred between 4 and 6 February.

Mr Phillips' conversations with Fiona Mactaggart, Lord Dubs and Baroness Falkner of Margravine took place on 8 and 9 February. From the accounts given of these conversations by the members concerned it appears that in each case Mr Phillips raised the issue of publication of evidence, and the possibility that certain evidence might be redacted. He also touched on the personal criticisms directed against him, and accused the chairman of the JCHR, either explicitly or by implication, of unfairness.

The nature of the alleged contempt

It will be clear from the above that not one but two possible contempts may have occurred. The first was what appears to have been a leak of the contents of the JCHR's draft report, which took place on or before 6 February. It is well-established that such leaks may be treated as contempts.[2] The Joint Committee made no complaint respecting the apparent leak, and no further investigation was therefore undertaken.

The second possible contempt was that complained of by the Joint Committee, namely Mr Phillips' apparent attempt to influence members of the Joint Committee prior to their consideration of the draft report. *Erskine May* notes that "attempts by improper means to influence Members in their parliamentary conduct may be considered contempts", before indicating that improper "pressure" may be applied by means of "a positive and conscious effort to shift an existing opinion in one direction or another."[3]

[2] See *Erskine May*, 24th edition (2011), pp 259–60.

[3] *Ibid.*, p 265.

The position was complicated by the status of the JCHR itself. *Erskine May* states that "joint committees are formally composed of separate select committees appointed by each House to work together". While they work together as one committee, they are "defined in procedural terms as two committees".[4] It followed that, in procedural terms, interference with a Lords member of a joint committee would be a contempt of the House of Lords, and interference with a Commons member a contempt of the House of Commons.

In the complaint against Mr Phillips it was alleged the he had spoken to one member of the Commons, and two members of the Lords. Thus two separate contempts were alleged, and, in the absence of any mechanism whereby a joint inquiry could be conducted, separate references to the Privileges Committees of the Commons and Lords were agreed on 23 and 25 February respectively.[5]

The House of Commons inquiry

In the event, the Commons Standards and Privileges Committee was first off the mark, launching an inquiry immediately. The Lords Committee for Privileges did not meet until 1 March, and took the view that it would be neither efficient nor procedurally fair for two inquiries to proceed concurrently. The committee therefore decided not to undertake any inquiry until after the Commons inquiry had been concluded.

The Commons took written evidence from Mr Phillips himself, from Mr Andrew Dismore MP,[6] chairman of the JCHR, and from staff of the Joint Committee. Although the Commons committee did not specifically invite evidence from the Lords members of the JCHR (indeed, any contempt in respect of the Lords members would have fallen outside the committee's jurisdiction), Mr Dismore's evidence included contributions from all members of the Joint Committee who had spoken to Mr Phillips.

With the dissolution of Parliament fast approaching (it eventually took place on 12 April) the Standards and Privileges Committee decided to publish the evidence it had gathered,[7] but not to make a report on the original allegation. In a letter to the chairman of the House of Lords Committee for Privileges, dated 30 March, the chairman of the Commons committee, Sir Malcolm Rifkind MP, noted that one factor dissuading his committee from publishing

[4] *Ibid.*, p 911.

[5] HC Deb., 506, cc 169–72; Lords Journal (2009–10) p 243.

[6] Mr Dismore subsequently lost his seat at the May 2010 general election.

[7] The evidence is available online at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmstnprv/memo/privilege/contents.htm>.

a report had been the "perceived need to avoid pre-empting the outcome of any inquiry that may be undertaken by the Committee for Privileges of the House of Lords." At the same time he indicated that his committee "was unable to conclude on the basis of the evidence received thus far that there had been any contempt of the kind alleged in the Joint Committee's Report".

In reaching this conclusion, the Committee for Standards and Privileges may have been influenced by the fact that the one member of the House of Commons telephoned by Mr Phillips, Fiona MacTaggart MP, strongly supported his actions, stating in her evidence that "I frankly would not think him worthy of the well-paid and responsible position he holds if he did not seek to influence, in a wholly proper way, the outcome of this enquiry by drawing attention to evidence and to the importance of due process." Of the three members of the JCHR who spoke to Mr Phillips, the only one to argue that his behaviour was "deeply inappropriate" was a member of the House of Lords, Baroness Falkner of Margravine. Thus insofar as there was evidence of a contempt having been committed, it pointed more to a contempt of the House of Lords than of the House of Commons.

The House of Lords inquiry

At its meeting on 1 March the Committee for Privileges had decided that, should an inquiry be required, following completion of the Commons inquiry, the Clerk of the Parliaments should in the first instance consult three members of the committee with senior judicial experience. This consultation took place early in the new Parliament. The findings of the three judicial members were then put to the full committee (now renamed the Committee for Privileges and Conduct) on 5 July, and the committee's report, endorsing their findings, was published shortly thereafter.[8]

The committee decided, first, that no further evidence was required—the evidence assembled and published by the Commons committee included "all the relevant and readily available information with regard to both Houses." No objection was raised to relying on evidence submitted to and published by a Commons committee.

The committee accepted that, in certain circumstances, Mr Phillips' actions could have been judged to constitute a contempt. The committee also noted that each House enjoys "considerable discretion" in deciding whether or not an individual's actions in any particular case do in fact amount to a contempt.

[8] Committee for Privileges and Conduct, *Mr Trevor Phillips: Allegation of Contempt*, 1st Report, 2010–12 (HL Paper 15).

In this case the committee gave particular weight to two relevant factors—

- First, the committee noted Mr Phillips' contention that "the dividing line between legitimate engagement with committees and inappropriate interference, amounting in some cases to contempt, is unclear." The committee, without formally endorsing this view, expressed "some sympathy" with it.
- Second, the committee considered whether any harm was caused to the JCHR's work. Mr Dismore, the former chairman of the JCHR, had stated in his written evidence that "the constructive working atmosphere in the committee was undermined". He further argued that "it was difficult to escape the conclusion that some Members had been influenced in their approach to the draft Report by their private conversations with Mr Phillips." However, the Committee for Privileges and Conduct noted that there was "no firm factual evidence" to support Mr Dismore's comments. In particular, the committee noted that the JCHR had in fact agreed a highly critical report on the EHRC on 2 March, and that none of the other members of the JCHR had endorsed Mr Dismore's view. The committee concluded that "Mr Phillips' actions did not significantly obstruct or impede the work of the JCHR".

Taking these factors into account, the committee found that Mr Phillips had not committed a contempt of the kind alleged by the JCHR. However, the committee criticised his actions in more general terms, stating that—

> "it should have been obvious to Mr Phillips that the proper way to have raised [his] concerns would have been to call or write to the Chairman or clerk of the JCHR, not to ring up individual members of the JCHR with whom he was personally acquainted. Mr Phillips' behaviour in ringing individual members of the JCHR, in order to raise his concerns over the handling of evidence, was inappropriate and ill-advised."

Procedural fairness

The committee also drew attention to more general issues of procedural fairness. Noting that the JCHR's final report contained "strong personal criticism" of Mr Phillips, the committee expressed concern "that current procedure affords individuals who are the subject of such personal criticism in a committee report no formal opportunity to see and comment on a draft ahead of publication." The committee drew attention to the longstanding "Salmon principles", deriving from the 1966 Royal Commission on Tribunals of

Inquiry, which confer extensive rights upon witnesses appearing before such tribunals. More recently, a statutory requirement has been placed upon those chairing tribunals to act with "fairness"; any person subject to criticism by a tribunal of inquiry must be sent a "warning letter", and given a "reasonable opportunity" to respond.[9]

The committee acknowledged that there are significant differences between select committee inquiries and tribunals of inquiry: committee inquiries are political, rather than judicial, in character; moreover, the right of committees to criticise individuals holding high office (Ministers in particular, but possibly also those responsible for public bodies such as the EHRC) must be protected. The committee accepted that further work and consultation were needed before making major changes to select committee procedures.

Taking all these factors into account, the committee recommended "that the Procedure Committee be invited to consider the procedure to be followed in a case where a committee intends to make personal criticisms of a named individual (other than a Minister)."

In accordance with the spirit of its own recommendation, the committee agreed that Mr Phillips should be given an opportunity to comment on its draft report. In a letter dated 2 July he thanked the committee for the opportunity to comment, but questioned whether, in light of the factors set out in the committee's report, it was reasonable that his actions should be criticised as "inappropriate and ill-advised". The committee was not persuaded to change its mind, but Mr Phillips' letter was reprinted as an annex to its report.

Procedure Committee consideration

The recommendation of the Committee for Privileges and Conduct was agreed by the House on 27 July 2010. Although the Procedure Committee did not consider the issues raised by this case until early 2011, its conclusions are, for the sake of completeness, included in this note. In advising the committee, the clerks noted that practice in other Commonwealth parliaments varied. While several Commonwealth legislatures had introduced a right to respond to criticisms, only the New Zealand House of Representatives was thought to have a procedure specifically designed to deal with criticisms proposed to be made in select committee reports. Standing Order 242 of the New Zealand House of Representatives states that:

[9] The Inquiry Rules 2006 (SI 2006/1838), rule 13.

> "**Findings**
> (1) As soon as practicable after a select committee has determined any findings to be included in a report to the House, and prior to the presentation of the report, any person named in the report whose reputation may be seriously damaged by those findings must be acquainted with any such findings and afforded a reasonable opportunity to respond to the committee on them. The committee will take such a response into account before making its report to the House.
> (2) Any response made under this Standing Order is strictly confidential to the committee until it reports to the House."

In considering whether or not to recommend a similar rule in the House of Lords, the committee was conscious that it could significantly limit the freedom of committees to judge how to handle their own business. In reality, there were very few cases of such personal criticism in House of Lords select committee reports, while introducing a different set of rules to the House of Commons could have significant implications for joint committees (including the JCHR itself).

The committee therefore decided not to follow the example of the New Zealand House of Representatives, concluding that a formal rule requiring select committees to afford similar rights to those afforded to persons criticised in tribunals of inquiry was neither necessary nor proportionate. Instead, the committee recommended that new guidance be issued to committee clerks and chairmen, drawing attention to the principles of procedural fairness, and inviting committees to consider on a case-by-case basis whether it would be desirable to give notice to an individual if the committee were minded to make criticisms of a personal nature. The Procedure Committee's report was agreed by the House on 28 April 2011.

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Address by President of Indonesia

On 9 March 2010 the House of Representatives agreed to a motion moved by the Leader of the House concerning arrangements for an address to be made to the House of Representatives on 10 March by His Excellency Dr Susilo Bambang Yudhoyono, President of the Republic of Indonesia. The motion provided for a message to the Senate inviting Senators to attend the House as guests and also extended the powers of the Speaker in maintaining order to include Senators seated on the floor of the House.

On 10 March the House suspended at 11.44 am, and resumed upon the ringing of the bells at 2.30 pm. After taking the chair, the Speaker welcomed the President and Senators to the sitting of the House.

Following welcoming remarks from the Prime Minister and the Leader of the Opposition Dr Yudhoyono addressed Members and Senators. This was the seventh occasion on which a visiting head of state or government has addressed the Parliament.

Change of Prime Minister

Thursday 24 June 2010 was the last scheduled sitting day before the winter adjournment of the House. Late on the previous evening, and after the House had adjourned until 9.00 am on the Thursday, the Prime Minister, Mr Kevin Rudd, had announced there would be a ballot for the leadership of the Parliamentary Labor Party the next morning, following a request from Ms Julia Gillard. A caucus spokesman emerged from the meeting the next morning to announce that Ms Gillard had been elected unopposed as leader, and the new Deputy was Mr Wayne Swan. Ms Gillard was subsequently appointed as Prime Minister by Her Excellency the Governor-General, Ms Quentin Bryce. At the commencement of Question Time on 24 June 2010 Ms Gillard announced that she had been elected party leader in a caucus meeting and sworn in by the Governor-General.

Hung parliament

On 19 July 2010 the Governor-General prorogued Parliament and dissolved

the House of Representatives, to enable a general election for the House of Representatives and half of the Senate to be held on Saturday 21 August 2010. The election resulted in a hung parliament: the Australian Labor Party (ALP) won 72 seats, the Liberal-National Coalition 72, one Greens member was elected and five non-aligned members (one of whom identified himself an "Independent WA National").

The Australian Greens member, Mr Bandt, and one of the non-aligned members, Mr Wilkie, announced their support for the ALP. On 7 September the three other independent members, Messrs Katter, Oakeshott and Windsor, announced their decisions. Mr Katter's preference was for the Liberal-Nationals Coalition but Mr Oakeshott and Mr Windsor supported the continuation of an ALP government. They committed to supporting the government on supply and to not supporting want of confidence motions other than in special circumstances. They reserved their position on other matters, as had Messrs Bandt and Wilkie. This meant that on agreed matters the ALP could count on 75 votes (the Speaker coming from the ALP), the smallest possible margin in the 150-seat House.

Reform proposals had featured prominently in the discussions after the election, and key points were spelt out in agreements reached between the major parties and Messrs Katter, Oakeshott and Windsor. In addition, the government had made separate agreements with the Australian Greens and with Mr Wilkie. Many of the reform proposals concerned the standing orders and practices of the House and some are discussed in these notes.

Opening of the 43rd Parliament

Following the general election on 21 August 2010, and in accordance with the Governor-General's proclamation, Senators and Members assembled in Parliament House at 10.30 am on 28 September 2010. As Deputy of the Governor-General, the Chief Justice of the High Court (The Hon. Robert Shenton French AC) declared open the Parliament in the Senate chamber, members having proceeded there on request delivered by the Usher of the Black Rod. Members returned to the House of Representatives chamber after being instructed to elect a Speaker.

Mr Harry Jenkins was re-elected unopposed as the Speaker and, contrary to the usual pattern, an opposition member, Mr Peter Slipper, was nominated by a government member for the position of Deputy Speaker and won the position in a ballot contested by another coalition member, Mr Bruce Scott, who had been supported by his own colleagues, and who was subsequently appointed Second Deputy Speaker.

Committee developments

Pursuant to the parliamentary reform agreement, a number of changes have been made in regard to committees. The number of House general purpose standing committees has been reduced from 12 to 9, and membership of each also reduced to seven: four government and three non-government. Where a non-aligned member wishes to be a member the membership is increased to a total of eight, i.e. 4:3:1. Given that the chair has only a casting vote and that most chairs are government members, this means that on those committees the government is in a minority. Three of the non-aligned members (Messrs Oakeshott, Windsor, and Wilkie) chair committees.

The reform proposals also dealt with the long-running concern about delays in government responses to committee reports. It is now provided, by resolution, that if a response is not received within six months the minister must provide a signed statement to the House setting out the reasons for the delay, and be available to appear before the committee to answer questions about the delay.

There has been an increased use of joint select committees in the 43rd Parliament: the Joint Select Committee on Cyber Safety was re-established; and a Joint Select Committee on Gambling Reform and a Joint Select Committee on the Parliamentary Budget Office, both commitments given as part of the parliamentary reform agenda, have been established. On 2 March 2011 the Parliament established the Joint Select Committee on the Christmas Island Tragedy to inquire into an incident on 15 December 2010 in which an irregular entry vessel foundered on rocks at Rocky Point on Christmas Island.

The House Selection Committee, which had existed before 2008, was re-established. It had always had responsibility for selecting and prioritising private members' business and committee and delegation business, with authority to allocate times for individual items, as well as times for individual speeches. A very significant additional role now has been that the committee looks at all bills introduced and has the power to refer bills directly to House committees. In fact this power can be exercised by an individual member of the committee.

The Selection Committee consists of 11 members and is chaired by the Speaker. One non-aligned member serves on the committee, together with the Whips and other members. Neither the Leader of the House nor the Manager of Opposition Business is a member. It meets twice each week—the first meeting considers private members' and committee business, the second considers bills. It is supported by the Clerk Assistant (Table).

The House has established an Appropriations and Administration Committee. It is not called an "appropriations and staffing" committee, to reflect the fact that since the Parliamentary Service Act 1999 the Clerk has responsibility for staffing matters. The Speaker chairs this committee.

Inquiry into the development of a draft Code of Conduct for members

The Committee of Privileges and Members' Interests has had an inquiry referred by the House in November 2010 into the development of a Code of Conduct for members of the Australian Parliament.

The stimulus for the inquiry was the various agreements for parliamentary reform which were agreed to in the formation of a minority government in September 2010. These agreements referred to the adoption of a Code of Conduct for federal parliamentarians and the appointment of a Parliamentary Integrity Commissioner to uphold the Code. In addition to the development of a draft Code, the committee also has been asked to look at how complaints under the Code would be raised and dealt with.

The committee is required to report to the House by July 2011.

Publication of details of members' interests on the Parliament House website

In the entry for the House of Representatives last year, there was reference to the publication of the statements of members' interests on the Parliament House website.

The Committee of Privileges and Members' Interests concluded its consideration of this matter and agreed that the statements should be published on the website from the start of the 43rd Parliament.

With the start of the 43rd Parliament in October 2010, the statements are now published on the Parliament House website.[1]

Senate

General election

In August 2010 a general election was held for the House of Representatives and half the Senate, resulting in the election of a minority government. To form a government, Prime Minister Gillard entered into various agreements with cross-bench members to enlist their support. The agreements included numerous proposals for parliamentary reform, several of which were based on Senate practices. As a multi-party chamber where numerical domination by any party

[1] See <http://www.aph.gov.au/house/committee/pmi/registermeminterests.htm>.

or formal coalition of parties was rare, the Senate has, over the years, developed mechanisms to enhance the accountability of the executive. Following the election, some further changes were adopted on a trial basis.

Senators elected at the August 2010 half-Senate election do not begin their terms till 1 July 2011 and will have endured one of the longest intervals since Federation as senators-elect.

Privileges Committee inquiry into official witness guidelines

For many years, the government has maintained guidelines for the information of its officers appearing as witnesses before parliamentary committees. The guidelines, which have never been formally endorsed by the Senate, were last updated in 1989. Since then, the expansion of parliamentary committee work and greater contact between committees and officers has exposed both the inadequacy of the guidelines and, in many cases, the poor state of knowledge amongst officers of the public service and statutory authorities of their obligations to Parliament.

In 2009, a Senate committee reported concerns that an inquiry had been potentially obstructed by various instructions issued by the relevant department to its officers about their participation in that inquiry. The concern was that the instructions deterred officers from participating in the inquiry, which concerned allegations of misconduct amongst the crew of a particular naval vessel. The Defence Department's instructions were countermanded by the Minister. Revised instructions were issued and the Defence Chief apologised, but the committee remained concerned with aspects of the revised instructions and at the department's failure to understand and exercise its responsibilities and obligations to the committee.

The adequacy of the guidelines was referred to the Senate Committee of Privileges in the 42nd Parliament but the committee's inquiry had not advanced very far before the election. After the election, broader terms of reference were sent to the committee, also referring to the provision of information to the Senate and senators and to the level of officers' knowledge of parliamentary powers to obtain information. The inquiry is expected to consider the development of model guidelines which could be adopted by agencies to assist their officers in their interactions with the Senate.

Privileges Committee inquiry into a bill

In 2010 the Privileges Committee received its second-ever reference of a bill which purported to impose restrictions on the provision of information to parliamentary committees by Australian government officers. Parts of the bill

represented a fundamental conflict with the Parliamentary Privileges Act 1987, enacted pursuant to section 49 of the Australian Constitution to clarify certain issues of privileges, including by providing an expanded definition of "proceedings in Parliament". The bill also purported to impose criminal sanctions on witnesses giving evidence to committees other than in defined circumstances. The committee recommended the removal of the offending provisions. The bill lapsed on prorogation but was reintroduced in the new Parliament in a revised form, the government having accepted the committee's recommendation.

Assessment of public interest immunity claims

One feature of the agreements on parliamentary reform was a commitment to refer to the recently created statutory office of Information Commissioner the task of assessing and reporting on claims of public interest immunity made by the government in response to orders for production of documents agreed to by either House. The agreements had been entered into without consultation with the Information Commissioner. When the Senate tried to pre-empt matters by ordering the Commissioner to provide a report on statements of reasons provided by the government for declining to comply with Senate orders, the Commissioner demurred, claiming he could not do something that was not specified in his statute (despite the statute containing an incidental power). The Senate explained the basis of its powers to the Commissioner and, in ordering him to reconsider his position, pointed out that in conferring certain functions on him the Parliament had not diminished the powers of the Houses conferred on them by section 49 of the Constitution (alteration of which requires explicit statutory declaration). The Commissioner nonetheless queried the Senate's powers, despite numerous precedents for comparable orders to statutory officers or authorities that had all been complied with. The situation remains unresolved.

Consideration of private senators' bills

Another feature of the agreements on parliamentary reform was that more time should be available for the consideration of private members' legislation and there should be procedures for bringing private members' business to a vote. While the latter was already a feature of Senate procedures, the absence of sufficient opportunities to consider the former had been a growing concern in the Senate. Accordingly, on the recommendation of the Senate Procedure Committee, the Senate adopted new procedures on a trial basis that provide for one morning each week to be devoted to the consideration of private

senators' bills (exclusive of other backbench business, including private members' bills coming from the House of Representatives). The trial is still in its early stages and the procedures are expected to evolve.

Private senators' bills and expenditure

Two private senators' bills passed by the Senate in the past year or so have raised difficult issues about the financial initiative of the executive and the powers of the Senate. The Constitution prevents the Senate from initiating bills appropriating money. This has never meant that bills with significant financial implications have not or cannot be introduced in the Senate. In such cases, the necessary appropriation may be inserted by the House of Representatives or provided for in separate legislation.

The problem arises with a bill that amends an Act containing a standing or open-ended appropriation. Standing appropriations diminish parliamentary control over expenditure by removing parliament's right to consider such expenditure on a regular basis. Once a standing appropriation has been agreed to, the executive is effectively given a blank cheque. Approximately 80 per cent of Australian government expenditure is covered by standing appropriations. Under Senate precedents, a bill which amends an Act containing a standing appropriation, and which may result in further expenditure under that appropriation, is not a bill which appropriates money, the appropriation having already been made elsewhere. The two private senators' bills that were passed were bills of this type. The House of Representatives refused to consider them. With the government in a minority in both Houses and both Houses having virtually equal legislative powers under the Constitution, consideration is being given to mechanisms that would preserve the Senate's legislative rights while respecting the financial prerogative of the government.

Parliamentary Budget Office

The desirability of a Parliamentary Budget Office was another feature of the agreements on parliamentary reform, although its functions, powers and other particulars remained unspecified. The agreements expressed a preference for the office to be located within the Parliamentary Library but a joint select committee appointed to examine the idea recommended otherwise. The committee recommended that the office be established outside the structure of the existing parliamentary departments by means of a dedicated enabling statute providing for its functions and powers and the appointment and independence of its head. Other recommendations also covered the desirable funding level for the office and arrangements for supervision of its annual work plan and estimates

by the Joint Committee of Public Accounts and Audit. That committee has a similar relationship with the Auditor-General. Ongoing funding at the recommended level was included in the 2011–12 Budget.

New South Wales: joint entry on behalf of the Legislative Assembly and Legislative Council

Joint Select Committee on Parliamentary Procedure

Following the August 2010 federal election in Australia various proposals for reform of the Commonwealth House of Representatives were adopted in a document entitled *Agreement for a Better Parliament: Parliamentary Reform*.

In September 2010 the Houses of the New South Wales Parliament referred the *Agreement for a Better Parliament* to a Joint Select Committee on Parliamentary Procedure for inquiry and report, to allow the Parliament to consider whether any of the reforms adopted in the Australian House of Representatives could usefully be adopted by either or both of the Houses of the New South Wales Parliament.

In approaching the inquiry the Committee was cognisant of the fact that section 3 of the Constitution Act 1902 constitutes the Legislative Council and Legislative Assembly as separate and sovereign Houses of the New South Wales Parliament, each with its own different membership, electoral arrangements, practices, procedures and standing orders. For this reason, the Committee divided into two working groups of Council and Assembly members, each responsible for considering the application of the reforms proposed in the *Agreement for a Better Parliament* to their particular House.

The Committee reported in October 2010. In its report, the Committee found that both the Council and the Assembly had already implemented some of the reforms contained in the *Agreement for a Better Parliament*. For example, the Council had already introduced time limits for questions and answers and supplementary answers in Question Time, and the Assembly already had in place procedures to enable members to raise constituency issues.

In other areas, there were broad areas of commonality between both subcommittees, with both Houses having already introduced a *Code of Conduct for Members* and an Acknowledgement of Country at the commencement of sittings, support from both working groups for placing the funding and staffing arrangements of the Parliament on a more secure and independent footing, and support from both working groups for the introduction of a Parliamentary Integrity Commissioner to be considered by the Privileges Committees of both Houses in the new Parliament.

However, the working groups also adopted certain proposals for reform specific to their Houses:

- The Council working group supported further examination of the merits of a Selection of Business Committee, especially as it may relate to the management of private members' business and debate of committee reports in the Council. The working group also advocated further examination of the merits of reform to the committee system, and the merits of defining the meaning of appropriation bills "for the ordinary annual services of the Government". Given the complexity of these issues, the Council working group recommended that the Council Procedure Committee review these and other matters in the new Parliament. The House has now referred these matters to the Procedure Committee for inquiry and report.
- The Assembly working group supported further examination by the Standing Orders and Procedure Committee of a number of issues, including: providing for two Assistant Speakers, one a Government member and one a non-Government member; providing for the Speaker to nominate four Temporary Speakers, two Government members and two non-continued Government members; requiring the chair of the Public Accounts Committee to be a non-Government member; requiring ministers to provide an explanation to the House for a late response to a committee report or a late response to a petition signed by 500 or more persons; requiring the list of unproclaimed legislation tabled by the Speaker 90 days after assent to include the reasons why the legislation remains unproclaimed; and placing a five-minute limit on answers to questions asked in the House. The standing orders were subsequently amended in November 2010 to provide that an answer to a question asked in the House must be limited to five minutes.

Inquiry into the exemption of members of Parliament from jury duty

Section 6 of and Schedule 2 to the Jury Act 1977 (NSW) provide that members of the New South Wales Legislative Council and Legislative Assembly are ineligible for jury duty.

In June 2010 the former Attorney-General referred to the Legislative Council Standing Committee on Law and Justice an inquiry into the eligibility of members of Parliament who do not hold ministerial portfolios to serve on juries, including whether the existing statutory exemption under the Jury Act 1977 should be repealed. The reference followed a 2007 report of the New South Wales Law Reform Commission entitled *Jury Selection*, which contained

a number of recommendations intended to broaden the pool of potential jurors, including that members of Parliament should serve on juries.

It is noted that the UK Parliament withdrew the statutory immunity of members of Parliament from jury duty in 2003.

The Committee received submissions from a number of people and organisations including the President and Speaker of the NSW Parliament, current and former members of the NSW Parliament, the Clerk of the Parliaments, the Clerk of the Legislative Assembly, clerks of other parliaments, the Office of the Director of Public Prosecutions, the Public Defenders Office, the Chief Magistrate of the Local Court of NSW and others.

The Committee reported on 24 November 2010. The report made one recommendation upholding the exemption of members from jury service. In support, the Committee cited the doctrine of the separation of powers, acknowledging that while the doctrine is not formally expressed in statute in New South Wales, it is nonetheless fundamental to the state's system of government, and that allowing individuals who make laws to then adjudicate on those laws would be a fundamental breach of the doctrine.

The Committee also accepted the longstanding principle, developed over centuries, that the Houses have the first right to the service of their members.

The statutory ineligibility of members of the Legislative Council and Legislative Assembly for jury duty remains in place.

New protocol for the execution of search warrants on members' offices

In November 2010 the presiding officers of the New South Wales Parliament and Commissioner of Police entered into a Memorandum of Understanding on the Execution of Search Warrants on the Premises of Members of the New South Wales Parliament.

The finalisation of this protocol follows the adoption in December 2009 of a Memorandum of Understanding on the Execution of Search Warrants in the Parliament House Office of Members of the New South Wales Parliament between the President, Speaker and Commissioner of the Independent Commission Against Corruption (ICAC).

Together, these two protocols establish formal arrangements for the execution of search warrants by the two agencies most likely to seek to execute a search warrant on the premises of members of the NSW Parliament. Their finalisation is the culmination of a series of inquiries and events dating back to 2003, when the ICAC executed a search warrant on the offices of the Hon Peter Breen MLC. At the time, there were no protocols for regulating the execution of such search warrants.

Electoral funding reform

In November 2010 the New South Wales Parliament passed the Election Funding and Disclosures Amendment Act 2010 (NSW). The Act amended the Election Funding and Disclosures Act 1981 (NSW) to make major reforms to the NSW electoral funding scheme. Of note, the Act introduced caps on political donations and election spending for State elections, including caps on third party spending. Donations to political parties and groups are now capped at $5,000 per annum. Donations to elected members, candidates and third party campaigners (i.e. an entity that is not a registered party, elected member, group or candidate who incurs electoral expenditure in excess of $2,000) are now capped at $2,000 per annum. To compensate parties and candidates for the reduction in political donations, the Act increased public funding for election campaigns.

New South Wales Legislative Assembly

Members found guilty of corrupt conduct

Following allegations that the Member for Penrith, Karyn Paluzzano, and a number of her electorate office staff had made false claims for sitting day relief (SDR) payments, the Independent Commission Against Corruption (ICAC) commenced an investigation into the matter in April 2010. The SDR entitlement, as it then was, could be used by members to employ temporary staff for their electorate offices where a member requests electorate office staff to attend Parliament House for sitting days.

When Mrs Paluzzano appeared before the ICAC she admitted that she had knowingly falsified the SDR forms in stating that certain staff members had worked under the SDR arrangement when in fact they had assisted her in attending to constituents at their homes, undertaking what the ICAC deemed to be "doorknocking". Following this admission Mrs Paluzzano resigned from the Legislative Assembly on 7 May 2010. Prior to her appearance before the ICAC Mrs Paluzzano had stated that she had not misused public money to pay staff for partisan campaigning.

The Independent Commission Against Corruption tabled its report on 13 July 2010. The ICAC found that Mrs Paluzzano and her former electorate staff engaged in corrupt conduct in connection with the submission of false claims for SDR payments. It has recommended that the DPP consider prosecuting Mrs Paluzzano for the common law offence of misconduct in public office, offences for obtaining a valuable thing for herself and obtaining money for her

staff contrary to the Crimes Act 1900 (NSW), and offences of giving false or misleading evidence to the Commission.

The report has a number of recommendations for actions to be undertaken by the Clerk of the Legislative Assembly:

"Recommendation 1—That the Clerk of the Legislative Assembly:

(a) consider whether and if so, to what extent, door knocking engaged in by electorate officers may constitute or involve "electioneering" or "political campaigning";

(b) review the range of duties currently performed by electorate officers to determine whether they perform other activities that may involve electioneering or political campaigning; and

(c) prepare written guidelines for members and electorate officers that clearly define the terms "electioneering" and "political campaigning", advise whether the activities identified in paragraphs (a) and (b) of this recommendation are permissible activities for electorate officers to engage in and emphasise that funds provided for the salaries of electorate officers are intended as payment for the performance of those duties described in relevant position descriptions which do not include electioneering or political campaigning.

Recommendation 2—That the Clerk of the Legislative Assembly:

(a) consider whether Parliament's audit program of Members' entitlements has the capacity to detect corrupt conduct and; if not

(b) develop, implement and regularly evaluate a corruption prevention strategy that includes:

- a comprehensive risk assessment of the corruption risks in relation to the use of Members' allowances and entitlements
- a corruption risk management plan describing the corruption risks identified and the strategies Parliament will adopt to manage each of these risks
- measures capable of detecting corrupt conduct and non-compliance by Members and electorate office staff."

As a consequence of these recommendations, the Speaker wrote to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics requesting it to prepare a discussion paper on the definitional issues raised in the ICAC report with a view to determining whether it is possible to define effectively the terms "electioneering" or "political campaigning" for

incorporation into guidelines and into the position description for the staff of members.

The Committee responded to the Speaker that in its view the position description that outlined the duties of electorate officers currently provided adequate guidance to staff on the scope of their support to members given the wide-ranging and complex nature of an elected politician's role and function.

The Committee noted that in the lead up to the March 2011 general election the Department of Premier and Cabinet had circulated guidance in relation to restrictions that applied to "campaigning" which prohibited "any statement or activity by staff that could be construed as attempting to influence the way a person might cast their vote." The Committee considered that any further prescriptive approach would be problematic. It also recommended that it be consulted regarding any draft definitions that may be prepared by the Parliamentary Remuneration Tribunal or the parliamentary administration.

In December 2010 another member, Angela D'Amore, and some members of her staff were found to have engaged in corrupt conduct by falsifying claims for sitting day relief payments. In this case, the falsification involved claims that certain members of staff had worked at the electorate office and were thereby entitled to the sitting day relief payment when in fact they had worked at Parliament House.

The fact that a number of members had misused their entitlements and were found to be in breach of the Code of Conduct indicated a need for more training and education for members on the Code of Conduct and ethics generally.

In December 2010 the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics reported on a review of the Code of Conduct and related issues. One of the issues discussed was in relation to the education and induction of members.

The Committee has a statutory function pursuant to section 72E(1)(b) to carry out educative work relating to ethical standards applying to members of the Legislative Assembly. The Committee noted that it supports continuing the current induction programme, which includes a session on the Members' Code of Conduct and the regulations for the reporting of members' interests. The Committee also agreed that further training should be given to members within their first year in office and when they were familiar with the day-to-day operations of electorate offices and the scope of their parliamentary role. The Committee also recommended offering an ethics training module every 12 months, and that, to encourage participation, a record be kept of members' completion of the module.

A session of ethics and the Code of Conduct formed part of the most recent training and induction programme for new members of the 55th Parliament.

Draft Parliamentary Privilege Bill

On 2 December 2010 the then Speaker, Richard Torbay, tabled an Exposure Draft Parliamentary Privilege Bill for the information of members.

While NSW has a Parliamentary Precincts Act, and there are other protections and statutory powers in the Defamation Act, the Parliamentary Evidence Act and Parliamentary Papers Act, there is nothing equivalent to the Commonwealth Parliamentary Privileges Act.

The Commonwealth Parliamentary Privileges Act enacts precise legal language to codify freedom of speech. The Exposure Draft Bill tabled by Speaker Torbay, while adopting many similar provisions to the Commonwealth Act, is not identical. The bill was drafted to acknowledge the NSW environment, and the need for powers to augment those established by the New South Wales Constitution, and the standing orders of each House.

In particular, the Exposure Draft attempts to address two current matters that have arisen in recent times, which impede a member from freely exercising their role and functions as a member. In each case the test is still one of necessity—of what is required in contemporary times for the Parliament to be able properly to fulfil its role.

One matter addressed by the bill is the problem of "effective repetition" of an allegedly defamatory statement outside of Parliament, which has redrawn the boundary between privileged and unprotected speech to the detriment of Parliament. A second issue is the need to protect certain confidential communications contained in the records and correspondence of members from disclosure in response to pre-trial discovery, or subpoena. Not only members, but also citizens, should know where they stand in relation to privilege, freedom of political communication, and the right balance between the roles of the Parliament and the role of the courts.

The Exposure Draft Bill is not intended to cover the minutiae of procedures and administrative activities required to give purpose to the provisions. There is a regulation-making power within the bill, and acknowledging the different practices and standing orders of the two distinct Houses in New South Wales, the bill's provisions are intended to sit within a framework of standing orders, procedural resolutions and guidelines issued by the presiding officers.

By tabling the Exposure Draft at the end of the 54th Parliament, Speaker Torbay hoped that the bill could be circulated and discussed, so that during the life of the new Parliament it can be taken up by a joint committee. This

would provide an opportunity for the public and members to review fully what powers and sanctions are necessary and warranted to enable Parliament properly to fulfil its function in society.

Draft Members' Staff Bill

On Thursday 2 December 2010 the then Speaker, Richard Torbay, tabled the Exposure Draft Parliamentary Member's Staff Bill. Upon tabling the Bill, the Mr Torbay said that the Bill will enable Members of Parliament to make the decision to employ and dismiss their own staff. The Bill covers both Legislative Council and Legislative Assembly members and, in Schedule 1, parliamentary office holders who employ staff to assist them in those roles.

By way of background Speaker Torbay said that the current instrument of delegation to the Speaker and the President to employ staff of the Parliament is an Order in Council issued in 1956. Members of Parliament did not have staff allocated to them in 1956 and the delegation did not envisage the employment of members' staff. This, the Speaker said, led him to the conclusion that under the present arrangements there is a misalignment of the decision to employ or dismiss made by individual members and the power or authority to employ and dismiss of the presiding officer.

The Bill provides for members' staff to be Crown employees, for electorate officers to continue to have their conditions of employment determined by an industrial instrument and for the presiding officers to be the employer for other industrial purposes, including making determinations on matters not included in the award or contract of employment.

New South Wales Legislative Council

The impact of prorogation on standing committees

In late December 2010 and early 2011 the former Government's reforms to the power industry in New South Wales precipitated a re-examination of the capacity of standing committees of the Legislative Council to meet and transact business after the Parliament has been prorogued.

By way of background, in 1982, to facilitate the establishment of joint standing committees of the NSW Parliament, standing order 257C (now standing order 206(1)) was inserted into the standing orders of the Legislative Council to provide that such committees have the power to meet and transact business "during the life of the Parliament".

Council-only standing committees were subsequently established in 1988. Between 1988 and 1993 these standing committees, unlike select and sessional

committees, were not included in enabling legislation routinely passed by the Parliament to enable committees to sit after prorogation, as it was not considered necessary due to standing order 257C.

However, in 1994 the Crown Solicitor provided written advice to the Clerk of the Legislative Assembly arguing that the former Assembly standing order 374A and the equivalent Council standing order 257C, to the extent to which they may have purported to authorise committees to sit after prorogation, were invalid.

As expressed in *New South Wales Legislative Council Practice*, the clerks of the Council have always taken the view that the Crown Solicitor's position represented an extremely narrow interpretation of the powers of the Council.

Both views were put to the test during the events of late December 2010 and early 2011.

On 15 December 2010 the Government announced the sale of state electricity assets under a gentrader model. Subsequently, on 22 December 2010 the Parliament was prorogued by the Governor on the advice of the Executive Council several months before the election of 26 March 2011. At the time, the Government was accused in the media of using prorogation in an attempt to avoid an inquiry by the Council's General Purpose Standing Committee No. 1 (GPSC 1) into the transaction.

Despite the prorogation of Parliament, the following day, 23 December, GPSC 1 self-referred terms of reference for an inquiry into the gentrader transactions, following advice from the Clerk that it had the power to do so.

The Government subsequently sought updated legal advice from the Crown Solicitor on the matter. In his advice dated 2 January 2011 the Crown Solicitor reiterated his 1994 advice that standing committees cannot function while the Council is prorogued unless they have legislative authority to do so. In the process, the Crown Solicitor again argued that standing order 206(1) of the Council, to the extent to which it may purport to authorise committees to sit after prorogation, is invalid.

By contrast, in separate advice to the then President dated 11 January 2011, the Clerk advised that there is no restriction on the capacity of standing committees to meet and transact business during periods of prorogation. The position adopted by the Clerk was as follows:

- It is common ground that the life of the New South Wales Parliament does not come to an end on prorogation. There is no statutory or judicial warrant for treating prorogation as effectively ending the life of a Parliament. Rather, under section 22F of the Constitution Act 1902, it is only in the event that

the Assembly is dissolved that the standing committees must cease to meet and dispatch business.

- While historically it has generally been held according to practice that the Council cannot permit a committee to sit after prorogation, on a more modern reading of the system of responsible government in New South Wales, this traditional understanding has arguably given way to the paramount role of the Council in scrutinising the actions of the executive government and holding it to account, a role explicitly acknowledged by the High Court of Australia in *Egan v Willis* in 1998. Under this contemporary system of responsible government, standing committees must have the power to conduct inquiries after prorogation as a matter of "reasonable necessity". The traditional interpretations of the impact of prorogation on the Council and its committees inherited from the British Parliament are of little or no relevance, and are not suitable for application, in modern times.
- In relation to the legality of standing order 206, the standing orders may regulate the powers of the Council, including the power to conduct inquiries.

The position adopted by the Clerk was subsequently supported by Mr Bret Walker SC in a legal opinion dated 21 January 2011. In relation to the legality of standing order 206, Mr Walker cited section 15 of the Constitution Act 1902, which provides that the Legislative Council may adopt "as there may be occasion" standing rules and orders "regulating ... the orderly conduct of such Council ...". Mr Walker argued that it is not in question that the standing orders may regulate some aspects of prorogation, such as the revival of bills in a new session of parliament, and that such matters legitimately fall within the "orderly conduct" of proceedings. By extension, there is no reason why the standing orders should not be held to regulate other aspects of prorogation, such as allowing a committee to sit during the "life of a Parliament" (including any period of prorogation) and to report in the next session.

In relation to the system of responsible government, Mr Walker observed:

> "It is clear from the reasoning of all justices in the High Court in *Egan v Willis*, various as their approaches were, that questions of parliamentary power depend not only on statutory wording but also their broad, beneficial and purposive reading of provisions for such a central institution. And at the heart of that functional approach, in my opinion, lies a paramount regard for responsible government in the sense of an Executive being answerable to the people's elected representatives. It is not possible, in my view, to read any of the historical and especially English accounts and explanations of prorogation without noting the radical shift from a King against Parliament to

> Ministers responsible to democratically elected representatives of the people. What possible justification could there be, in modern terms, for permitting the Executive to evade parliamentary scrutiny by taking care to time controversial or reprehensible actions just before advising the Governor to prorogue the chambers?"

Despite these differing legal opinions, the former Premier, Treasurer and Leader of the Opposition all appeared voluntarily before the Committee and gave evidence. However, seven former directors of Delta Electricity and Eraring Energy refused to appear before the Committee, even after having been issued with a summons under the Parliamentary Evidence Act 1901, citing concerns as to whether their evidence would be protected by parliamentary privilege. Ultimately, the President chose not to enforce the Committee's power to have the witnesses arrested and appear before the Committee, given the legal uncertainties in the case.

While the actions of the Committee in meeting and holding hearings after prorogation was contentious, it seems likely that Council standing committees will continue to sit and transact business after prorogation in the future.

In a postscript to these events, in May 2011 the new Government introduced a bill into Parliament to insert into the Constitution Act 1902 a new section that provides that the Premier or Executive Council may not advise the Governor to prorogue the Legislative Council and Assembly for the six months prior to 26 January in the year in which an election is due to be held. This provision effectively prevents the Executive Government from proroguing Parliament early in the lead up to an election in an attempt to prevent parliamentary scrutiny of its activities.

Queensland Legislative Assembly

Review of the committee system

On 25 February 2010 the Legislative Assembly established the Committee System Review Committee (CSRC) to undertake a review of Queensland's parliamentary committees, with a focus on how the parliamentary oversight of legislation could be enhanced and how the existing parliamentary committee system could be strengthened to enhance accountability. Amongst other aspects, the committee was tasked with considering the role of parliamentary committees in examining legislative proposals (particularly in unicameral legislatures) and timely and cost effective ways in which committees could more effectively evaluate legislative proposals.

The CSRC report, tabled on 15 December 2010, made 55 recommendations including—

- Establishment of nine portfolio-based committees which would examine policy and legislation in their dedicated policy areas. Each committee to have the ability to report on all aspects of government activities, including investigating and reporting on events, incidents and operational matters of the government. All new bills to be referred to a committee for consideration before proceeding through the House. Each portfolio committee to examine the Budget estimates for their portfolio.
- Bipartisan support of a committee would be required before the government could make any appointment to a range of sensitive public offices, including the Ombudsman, the Information Commissioner and the Auditor-General.
- The current Parliamentary Crime and Misconduct Committee would continue and, in a first for Queensland, would be chaired by a non-government member. In addition, a review of the committee membership with a view to including non members of Parliament—that is, "lay members".
- Establishment of a Committee of the Legislative Assembly which would coordinate the business of the parliament as well as taking on the functions of the Standing Orders Committee and the Integrity, Ethics and Parliamentary Privileges Committee without the oversight function of the Integrity Commissioner. Membership of this committee would comprise the Leader of the House, the Premier (or nominee), Deputy Premier (or nominee), Leader of Opposition Business, Leader of the Opposition (or nominee) and Deputy Leader of the Opposition (or nominee).

The government's interim response was tabled on 9 March 2011 during the debate on the motion to note the CSRC report. On completion of the debate after seven and a half hours the House established the Committee of the Legislative Assembly to consider—

- issues arising from the CSRC report;
- issues arising from the debate in the Legislative Assembly on the noting of the committee report;
- the government response to the committee report; and
- issues and matters relating to the reforms contained in the report and incidental matters referred to the committee by the Premier.

On 5 April 2011 the Parliament of Queensland (Reform and Modernisation) Amendment Bill was introduced to enact the first stage of the government's response to the work undertaken by the CSRC. The Bill was passed

on 12 May but the provisions establishing the new committees have not yet commenced.

150th anniversary of Queensland Parliament

22 May 2010 marked the 150th anniversary of the Queensland Parliament's first sitting. A number of commemorative and celebratory events were held throughout the year to mark this historic milestone, referred to as P150. These included an open day, book launches, a wine launch, youth parliaments, launch of the Re-Member project (a fully searchable online database of biographical information on the parliament's first members), online publication of the record of proceedings of the first year of parliament, a dinner debate and dedication of a "Speaker's Corner" devoted to encouraging Queenslanders to speak and engage in open and vigorous debate.

Tasmania House of Assembly

Size of Parliament

Debate continues around the possible return of the House of Assembly from 25 to 35 members. It seemed that support from all three parties and more generally from informed commentators in the community had assured the passage of legislation at the autumn 2011 sittings of Parliament. However, when significant state budgetary troubles were announced, the consensus collapsed in March and while the matter is still acknowledged to be important it has become an aspiration for fulfilment at some future time.

Integrity Commission

The Integrity Commission, a Tasmanian version of an "anti-corruption watchdog", commenced operations in October 2010. The Board of the Commission consists of: Hon Murray Kellam AO (Chief Commissioner), Mike Blake (Auditor-General), Simon Allston (Ombudsman), Iain Frawley (State Service Commissioner), David Hudson, Elizabeth Gillam and Luppo Prins APM. The chief executive officer is Mrs Barbara Etter APM.

Under the Integrity Commission Act of 2009 a Joint Parliamentary Standing Committee has been established to monitor the activities of the Commission and liaise with it. The Committee's role is set out more fully in section 24 of the Act. Three members have been appointed from each House of Parliament to form the Committee.

A Parliamentary Standards Commissioner has been appointed. He is Hon Fr Michael Tate AO.

Committees

Following the March 2010 general election a minority government situation exists in Tasmania. The Labor Party rules in a power-sharing arrangement with the Tasmanian Greens, the latter of whom have two ministries. The minority situation has led to some interesting manoeuvring in the chamber. One result has been the referral of a number of controversial matters to House of Assembly select committees. For many years there were virtually no select committees in the Assembly. The small numbers in the House may have been a factor. Since June 2010 there have been five select committees established. They are: Child Protection; Costs of Housing, Building and Construction in Tasmania; Gaming Control Amendment Bill; Scottsdale Sawmills; Water and Sewerage.

The establishment of other committees may be expected shortly. With such a significant number of committees in operation strain has been placed on staff resources.

The House of Assembly now has responsibility for the Joint Committees on Public Works and Integrity and the Legislative Council has Subordinate Legislation and Public Accounts. Hitherto Public Accounts was the responsibility of the House.

Minister ejected from the House

After a rowdy first part of the last sitting day in 2010 (18 November) the Speaker ejected the Minister for Education (Hon Lin Thorp MLC) from the chamber for 10 minutes. LC Ministers have appeared in the House of Assembly Question Time for the last couple of years. It was the first time that a both Minister and an MLC had been ordered to leave. With the retirement of the Hon Michael Aird MLC and the defeat at the polls of Hon Lin Thorp MLC, there are no longer any Ministers in the Upper House.

Change of Premier

On 24 January 2011 David Bartlett MP resigned as Premier, citing the need to spend more time with his young family. The Deputy Premier and Treasurer, Hon Lara Giddings MP, has become the new Premier. She is the first female Premier of Tasmania and will retain the Treasury portfolio.

Tasmania Legislative Council

There were two matters arising during 2010 that may be of interest. First, on 16 November 2010 a motion was moved to express favour towards increasing

the size of the Council from 15 to 19 members. The size of the Council, presently 15 members, has ranged between 15 and 19 members since its inception in 1856. The last change was in 1998, to reduce the size of the Council, which some members and outside observers subsequently argued was a mistake in retrospect. This motion was the first test of the Council's position on the question of its size since the 1998 reduction. It was negatived, nine votes to five.

Secondly, also in November, following discussion and debate through the sitting year, the Council agreed to establish two sessional committees on government administration. Each committee has responsibility for the oversight of certain portfolio areas and will thus provide ongoing scrutiny of government with an ability to react faster than the Council as a whole if an inquiry needed to commence. The new committees, as part of a planned and structured committee system, were envisaged as likely to be a more efficient model compared to relying largely on select committees.

Victoria Legislative Council

Dispute Resolution Committee—resurrecting defeated bills

The Constitution (Parliamentary Reform) Act 2003 inserted into the Constitution Act 1975 a Dispute Resolution Committee, for the purposes of resolving disputes between the two Houses over bills—that is, a bill that has "not been passed within 2 months after the Bill" has been transmitted to the Council from the Assembly. It is a matter for the Assembly only to refer a bill. The Committee received its first reference in 2009, as reported in last year's edition of *The Table*. Two further references were received in 2010, which served to highlight a number of inconsistencies with the operation and outcomes of the Committee and dispute resolution process more generally.

In February 2010 the Legislative Council defeated the Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Bill 2009. Following the defeat of the Bill in the Legislative Council, the Legislative Assembly agreed to a resolution to refer the Bill to the Dispute Resolution Committee. This was the second time the Assembly had referred a defeated bill to the Committee, and as with the first bill, there was a significant disagreement between the Government and the Opposition about the power of the Assembly to refer defeated bills to the Committee—the main point of contention being that a defeated bill is in effect dead, not in dispute, and therefore incapable of being referred to the Dispute Resolution Committee. Despite these objections, the Bill was referred to the Committee and following numer-

ous meetings, an agreement was reached between the two major parties on the Bill and a Dispute Resolution agreed to.

However, unlike the previous bill referred to the Committee, which recommended a new bill be introduced and passed incorporating the agreed changes, this time the Committee recommended that the original bill be passed with a set of agreed amendments. This aimed to comply more strictly with the requirements of the Constitution Act 1975 regarding Dispute Resolutions. Under section 65A of the Act, a Dispute Resolution can recommend that the bill (a) be passed as transmitted by the Assembly to the Council without amendment; or (b) be passed with the amendment or amendments specified in the resolution; or (c) not be passed. As the first Dispute Resolution agreed to by the Committee recommended a new bill be introduced, it was arguable whether these provisions had been complied with.

The Dispute Resolution was subsequently tabled in both Houses. However, given the Bill had been defeated and therefore was not on the notice paper of either House, giving effect to the Committee's recommendation became procedurally difficult. The process followed in the Assembly was that the House rescinded the third reading of the Bill and suspended its standing orders to enable the House to reinstate the Bill at the consideration in detail stage. This allowed the Assembly to reconsider the Bill, make the amendments proposed by the Dispute Resolution Committee, and then retransmit the Bill incorporating the amendments to the Council.

On receipt of the Bill by the Council, the President ruled that in his view the Bill was the same in substance to the original Bill considered and defeated by the Council; therefore the House could not accept a motion for the first reading of the Bill due to standing order 7.06, which states:

> "No question will be proposed in the Council which is the same in substance as any question which has been resolved during the previous 6 months in the same Session."

The following day, the Government moved a motion to suspend standing order 7.06 to allow the Council to reconsider the Bill, which was agreed to following a division (with the three Australian Greens and sole Democratic Labour Party member opposing the motion). This then allowed the President to accept a motion for the first reading of the Bill. The Bill, incorporating the amendments made by the Assembly on the recommendation of the Dispute Resolution Committee, then progressed through its remaining stages and was ultimately passed by the Council.

The third bill referred to the Dispute Resolution Committee was the Transport Legislation Amendment (Ports Integration) Bill 2010, defeated by the Legislative Council on the second reading on 22 June 2010 and returned to the Legislative Assembly. The Assembly referred the Bill to the Dispute Resolution Committee on the motion of the Minister for Police and Emergency Services on 24 June 2010 and the Legislative Council was informed accordingly.

On this occasion the Committee produced a different result again compared with the two previous referrals.

The first time the Committee considered a bill referred to it, the Committee recommended a new bill incorporating significant changes be introduced and passed. The second time the Committee took a different approach and recommended the bill be passed with numerous amendments recommended by the Committee (see above).

In the third instance, on 27 July 2010 the Clerk of the Legislative Council laid on the Table a copy of the Dispute Resolution agreed to by the Dispute Resolution Committee on the Transport Legislation Amendment (Ports Integration) Bill 2010. The resolution of the Committee simply stated that the Legislative Council should pass the Bill without amendment. This was a result of the Opposition changing its position on the Bill following discussions with the Government.

The main difficulty that arose from this resolution was how the Council would implement the Committee's recommendation, given the Bill had been defeated and was no longer listed on the Notice Paper. The Assembly subsequently agreed to a resolution to retransmit the Bill to the Council, and the Government then moved a motion to rescind the order of the Council negativing the second reading and suspending so much of standing orders to permit the second reading question to be put again. This was agreed to on division, with the Greens and Democratic Labour Party members opposing the motion.

Later that day, the Legislative Council passed the Bill without amendment, notwithstanding the protestations of the Greens Party members, who expressed the view that the process of the Dispute Resolution Committee is undemocratic as bills that have been rejected by the democratically elected Upper House should be considered dead bills and therefore unable to appear before the House for another six months as per normal procedure.

CANADA

House of Commons

The House Administration in collaboration with Public Works and Government Services Canada continued its efforts to meet the key objectives of the Long-Term Vision and Plan for the Parliamentary Precinct. This plan serves to ensure that members and staff have safe, efficient facilities that meet the demands of a modern workplace while preserving and enhancing this important national heritage setting for all Canadians.

The approved Strategic Direction focuses on the renovation of the core historic parliamentary buildings—the triad of the West Block, Centre Block and the East Block—as the first priority, phased over a period of 25 years. This renovation will require the interim relocation of the parliamentary chambers and associated legislative functions to the East and West Blocks, as well as the transfer of parliamentarians to other locations. Accordingly, the East and West Blocks are to be renovated first, not only to accommodate the interim uses from Centre Block, but also to address the pressing restoration work that is required on these two buildings.

During 2010, alternative workspaces for the relocation of the West Block parliamentary functions, including committee rooms and support services, were found. Rather than constructing entirely new facilities, existing crown-owned buildings were renovated and retrofitted to meet this need. The West Block has now been entirely vacated to allow major construction work to begin.

Masonry repairs and urgent building interventions continue in the Parliamentary Precinct to ensure the preservation of these heritage assets.

Further details about the Long-Term Vision and Plan for the Parliamentary Precinct can be found at: <www.parliamenthill.gc.ca>.

Alberta Legislative Assembly

New electoral divisions were proposed for Alberta by the Electoral Boundaries Commission, chaired by the Hon. Mr Justice E.J. Walter, a former Chief Judge of the Provincial Court of Alberta, in the Commission's final report tabled with the Assembly as an intersessional deposit on 24 June 2010. Under amendments to the Electoral Boundaries Commission Act in 2009, the Commission was to redraw Alberta's electoral divisions to incorporate four additional constituencies, bringing the total to 87. Under the procedure outlined in that Act, if the Assembly approves or approves with amendments the proposals of the Commission, the Government must bring forward a bill that same session in

accordance with the Assembly's resolution. The requisite motion was passed by the Legislative Assembly on 26 October 2010 with four amendments concerning constituency name changes. One major difference in 2010 was that the report of the Commission contained the constituency boundary coordinates on a DVD attached to the report rather than in paper form. This marked the first time the Alberta Legislative Assembly had incorporated by reference an electronic document, although British Columbia had adopted an electronic version of electoral divisions in 2008. The subsequent Bill giving effect to the electoral division changes in Alberta, Bill 28 the Electoral Divisions Act, was introduced in the Assembly on 3 November 2010. In past years similar bills had incorporated the metes and bounds descriptions of the constituencies but Bill 28 referred, by sessional paper number, to the DVD prepared by the Chief Electoral Officer and tabled in the Assembly which contained the maps and precise boundaries of the electoral divisions. While Members were able to propose amendments as with any other bill, the process required advance notice to Parliamentary Counsel so that experts on loan for the purpose could map the changes on the DVD. However, no substantive amendments were proposed to the proposed electoral divisions. One name change was proposed in Committee of the Whole and adopted. The amendment contained the direction that the name be changed in the DVD referenced in the Bill. Time allocation was invoked by the Government at committee stage and third reading. The Bill received Royal Assent on 2 December 2010 and comes into force upon the issuing of the writ for the next provincial general election.

British Columbia Legislative Assembly

In the summer of 2010 the first citizen's initiative petition was completed under the Recall and Initiative Act. The legislation, introduced in 1995, permits registered voters to propose new laws or changes to existing laws. The initiative, led by former Premier William Vander Zalm, proposed new legislation to extinguish the 12 per cent harmonised sales tax (HST), which came into effect in British Columbia on 1 July 2010. Following ratification by the Acting Chief Electoral Officer, the initiative petition and draft bill were referred on 20 August to the all-party Select Standing Committee on Legislative Initiatives. The legislation provided the Committee with a mandate to recommend one of two options: (a) table a report recommending that the draft bill be introduced into the House at the earliest practicable opportunity, or (b) refer the initiative petition and draft bill to the Chief Electoral Officer for a province-wide initiative vote.

The Legislative Initiatives Committee met twice in September before referring the petition and draft bill to the Chief Electoral Officer for a province-wide initiative vote scheduled for 24 September 2011, as determined by the statute. Under the Recall and Initiative Act, a threshold of at least 50 per cent of voters in two-thirds of all electoral districts is required for an initiative vote to pass. However, the Premier, Gordon Campbell, announced on 13 September 2010 that should a simple majority vote in favour of repealing the HST, the government would implement this change.

Northwest Territories Legislative Assembly

On 4 March 2010 the House was adjourned to 11 May 2010. Shortly after the adjournment, the Executive Council advised the Speaker that it would be in the public interest to recall the House at an earlier date. Accordingly, the Speaker, satisfied of the need for a recall, gave notice that the House would reconvene on 23 March 2010 to discuss a supplementary appropriation act regarding the Deh Cho Bridge. This is the first such recall in 12 years.

In the consensus government system, it is possible for a standing committee to initiate a major review of a piece of legislation if members feel an Act is outdated and no longer serving the needs of Northerners. This was the case with the Standing Committee on Social Programs Review of the Child and Family Services Act. This was the first instance where departmental officials travelled with the Committee and worked very closely with members, which was a unique approach to this type of endeavour. The report is still, clearly, a product of the Committee, and the recommendations in the report will, as usual, be directed towards the Government for consideration and response. In keeping with normal practises, the Government is under no obligation to comply with the recommendations, but it does have to provide a comprehensive response to the Committee's recommendations within 120 days.

The Speaker of the Legislative Assembly has introduced some new, "greener" initiatives to the Legislative Assembly. One of these ideas was to "drop the pop" in the legislature. Various schools in the NWT have "dropped the pop" in classrooms to help students lead a healthier lifestyle and the Legislative Assembly, as of 1 June 2009, discontinued sales of soft drinks in the building. The Legislative Assembly also stopped selling bottled water as a "green" initiative to reduce waste.

Another initiative saw the Legislative Assembly undertake a paper reduction strategy, reducing its paper consumption by 25 per cent in the last two years. The Legislative Assembly website has been used to eliminate the need to

supply copies of house documents in paper form. The website now posts copies of tabled documents, ministers' statements and motions, as well as bills, news releases and orders of the day.

In addition, the Assembly's commissioning of its new wood pellet boiler occurred on 29 October 2010. The wood pellet boiler will offset 90 per cent of the building's annual fuel (about 82,000 litres), as well as reducing greenhouse gas emissions by approximately 240 tonnes per year.

The Speaker of the Legislative Assembly hosted the first-ever Elders Parliament from 2 to 7 May 2010. Any resident of the Northwest Territories over the age of 50 is eligible to apply for this programme. 18 elders from across the territory came to Yellowknife for a week of meetings and briefings, including three days of sitting in the chamber to voice their opinions on important issues. All of the public debates and meetings were televised and broadcast throughout the Northwest Territories on our Legislative Assembly broadcasting system in three different languages. The elders had a wonderful time getting to know their peers from communities around the Northwest Territories, and enjoyed the chance to debate publicly issues that affect them. There was a lot of media coverage, and many of the "real" MLAs sat in the public gallery to watch the proceedings in the chamber.

Another recent innovation has enabled the Legislative Assembly to offer its citizenry the opportunity to sign electronic petitions. The Assembly will use similar rules to those for paper petitions—petitions will still have to be sponsored by a member to be presented in the House—but now a larger number of people will have access to them. Because many Northwest Territories communities are separated by large physical distances, the Assembly is happy to offer more access to public petitions through its e-petitions site. The site went live on 27 October 2010 and the Assembly has already seen keen interest in it. This is a pilot project that will be monitored and reviewed in 2011.

Québec National Assembly

The Commission de la représentation électorale (CRÉ) tabled its revised proposal on the delimitation of the electoral divisions in the second volume of its preliminary report during the sittings held by the Committee on the National Assembly (CNA) on 14 and 15 September 2010.

The Election Act provides that following this tabling before the CNA, the CRÉ shall submit a report indicating the boundaries of the electoral divisions to the President or the Secretary General of the National Assembly. A limited debate on this report must then take place in the Assembly or in the CNA, and

no motion may be presented during the debate.[2] Subsequently, the new list of electoral divisions is published in the *Gazette officielle du Québec*.[3] The list of electoral divisions thus published enters into force at the moment of the dissolution of the National Assembly, unless this dissolution occurs before the expiry of a three-month period following this publication.[4]

However, in October 2010 the political parties agreed to suspend the electoral division delimitation process provided for in the Election Act and submit their proposals to modify the electoral divisions to the Assembly. One of the issues is the loss of electoral divisions in the regions where the number of electors has decreased.

On 3 November 2010 the Minister responsible for the Reform of Democratic Institutions and Access to Information introduced Bill 132, An Act to suspend the electoral division delimitation process. On 23 November 2010 this bill was passed on division. Its purpose is to suspend the electoral division delimitation process begun by the CRÉ until 30 June 2011. Whether the parliamentarians reach a consensus before the end of the suspension of this process in summer 2011 remains to be seen.

Saskatchewan Legislative Assembly

Métis sash presentation ceremony

The Métis people of Saskatchewan have a long and proud history. As stated in the *Encyclopedia of Saskatchewan*, "The epistemological roots of the word "Métis" are very important because the word presently denotes a distinct Indigenous nation with a talent for adopting other cultural traditions and making them their own. Indeed, the Métis have always practiced a culture which has fused First Nations (Cree, Saulteaux, Dene and Dakota), Euro-Canadian (*Canadien*), and European (Scots/Orkney) parent cultures into a unique synthesis".

The Year of the Métis in Saskatchewan was declared for 2010. On 30 November Speaker Toth accepted a Métis sash on behalf of the members of the Legislative Assembly to be placed on the Table. It will remain in the chamber as a reminder of the rich culture and heritage of the Métis in Saskatchewan.

[2] Election Act, R.S.Q., c. E-3.3, section 28.
[3] *Ibid.*, section 29.
[4] *Ibid.*, section 32.

GUYANA NATIONAL ASSEMBLY

The role of the Clerk[5]

The Clerk of the National Assembly of the Parliament of Guyana has a public administrative role as well as being a specialist in the rules of parliamentary procedure and practice. As departmental head, the Clerk administers the Parliament Office under the general oversight of the Speaker in the same way as the permanent secretary of a ministry administers his or her department under a minister. However, the exercise of this responsibility is qualitatively different to the exercise of the normal administrative functions of a department head, because decisions made or advice given may often be subject to the scrutiny of all members of the National Assembly and the public at large.

The Clerk administers a department of staff members and is responsible for providing services to the Speaker of the National Assembly, the Prime Minister, ministers, party leaders, "shadow ministers" and private members. The management role of the Clerk covers the usual range of departmental functions, including appointments, discipline, attendance, hours of duty, overtime, leave, salaries, etc. This may be described as his "public administration role".

Apart from his public administration responsibilities, the Clerk is responsible for procedural matters both inside and outside the chamber. In this capacity the Clerk has numerous responsibilities laid down in the standing orders which are derived from the constitution.

The Clerk also performs important functions in the legislative process. After each bill is passed by the Assembly and before it is sent to the President for his assent, the Clerk must satisfy himself that the bill in proper order. In whatever way and whenever the Assembly deals with an amendment to a bill or disposes of a bill, the Clerk is required to record accordingly and faithfully the action taken by the National Assembly.

When the Assembly proceeds to elect a new Speaker the Clerk assumes the role of Chairman of the National Assembly, calling on the proposer and the seconder and putting such questions as are necessary until the Speaker's chair is filled.

The Clerk must also assist in the smooth running of the chamber by the provision of routine support services, documentation and advice. To do this adequately the Clerk must have extensive knowledge and experience of the

[5] The contribution of the Guyana National Assembly to the annual comparative study in the 2010 edition of *The Table* (volume 78) on the role of the clerk or secretary general arrived after the publication of that edition; it is therefore included in this edition as this miscellaneous note.

interpretation of the standing orders, parliamentary practice and precedent, and the requirements of the constitution in so far as they affect the functions and tasks of the Assembly. He is also required to be informed on the law and practice of the United Kingdom House of Commons, from which much of the Assembly's practice is derived.

There is no fixed term of Office for the Clerk of the National Assembly. However, according to Article 158(1) of the constitution the Clerk shall vacate his office when he attains the age of 65 or such later age as may, in any particular case, be prescribed by the Commission consisting of the Speaker, as chairman, the minister responsible for finance or a person nominated by that minister to represent him at any meeting of the Commission and one other minister designated from time to time by the Prime Minister.

According to Article 158(2) of the constitution the Clerk shall be removed from office by the President if, but shall not be so removed unless, the National Assembly, by resolution which has received the affirmative votes of a majority of all elected members thereof, has resolved that he ought to be so removed for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

INDIA

Lok Sabha

In 2010 the practice with regard to the Cut Motions to the Outstanding Demands for Grants of the Ministries/Departments of the Union Government of India was changed by the orders of the Speaker of the House of the People. However, before enumerating the change in the practice being followed till 2010, the procedure for passing Demands for Grants is spelt out in brief.

Procedure for passing Demands

After presentation of the Budget, the Minister of Parliamentary Affairs holds a meeting of the Leaders of Parties/Groups in the House of the People in regard to the selection and order of discussion on Demands for Grants of the Ministries which are to be discussed in the House and time to be allotted thereon. On the basis of the decisions made at this meeting, the Government forwards the proposals for the consideration of the Business Advisory Committee (BAC). The BAC makes a report to the House. After adoption by the House of the report of the Committee, the allocation of time to various Ministries whose Demands for Grants are to be discussed in the House is pub-

lished in the Bulletin. Generally, Demands of three or four Ministries are selected for detailed discussion.

When the Demands for Grants are discussed, motions can be moved for reducing the amount of any Demand for Grant. These motions are called cut motions. After the presentation of the Budget, members of the House of the People can table notices of cut motions in respect of any Ministry. Immediately before discussion on a Demand for Grant is taken up, the Speaker asks the members present in the House whose cut motions to the Demand for Grant have been circulated to send slips to the Table within 15 minutes indicating the serial numbers of the cut motions they would like to move. Only those cut motions, slips in respect of which are received at the Table within the stipulated time, are treated as moved.

After discussion on the Demand for Grant is over, cut motions are first disposed of and then the Demand for Grant is put to a vote. Cut motions in respect of only those Demands which are discussed in the House are allowed to be moved.

On the last day allotted for discussion on the Demands for Grants at the time fixed in advance, the Speaker puts all the Outstanding Demands for Grants to the vote of the House. This process is known as a guillotine.

No action is taken on the notices of cut motions to the Outstanding Demands for Grants, which are to be guillotined.

Change in practice

During the Fourth Session of the 15th Lok Sabha (22 February to 7 May 2010), a member of the House of the People *vide* his letter addressed to the Hon. Speaker raised the following constitutional issue—

> "Article 113 of Indian Constitution empowers a member to assent or to refuse to assent any expenditure submitted in the form of Demands for Grants. But the Grants passed by guillotine do not give this right to the member."

The issue was examined in the light of the relevant provisions of the Constitution of India and the Rules of the House. It was decided by the Speaker of the House of the People that members might be permitted to move cut motions to Outstanding Demands for Grants, i.e., the Demands which were to be guillotined.

On 27 April 2010, when the Outstanding Demands were to be guillotined, the Speaker made the following observation—

"Shri Gurudas Dasgupta, Hon'ble Member, in a letter addressed to me raised an important point relating to the right of the members of the House in moving cut motions on the demands for grants which are guillotined. He quoted Article 113 of the Constitution and stated that since the Constitution vests in the House of the People the power to assent to a demand subject to reduction of the amount specified in that demand, the members have the right to move cut motions on any demand submitted to the House for its approval.

This point was also raised in the Business Advisory Committee meeting held on 15 April 2010 by Smt. Sushma Swaraj, the Leader of Opposition, and other Hon'ble Members. I had promised to examine this issue in terms of the constitutional provisions and rules and practices followed in the House.

The practice following so far in the House has been that the cut motions in respect of Demands for Grants which are to be guillotined are not circulated and thus not allowed to be moved. But I did not find any rule which bars the moving of cut motions on demands which are not discussed in the House.

The right to move a cut motion flows from the power vested in the House under Article 113 of the Constitution to assent to any demand subject to a reduction of the amount specified in that demand. This Article or any of the rules does not make any distinction between the demands which are discussed in the House and those which are guillotined. Article 113 uses the words, any demand. It is thus clear that cut motions can be moved on all demands submitted to the House under Article 113(2).

I have given careful consideration to the rules as well as the practice that has been followed all these years in respect of cut motions. I have also examined the constitutional provision which vests the power in the House of the People to reduce any demand submitted to the House. Constitutional right is a superior right and it overrides practices. Right to move cut motions is an important right of the members of the House provided in the Constitution which cannot be curtailed. I am, therefore, allowing the cut motions to be moved on demands which are to be guillotined.

Lists of cut motions to the Outstanding Demands of various Ministries/ Departments have already been circulated. In the normal course, members are given 15 minutes' time to send slips at the Table indicating the serial number of the cut motions which they intend to move. However, in the present case, since it is not possible to give time to the members to send slips at the Table indicating the serial number of the cut motions they would like to

move, all the cut motions to the Outstanding Demands of various Ministries/Departments, for which notices have been given and which have been circulated, will be treated as moved. And these cut motions will be disposed of before the Outstanding Demands are put to the vote of the Houses."

Accordingly, all the cut motions to the Outstanding Demands, which had been circulated, were treated as moved and put to the vote of the House. All the cut motions were negated.

After disposal of cut motions, all the Outstanding Demands for Grants were submitted to the vote of House and voted in full.

Rajya Sabha

Representation of the People (Amendment) Bill, 2010

The Representation of the People Act, 1950 provides that every person who is not less than 18 years of age on the qualifying date and is ordinarily resident in a constituency is entitled to be registered in the electoral roll for that constituency. It has been specified under Chapter III in the *Hand Book for Electoral Registration Officers* that a person who has gone out of the country for business or employment should be treated as having moved out of that place. As a result, a large number of citizens of India residing outside India for various reasons do not get the right to vote and are not able to participate in the democratic process of elections in their motherland. The Government considered all aspects of their demand for conferring them voting rights and accordingly introduced the Representation of the People (Amendment) Bill, 2006 in Rajya Sabha on 27 February 2006. The Bill was referred to the department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. In pursuance of the recommendations of the Committee for bringing a comprehensive bill on the subject, the Government decided to withdraw, with the leave of the Rajya Sabha, the earlier Bill, namely, the Representation of the People (Amendment) Bill, 2006 and to introduce a fresh bill to amend the Representation of the People Act, 1950. The Bill *inter alia* sought to provide that every citizen of India, whose name is not included in the electoral roll and who has not acquired the citizenship of any other country and who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise outside India (whether temporarily or not), shall be entitled to have his name registered in the electoral roll in the constituency in which his place of residence in India as mentioned in his passport is located. It further sought to provide for the time, manner and procedure for registering the

person in the electoral roll after proper verification. Every person thus registered shall be allowed to vote at an election in the constituency. The Bill was passed by the Rajya Sabha on 30 August 2010 and by the Lok Sabha on 31 August 2010. The Bill was assented to by the President on 21 September 2010 and became Act No. 36 of 2010.

Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 2010

The Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 2010 *inter alia* seeks to enhance the salary, daily allowance, rate of road mileage, pension, amount of advance for purchase of conveyance, etc, of Members of Parliament. Introducing the Bill in the House, the Minister of Parliamentary Affairs, Shri Pawan Kumar Bansal, said that the Bill was in accordance with the recommendations of the Joint Committee on the Salary, Allowances and Pension of Members of Parliament, which had examined the matters connected with the rationalisation of salary, allowances and other facilities available to Members of Parliament and submitted its report on 5 May 2010. The Bill sought to enhance the salary to Rs.50,000/- per mensem and the daily allowance to Rs.2,000/- for each day of the session. It has sought to increase the road mileage to Rs.16/- per kilometre. The spouse of a member can travel any number of times by railway in first class air-conditioned or executive class in any train from the usual place of residence of the member to Delhi and back. When Parliament is in session, the spouse of a member will be entitled to travel by air or partly by air or partly by rail subject to the condition that the total number of such journeys shall not exceed eight in a year. The Bill has sought to enhance the pension of former Members of Parliament. If a member has served for any period, he will be paid a pension of Rs.20,000/- per mensem. If a member has served for more than five years, he shall be entitled to Rs.1,500/- per month for every year served in excess of five years. It has also increased the advance to purchase the conveyance to rupees four lakhs. The office expense allowance and constituency allowance have also been increased to Rs.45,000/- per month respectively. The amendments in the salary and the pension came into effect on 18 May 2009, while those relating to the daily allowance, road mileage, rail facility, air travel facility, conveyance advance, office expense allowance and constituency allowance came into effect on 1 October 2010. The Bill was passed by the Lok Sabha on 27 August 2010 and by the Rajya Sabha on 31 August 2010. The Bill was assented to by the President on 21 September 2010 and became Act No. 37 of 2010.

Constitution (One Hundred and Eighth Amendment) Bill, 2008

Political empowerment of women has been rightly perceived as a powerful and indispensable tool for eliminating gender inequality and discrimination. To achieve that objective, reservation for women in Panchayats and Municipalities was provided by insertion of articles 243D and 243T in the Constitution *vide* the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992, respectively. The Constitution (One Hundred and Eighth Amendment) Bill, 2008, popularly known as Women's Reservation Bill *inter alia*, seeks to reserve one-third of all seats for women in the House of the People (Lok Sabha) and state legislative assemblies. One-third of the total number of seats reserved for Scheduled Castes and Scheduled Tribes shall be reserved for women belonging to the Scheduled Castes or Scheduled Tribes in the Lok Sabha and the legislative assemblies. Reserved seats may be allotted by rotation to different constituencies in the state or the union territory. Reservation of seats for women shall cease to exist 15 years after the commencement of the Act. The Bill was introduced in the Rajya Sabha on 6 May 2008 and referred to the department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on 8 May 2008 for examination. The Committee presented its 36th report on the Bill to the House on 17 December 2009. The Bill was passed by the Rajya Sabha on 9 March 2010 and was transmitted to the Lok Sabha on the same day.

Amendments in the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha) relating to questions asked by the members of Rajya Sabha

In 2010 certain amendments in the Rules of Procedure and Conduct of Business in the Council of States relating to questions asked by the members of Rajya Sabha were brought into effect at the initiative of the Chairman, Rajya Sabha. The amendments in rule 43 and rule 54(3) of the Rules of Procedure and Conduct of Business in the Council of States were recommended by the Committee on Rules of Rajya Sabha in its 12th report, which were later adopted by the House. The amendments are intended to make the Question Hour more efficient and effective.

Under the earlier system, a member's name could appear in the Starred List for a maximum of three times—once as a first questioner and twice by way of clubbing. It was generally observed that as a result the average number of questions that were taken up for oral answer during the Question Hour was only

four to six. The written replies to the remaining questions used to be laid on the Table as if they were unstarred questions. It was felt that if a member's name is included only once in the Starred List, it would facilitate more members to ask supplementaries on questions. The Committee on Rules accordingly recommended amendments in rule 43 of the Rules of Procedure and Conduct of Business in the Council of States. As per the amended provisions of rule 43, not more than one question distinguished by an asterisk by the same member shall be placed on the list of questions for oral answer on any one day and questions in excess of one shall be placed on the list of questions for written answers. Further, each question included in the list of questions for oral answer will be in the name of one member only by virtue of his position in the ballot.

It was also observed that on many occasions, during the Question Hour, the House did not get comprehensive information from Government on an issue of sufficient public importance sought by the members through the question because the member in whose name the question is listed happens to be absent or does not put the question. It was felt that this deprived other members, as well as the whole House, from asking supplementary questions and receiving further information from the Government, which otherwise would have been given had the question been put by the concerned member. In order to address this problem, the Committee recommended amendments in rule 54(3) of the Rules of Procedure prescribing that if on a question being called it is not put or the member in whose name it stands is absent, the Chairman shall direct that the answer to it be given.

Integrated Talk Time Management and Electronic Display System

Effective time management plays an important role in conducting the proceedings of a legislative body. During the Budget Session in 2010 the Rajya Sabha installed an Integrated Talk Time Management and Electronic Display System in its chamber. This is basically time management software which is controlled by the Presiding Officer with the assistance of a touch screen placed on his table. It indicates the names of members participating in various debates and discussions, their party affiliation, division numbers, total time allotted to different parties, time consumed and time left for members individually and for political parties. The system, in addition to the Zero Hour submissions (matters raised with the permission of the chair), also covers the Short Duration Discussion, Calling Attention and Discussion on Private Members' Bills and Resolutions. A Dashboard Application Software has been installed on the table of the Chairman in the chamber. It displays the seating arrangement of the

members, their photographs, party affiliations, division numbers and other details. It also provides a detailed report regarding supplementary questions. The Chairman can see on his screen the number of times a particular member raised supplementaries during any specific session, date, etc. This system has proved to be of considerable assistance to the Chairman, who earlier had to rely on the information provided to him manually.

Committee on reduction in use of paper in the functioning of Rajya Sabha

One noteworthy development in the Rajya Sabha has been the initiative to minimise the consumption of paper and its wastage. A Committee on reduction in use of paper in the functioning of Rajya Sabha was constituted in May 2010 under the chairmanship of the Secretary, Rajya Sabha secretariat. The Committee also included representatives from the Ministry of Parliamentary Affairs, Department of Administrative Reforms and Public Grievances, National Informatics Centre and Press Information Bureau. The terms of reference of the Committee included: compilation of a list of printed documents presently supplied to members by the Rajya Sabha Secretariat and the Ministries; and identifying printed documents the supply of which could be dispensed with since they are available digitally. Also, it was to work out arrangements for supplying printed documents to Members of Parliament alternatively in CD/DVD format and examine the feasibility of sending the List of Business, Parliamentary Bulletins and Synopsis through e mail to all members as soon as they get uploaded on the websites. It was also to examine the ways and means of reducing the number of copies of the documents presently submitted by the different departments of the Government to the Rajya Sabha secretariat in printed/cyclostyled/photocopied form for circulation to members or for laying on the Table of the Rajya Sabha. The Committee was required to recommend measures for reduction of copies in paper form of both Starred and Unstarred questions for use in the secretariat and for supply to members and the media. The Committee has since submitted its report, which was placed before the Committee on Provision of Computer Equipment to Members of Rajya Sabha in its meeting on 20 December 2010. The Committee has directed that the report may be circulated to members to elicit their comments and suggestions on the proposed measures to provide information to members in electronic form to reduce the supply of paper copies of parliamentary documents.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Simultaneous interpretation service commences

On the first sitting day of the 2010 year, the Speaker, Dr the Rt Hon Lockwood Smith, launched a new simultaneous interpretation service for the House of Representatives. Members may address the Speaker and the House either in English or in te reo Māori (the Māori language), a right ensured under standing order 104. This reflects the status of te reo Māori as an official language of New Zealand under the Māori Language Act 1987. Previously, speeches in te reo Māori were interpreted into English by an interpreter stationed to the left of the chair. This usually involved members pausing at intervals during their speeches to enable the interpretation to be given. However, in 2008 the Standing Orders Committee recommended that a simultaneous interpretation service be introduced to encourage the more frequent use of te reo Māori in the House and to improve the flow of debate. Viewers of Parliament TV have a choice of audio with the live television coverage. They can hear whatever is spoken in the House, either English or te reo Māori, or they can hear "English only".

Legislation Bill

The Attorney-General introduced the Legislation Bill on 25 June 2010. The stated purpose of the bill is to modernise and improve the law relating to the publication, availability, reprinting, revision and official versions of legislation and to bring this law together in a single piece of legislation.

Two aspects of the bill of note are the proposal to enable revision bills and the introduction of key new defined terms for delegated legislation. One of these terms, legislative instrument, moves away from defining delegated legislation by description of the instrument in favour of a consideration of the instrument's legislative effect.

The revision bill proposal creates a class of bill that re-enacts an existing Act or Acts in an up-to-date and accessible form without altering the effect of the law. Express limits on the extent of revision are proposed. Revisions permitted include renumbering and rearranging provisions; changes in language, format and punctuation to achieve consistent and modern style of expression; correction of typographical, punctuation and grammatical errors; and minor amendments to clarify Parliament's intent or to reconcile inconsistencies between provisions. The bill provides for certification by experts that the revision powers have been correctly exercised and the effect of the law has not been changed, except as permitted by the Legislation Bill.

The revision bill proposal follows recommendations from the New Zealand Law Commission report on the *Presentation of New Zealand Statute Law*, October 2008. One proposal not reflected in the bill is the recommendation for a streamlined parliamentary procedure for passing revision bills to be set out in statute. It is anticipated that any streamlined process flowing from the enactment of this bill will be a matter to be considered by the Standing Orders Committee.

Dealing with multitudinous similar amendments

In May 2009 a determined filibuster included the lodging of more than 30,000 amendments to the text of a bill. It was noted that that experience was likely to lead to consideration of procedural changes, especially in relation to rules for the admissibility and lodging of amendments, so as to foster a focus on debate and the proper consideration of amendments.[6]

On 23 February 2010 the House considered the Injury Prevention, Rehabilitation, and Compensation Amendment Bill under urgency. During the committee of the whole House stage, attempts were made to delay the passage of the bill by similar means to those seen in May 2009, though on a smaller scale. Four new parts were proposed by Opposition members, each of which would have been separately debatable had they not been ruled out of order as not lodged with 24 hours' notice (a requirement for amendments that may have an impact on the Government's fiscal aggregates).

The Opposition then lodged 3,388 amendments to the preliminary clauses of the bill (as usual, preliminary clauses were considered last). All but 11 of these amendments were ruled out of order, in a series of rulings that were discussed extensively through points of order. These rulings articulated an interpretation of what it means for amendments to be "the same in substance" as amendments already dealt with (which is a ground for amendments to be ruled out of order under standing order 260).

The Chairperson, Hon Rick Barker (Assistant Speaker), ruled that when the committee had voted on one amendment to change a date "to have a succession of amendments that marginally change the date is out of order". In his view, the amendments were not substantially different. Arguments were raised about what approaches members could take to moving amendments to dates when dealing with bills in future, and the Chairperson explained that "the substantiality argument would be a judgment that would be made at the time by any future Chair. It would be made on the basis of how important the date was, in terms of the implications of the legislation."

[6] The matter was covered in the 2010 edition of *The Table* (volume 78), pp 104–06.

The Speaker was recalled to determine the matter, and endorsed the Chairperson's ruling. He also suggested an approach of selecting some amendments and testing them with the committee; this would "resolve the matter so that the Chair is not having to make that judgment totally on his or her own". This approach then was applied by the Chairperson when dealing with a further series of amendments to a date. He selected and proposed questions on the "least radical" and "most radical" of the dates proposed. When these two selected amendments were defeated, the amendments proposing dates ranging between them were ruled out of order as being substantially the same as the defeated amendments. This approach was accepted by members at the time without demur and now forms part of the practice of the House.

While these developments do not amount to the adoption of a procedure for the broader selection of amendments as occurs in the House of Commons in Canada and at Westminster, practice in this area continues to evolve. Such issues may be considered by the Standing Orders Committee.

Protests by members of Parliament

Protest action by a member of Parliament during the visit of a foreign dignitary has resulted in the Speaker writing to all members clarifying procedures for such situations. On 18 June 2010 Dr Russel Norman, Co-Leader of the Green Party, protested by holding a Tibetan flag when Vice President Xi Jinping of the People's Republic of China arrived at Parliament. An altercation ensued between Dr Norman and security personnel travelling with the Vice President, and the flag was removed from Dr Norman's grasp. The police reviewed video footage and interviewed witnesses, and decided there was insufficient evidence to substantiate any assault charges.

Some concern was expressed that Dr Norman's behaviour was inappropriate and had impeded the access of a visiting dignitary. The Speaker wrote to all members on 1 July, remarking that these events demonstrated that there was a need to clarify what the expectations are for members of Parliament who wish to express their views by way of peaceful protest in Parliament grounds. A Speaker's ruling of 27 July 1999 sets out the procedures that are to be followed in relation to demonstrations on Parliament grounds. This ruling states that "… if [members] participate in a demonstration in Parliament grounds they do so under the same conditions as apply to members of the public".

In his letter to members, the Speaker commented that it is important that members of Parliament are able to express their views, but in doing so do they must not impede the rights of others. He stated his expectation that members

of Parliament who wish to express their views by way of peaceful protest on Parliament's grounds should advise the Speaker's office of this intention. This would permit an agreement about where and how any protest might occur to ensure the safety of all those involved.

Compendium of Inter-Parliamentary Relations reports

For the first time, reports on the involvement of members of Parliament in the Official Inter-Parliamentary Relations Programme have been compiled into a single volume and presented to the House of Representatives. The volume, *Reports of the Official Inter-Parliamentary Relations Programme 1 January – 31 December 2009*, was presented to the House on 27 May 2010. It covers all Guest of Parliament visits that the New Zealand Parliament hosted last year. It also covers all overseas events that members participated in, other than those that were reported separately.

Wider reporting on the Inter-Parliamentary Relations Programme will encourage greater public knowledge of its nature and value and increase the accountability and transparency of the programme. Reports of the Official Inter-Parliamentary Relations Programme will now be an annual publication presented to the House by the Speaker.

Canterbury earthquake

On 4 September 2010 Canterbury was struck by a magnitude 7.1 earthquake, which was followed by many significant aftershocks. The quake caused great damage; fortunately there was no loss of life. In an unusual move, the parties agreed not to hold question time when the House met the following Tuesday—the Speaker called for questions but none had been lodged. The House gave leave for the Prime Minister's ministerial statement about the earthquake, and the responses to the statement made on behalf of other parties, to be longer than usual.

The House agreed by leave for the 15 members of Parliament with offices in the Canterbury area to be regarded as present for the purpose of casting party votes, so that they could assist constituents and deal with their own homes and offices.

In response to the earthquake, the Government introduced the Canterbury Earthquake Response and Recovery Bill. The bill contained unusually wide powers to grant exemptions from, or modify, or extend the provisions of primary legislation by Order in Council, as required to further the purposes of the Act. The bill provided that a Minister's recommendation for an Order in Council may not be challenged, reviewed, quashed or called into question in

any court. The bill passed through all stages and received the Royal Assent on 14 September 2010.

While the scale of the Canterbury earthquake needed an urgent legislative response, some concern was expressed in the media, and in academic and legal circles, about the powers and protections conferred by the Canterbury Earthquake Response and Recovery Act 2010. A number of Orders in Council have been made under the Act, and parliamentary scrutiny of them is provided by the Regulations Review Committee.

The committee has made an interim report on the orders, in which it stated that it was satisfied with the responses received about these orders from the responsible Government agencies. The committee intends to make a final report in 2011 on these matters, and is also contemplating its role in considering how emergency response powers could best be framed for future events.

Pike River Mine tragedy

An explosion in the Pike River coalmine, on New Zealand's west coast, on Friday 19 November trapped 29 miners underground. A second explosion on Wednesday 24 November extinguished hope for their survival. Leave was granted on the Thursday for the House, following prayers, to consider a Government motion without notice relating to the Pike River coalmine tragedy, and for the House to adjourn immediately thereafter.

A waiata (Māori song) was led by members (generally waiata are initiated by the public in the gallery with the Speaker's agreement). This was regarded as part of the debate, and so the Clerk did not stand and participate. The Speaker then invited the House to observe a minute's silence as a mark of respect.

Civil List Act review

In New Zealand, as in other jurisdictions, public sector spending has attracted considerable scrutiny and there has been recent public debate on parliamentary and ministerial spending. The Law Commission has been considering the Civil List Act 1979, which provides the legal authority for payments made to members of Parliament and Ministers for their salaries, allowances and expenses. This review was commenced some time ago following a reference from the Government, but recent events have strengthened the impetus for reform. Public concern about the legitimacy of expenditure has resulted from increased transparency around credit card spending by Ministers, as well as revelations about the use by a member's spouse of parliamentary travel entitlements for business purposes.

Following an inquiry into expenditure incurred by a Minister's office, Auditor-General Lyn Provost launched a wider inquiry into ministerial expenditure. The aim of this inquiry was to assess whether the Ministerial Services system for managing spending that could give personal benefit to Ministers operates coherently and effectively. The Auditor-General found that:

> "taken as a whole, the current Ministerial Services system for managing spending is an unsatisfactory basis for providing support to Ministers. There is an obvious risk that Ministers will be held to account for failures in the underlying system, which would unnecessarily damage public trust in our political leaders."

The Auditor-General recommended that the legal basis for the Ministerial Services system be revisited from first principles. She stressed the need for a new system to be a transparent one, under which the rules, policies and financial management processes are all clear and accessible and can easily be understood.

In December 2010 the Law Commission recommended that the Civil List Act 1979 be repealed, and a new statute enacted. It further recommended an independent enhanced Remuneration Authority be established to determine the travel, accommodation, attendance and communications services for members of Parliament and Ministers, and entitlements to funding and services to support parties' and members' parliamentary operations.

The Prime Minister has stated that the Government accepts the broad thrust of the recommendations and will consult the Speaker and political parties with the intention to enact legislative reform in this area before the end of the year.

Proposed application of the Official Information Act to parliamentary agencies

As part of its review of the Civil List Act 1979 the Law Commission also considered whether the Official Information Act 1982 should apply to information held by the Speaker in his role with ministerial responsibilities for the Office of the Clerk; the Parliamentary Service; and the Parliamentary Service Commission in its departmental holdings. While the Commission made initial recommendations to this effect, it continues to review this matter.

The recommendations arise in the context of the Commission's proposals to shift responsibility for the setting of members' funding entitlements for parliamentary purposes to an independent agency. The Commission considers that there is a legitimate and significant public interest weighing in favour of

availability of information held by the parliamentary administration, in particular relating to the expenditure of public money. The Law Commission envisages that the Official Information Act would apply only to "departmental holdings" of the Office of the Clerk and would not apply to:

- parliamentary proceedings, including internal papers directly relating to parliamentary proceedings;
- information held by the Clerk of the House as agent for the House of Representatives;
- information held by members in their capacity as members;
- information relating to the development of parliamentary party policies, including information held by or on behalf of caucus committees;
- party organisational material, including media advice and polling.

The Office of the Clerk is in consultation with the Law Commission on the recommendations, and the form they will take feeding into the Commission's broader review of the Official Information Act 1982 underway this year.

Deduction from member's salary under Civil List Act 1979

In August 2010 Hon Chris Carter became an independent member of Parliament, following his expulsion from the Labour Party. The member had been absent from the House for more than 14 sitting days and consequently, under the Civil List Act 1979, the Speaker made deductions from the member's salary as the absence was not caused by illness or by any other cause certified by the Speaker of the House to be unavoidable.

The amount of deduction, presently set at $10 for every sitting day (exclusive of those 14 sitting days), attracted attention in the media and was criticised as insufficient (although the Act provides that a member also forfeits any allowances that would be payable in respect of the period for which the member is penalised). In its review of the Civil List Act 1979, the Law Commission recommended that, if a member is absent for more than nine sitting days during any calendar year, there should be a deduction from the payments to be made to that member of 0.2 per cent of the annual salary of an ordinary member of Parliament for each day of absence (exclusive of those nine sitting days).

Electoral legislation passed

The Electoral (Finance Reform and Advance Voting) Amendment Bill, Parliamentary Service Amendment Bill and Electoral Referendum Bill were passed by the House on 15 December 2010. The Electoral (Finance Reform

and Advance Voting) Amendment Bill amended the Electoral Act 1993 particularly in relation to promoters of election advertisements, electoral advertising, the regulated campaign period, campaign expenditure limits and donations. The bill also amended the advance voting rules. This legislation excludes the broadcast of the proceedings of the House of Representatives from electoral advertising restrictions.

The bill was read with the Parliamentary Service Amendment Bill, the aim of which was to amend the Parliamentary Service Act 2000 to provide a permanent meaning of the term "funding entitlements for parliamentary purposes". The Minister in charge, Hon Simon Power, explained that the two bills were part of a package of legislative measures giving effect to the Government's electoral reform commitments. The Parliamentary Service Amendment Bill provides that parliamentary funding cannot be used for election advertising or certain referenda advertising.

The Government also gave a pre-election commitment to hold a referendum on the Mixed-Member Proportional Representation electoral system (MMP). The Electoral Referendum Bill makes provision for an indicative referendum to be held in conjunction with the next general election, in order to "provide electors with the opportunity to express an opinion on the preferred system of voting for election to the House of Representatives in New Zealand". The bill set out two questions that would form the referendum voting paper. Part A (the first question) asks voters if they wish to keep the current MMP voting system, or change to another voting system. Part B (the second question) asks voters, regardless of their answer in Part A, which voting system they would prefer if there were a change to another system. The options for voters will include the following alternative systems: First Past the Post, Preferential Voting, Single Transferable Vote and Supplementary Member. If the result from Part A indicates a majority in favour of changing to another voting system, another referendum will be held to enable the public to choose between MMP and the most popular option selected in Part B. The Government has indicated that this second referendum, if it occurs, would be held in conjunction with the 2014 general election.

Foreign Affairs, Defence and Trade Committee report on relations with Pacific

The Foreign Affairs, Defence and Trade Committee reported to the House in December 2010 on its inquiry into New Zealand's relationships with South Pacific countries. Included in the committee's recommendations was a proposal that the House establish an annual programme for Pacific parliamentar-

ians to discuss issues of democracy, governance, and collective interest. The proposed initiative would be funded under the aegis of the aid programme to promote leadership development, and particularly promote linkages and relationships amongst emerging leaders across the region.

In particular, the committee concluded that New Zealand's special constitutional relationships with Tokelau, Niue and the Cook Islands warranted special attention and different handling from normal aid relationships. The committee proposed a fundamental rethink of New Zealand's assistance strategy, aimed at improving standards and delivery of basic services—such as education, health, policing and justice—for communities in Tokelau, the Cook Islands and Niue, so as to bring them into line with New Zealand standards over time.

Court of Appeal rejects appeal of former member convicted of bribery and corruption

The Court of Appeal rejected the appeal of former member and Associate Minister, Taito Phillip Hans Field, from conviction and sentence of six years imprisonment for bribery and corruption as a member of Parliament and perverting the course of justice. In his trial Mr Field was found to have accepted free or low-cost labour on certain of his properties from various people to whom he was providing immigration assistance. At its heart this was an unlawful reward case. The essence of the wrong alleged was that Mr Field received a benefit for something that he was elected and paid to do as a member of Parliament, and thus the reward had been accepted "corruptly". This was the first prosecution of its kind in New Zealand, and before it could proceed leave was first required from a judge of the High Court.

During the hearing the court raised a concern as to whether the issues relating to the conduct of Mr Field might have given rise to questions relating to parliamentary privilege. The court noted that its duty was to ensure that it did not interfere in matters of privilege and in fulfilling that duty the courts must determine the scope of privilege and ask whether it applies in the particular case. The court also noted that the Speaker of the House (following the ministerial inquiry by Dr Ingram QC) had ruled that Mr Field's conduct could not be in contempt of the House because it was not linked to the parliamentary process. Therefore no question of privilege arose.

On appeal Mr Field argued four grounds but the principal ground was that the wrong legal test was adopted for "bribery and corruption" at both the leave to prosecute stage and the trial stages. The central issue before the court was the meaning of "corruptly". After examination of the overseas authorities the

court held that "corruption is conduct conducive to a breach of duty; that may or may not involve dishonesty or fraud". In the court's view, "as a matter of general principle, the sounder basis on which to put the offence relating to a member of Parliament is to recognise that it catches the corrupt acceptance of a 'bribe' in connection with the performance of that member's duties as a parliamentarian."

Trespass and parliamentary precincts

Under section 26 of the Parliamentary Service Act 2000 the Speaker exercises all the powers of an occupier under the Trespass Act 1980 in respect of the parliamentary precincts. The trespasser who is required to leave under section 3 may return at any time without penalty, whereas under section 4 the trespasser is not able to enter the Parliament grounds for two years. The Speaker is exercising a public function when using the powers of an occupier under the Trespass Act and therefore his actions and those of his delegates are subject to the test of reasonableness under the New Zealand Bill of Rights Act 1990. Consequently, those actions are subject to the scrutiny of the courts.

On 5 August 2010 a member of the public, Mr Rongonui, was given a trespass notice requiring him to stay out of the Parliament buildings and grounds for two years. On 6 and 10 August Mr Rongonui returned to Parliament. Each time he was arrested, and he was convicted of three charges under section 4(4) of the Trespass Act.

In a recent judgment in the case *Rongonui* v *Police*, Justice Ronald Young found that the evidence called by the police fell well short of establishing a reasonable basis for issuing a section 4 notice in the circumstances. The seriousness of trespass under section 4 is that Mr Rongonui could not see any of his representatives at Parliament nor enjoy the parliamentary debates in person. Consequently Justice Young held that the reaction in giving Mr Rongonui a section 4 notice was disproportionate to the circumstances and not reasonable.

Adjournment and statistics for 2010

The House adjourned for the summer break on Wednesday 15 December. Prior to the adjournment, the Speaker gave the traditional summary of business statistics as part of his final address. During 2010 the House sat for 595 hours and 58 minutes—30 hours more than the previous year. The Speaker announced that a total of 127 bills received the Royal assent, double the previous year's total of 66. The Speaker also noted 39,817 questions for written answer had been lodged—a substantial increase on 2009 during which 19,822 questions were received. There were 1,091 questions for oral answer lodged.

Before rising, the House adopted its programme for 2011, which comprises 81 sitting days over 27 weeks of sittings. The Prime Minister, Rt Hon John Key, has announced that the next general election will be held on Saturday 26 November 2011.

UNITED KINGDOM

House of Commons

Coalition Government in the United Kingdom

The 2005 Parliament went to almost its full term of five years, being prorogued on 8 April and dissolved on 11 April with a general election on 6 May 2010.

The Labour Party, which had governed since May 1997, led first by Tony Blair until June 2007 and then by Gordon Brown up to the election, lost 90 seats. Left with 258 seats it was 68 short of a majority among the 650 members in the new House, slightly enlarged as a result of boundary changes from the 646-seat House before the election. The Conservatives gained 100 seats, taking them up to 306, but leaving them still 20 short of an overall majority of 326. The Liberal Democrats, losing 13 but gaining 8 and ending up with 57 seats, held talks with both major parties before entering into a formal coalition with the Conservatives—the UK's first peace-time coalition since 1931.

The date of the first meeting of the new Parliament was set in the Royal Proclamation dissolving the old, which meant that it was decided by the outgoing Government. It was fortunate that they followed the advice of the Modernisation Committee, which had wisely recommended a longer than usual interval between the election and the first meeting of the House: 12 days, rather more than the six days that have been usual. This interval not only allowed the coalition negotiations to be completed, but also gave the House administration a welcome breathing space in which to launch the most professional and intensive programme of welcome it has ever delivered. Partly as a result of the fallout from the scandal in the previous Parliament over members' expenses, almost a quarter of the House (149 members) had stood down voluntarily or retired at the election, and 75 more members were defeated, leading to an influx of 227 new members, by far the largest intake since the 256 new members who arrived in 1997.

The Speaker was comfortably re-elected in his own constituency, standing as "Mr Speaker seeking re-election" with no major party opponents. There was, however, some resentment in the constituency (and a large number of spoiled ballot papers) at the convention that the Speaker is generally not

opposed by the major parties, and Speaker Bercow has undertaken to have the matter reviewed.

The Government had been formed within a few days of the coalition agreement, with Nick Clegg, the Leader of the Liberal Democrats, becoming Deputy Prime Minister and in charge of political and constitutional reform. Significantly, when a Liberal Democrat Cabinet Minister resigned over an expenses issue, he was instantly replaced by another Liberal Democrat, pointing towards a fairly rigid party division of posts between the coalition parties. Meanwhile, the former Leader of the House became the acting Leader of the Opposition, pending the election in autumn 2010 of a new Leader of the Labour Party.

After a few days for the swearing-in of members, the State Opening of Parliament was on 25 May followed by the Queen's Speech debate.

The novelty of having a coalition Government has proved to be less of a challenge than one might have expected; in some ways it has reverted to a binary chamber, similar to that in the 1960s, with the Government and Official Opposition between them occupying more than 95 per cent of the seats taken. The Speaker has been sensitive to allowing the different currents of opinion within the coalition to be expressed, in exercising his choice of whom to call to speak in the chamber.

Election of Deputy Speakers

On 2 July 2009 the new Speaker announced to the House his proposal that the three Deputy Speakers also be elected. Traditionally they had been decided on by the House on the basis of a motion made without notice by the Government at the beginning of a Parliament. In November 2009 the Procedure Committee produced an interim report, recommending that the House endorse the principle of election of Deputy Speakers by the whole House (rather than through separate party colleges) and in such a way that the party balance within the House was respected. The House agreed to the Committee's proposal without a division on 6 January 2010.

The Procedure Committee reported again in February 2010 and recommended election of the Deputy Speakers by the whole House by Single Transferable Vote (STV). The Committee believed that this mechanism would ensure that only one ballot would be held; that a minimum of votes would be wasted; and that successful candidates would have a significant level of support. The Committee also wanted constraints to be applied to the count so that two candidates would come from the opposite side of the House to that from which the Speaker was drawn, the first of whom would become

Chairman of Ways and Means and the second, Second Deputy Chairman of Ways and Means; one candidate would come from the same side of the House as that from which the Speaker was drawn and become the First Deputy Chairman of Ways and Means; and at least one man and at least one woman would be elected across the four posts of Speaker and Deputy Speakers. The proposals were agreed to by the House without a division on 4 March 2010 and became standing order No. 2A.

Under the standing order, it is for the Speaker to announce the arrangements for the election, including the timing. Immediately after the Queen's Speech on 25 May 2010, the Government moved a motion without notice empowering the Speaker to appoint up to three temporary Deputy Speakers to share duties in the chair with the Speaker until the election of the three Deputy Speakers. This motion was agreed without a division. Later that day the Speaker appointed two such members, the former Chairman of Ways and Means and a former member of the Panel of Chairs.

The ballot was held from 10 am to 12 noon on Tuesday 8 June 2010 and was conducted in the division lobbies, as the election of the Speaker had been in 2009. Under the STV system, each member has one vote, which is transferable. They place candidates in their preferred order using the figures 1, 2, 3, etc. The Speaker announced the result in the chamber after oral questions at 3.30 pm, and the results were then published. As it turned out, the three members eventually elected led the poll after the first preferences. Once the first Government-side member was elected, the others from that side could be excluded—since only one space was open to such candidates—and the count was completed. The second Opposition member elected being a woman, it was not necessary to invoke the gender constraints of the standing order.

Election of select committee chairs

New standing orders (which were agreed by the House on 4 March 2010, before the general election) provided for the Speaker to inform the parties, the day after his election, of the proportion of select committees with elected chairs to be allocated to each party. Within two weeks, the leaders of the parties concerned were to propose a motion to the House allocating each committee chair to a particular party in accordance with the Speaker's ruling. Despite its novelty, this process went smoothly and to time on the first occasion it was deployed. The agreement (without a division) of the House to the motion triggered the elections, which were held on 9 June. Each nomination required the support of 15 members of the same party as the nominee, or 10 per cent of the total numbers in that party (which for the two Liberal Democrat nominees

meant they required only six supporters). Up to five members of other parties could also indicate their support for a nomination. The nominations were published each day in the House's notice paper, along with a declaration of interests by each candidate. There was considerable media and public interest in the process, and a number of candidates offered statements in various forums of what they intended to do with their committees.

The secret ballot, which was conducted under the Alternative Vote system, was held in a committee room and lasted a full day. Members of all parties were able to vote in all ballots, whether the chair was drawn from their party or not, and the evidence of the numbers is that most members voted in most ballots. There was a 90 per cent turnout. The most contested chair was that of the Public Accounts Committee, for which there were six Labour party candidates, and the decision was not clear until after the last round of transfers of votes. The most talked-about contest was probably that between two Conservative party candidates for the Treasury Committee chair. The closest result was by four votes in a two-candidate race for the Labour-allocated chair of the Communities and Local Government Committee. Members were allowed to observe the count, but on the instructions of the Speaker the results were kept secret until announced to the House the following day. The full results, showing the effect of transfers of votes, were published in a separate document.

The Speaker made clear that an elected chair assumed office only when their committee had been appointed—and they did not begin to receive the additional payment made to chairs until that date.

Controverted election

On 3 December 2010 the Administrative Court upheld an election court's determination of 5 November 2010 that the election of the member for Oldham East and Saddleworth at the May 2010 general election was void because of the victor's illegal practices. Mr Phil Woolas, the sitting member and an Immigration Minister in the Labour Government, was found to have made three false statements about Elwyn Watkins, the Liberal Democrat candidate, who had gone on to lose the election by only 103 votes. Mr Watkins petitioned the election court on the ground that under section 106 of the Representation of the People Act 1983 (re-enacting legislation dating back to sections and 1 and 3 of the Corrupt and Illegal Practices Prevention Act 1895) it is an illegal practice to publish false statements of fact in relation to a candidate's personal character or conduct.

The jurisdiction of the House in the trial of controverted elections was transferred to the courts in an Act of 1868 which stipulated that the decision of the

election court was to be "final to all intents". Neither is discretion allowed, in practice, to the House to reject the decision by the judges. Disraeli reminded the House in 1872 "that the question whether there should be an appeal or not was brought under the consideration of Parliament, and was definitely decided in the negative."

Our contemporary courts are, however, not reluctant to claim their own rights of judicial review. In allowing an application from Mr Woolas for judicial review of the election court's determination, the Administrative Court decided that:

> "Although it is plain that Parliament intended that a lawful decision of the election court must be final in all respects, we do not consider that Parliament intended to provide that a decision that had been made on a wrong interpretation of the law could not be challenged. An express provision to that effect would have been required."[7]

The Administrative Court found that the election court had been mistaken in law to find that one allegation (that Mr Watkins had reneged on his promise to live in the constituency) contravened election law, but it upheld the election court's finding that two other false statements in election leaflets (that Mr Watkins condoned violence by extremists and that he refused to condemn those who had advocated violence) amounted to an illegal practice and the Administrative Court decided therefore that the election of Mr Woolas was indeed void.

Labour held the seat in the by-election held on 13 January 2011, though with a different Labour candidate: one of the consequences of being unseated in this way is that Mr Woolas is barred for three years from being elected to the House of Commons. He was in any case suspended from the Labour Party.

[7] [2010] EWHC 3169 (Admin) at para 47.

COMPARATIVE STUDY: TIMETABLING BILLS AND CLOSURE MOTIONS

This year's comparative study asked, "Does your chamber or parliament timetable the passage of bills? If so, how is the timetable decided, and when? Is it routine for all bills? If not, in what circumstances are bills timetabled and with what degree of frequency? How does timetabling affect different stages of bills? How are amendments to timetabling motions made (e.g. to provide more time than originally envisaged or to rearrange the proceedings to be taken on particular days)? Is it possible to "guillotine" debate on a bill? If so, in what circumstances?"

AUSTRALIA

House of Representatives

There is no set period of time for the length of debate on any stage of a bill during its passage through the House of Representatives. The length of time for debate on each stage of a bill's passage may be influenced by such factors as:

- its subject matter—whether the bill is of a controversial nature, whether it has the general agreement of the House, or whether it is of a "machinery" kind;
- the nature of the Government's legislative programme;[1]
- the urgency connected with passage of a bill;
- agreement reached between Government and Opposition; and
- the number of members from each side who wish to speak on the bill.[2]

[1] Consideration of the Government's legislative programme begins prior to each sitting period of Parliament when ministers advise the Prime Minister of their legislation requirements. Legislation is generally drafted for introduction in one sitting period, for debate and passage in the next. The Budget and other unavoidable, urgent legislation are exceptions to this legislative timetable. After considering ministers' requests, the Parliamentary Business Committee (PBC) determines the Government's legislative programme (a list of bills proposed for introduction in the Parliament in that sitting period) and accords a drafting priority to each bill on the programme. The PBC may agree to requests from ministers to vary the legislative programme during a sitting period. For more information on the Government's legislative programme, see Department of the Prime Minister and Cabinet, 1999, *Legislation Handbook*, p. 7.

[2] Harris IC, ed., *House of Representatives Practice*, 5 ed., 2005, p. 384.

Legislative process in the House: the usual routine

Usually a minister who wishes to introduce a bill gives written notice of his or her intention to the Clerk of the House, who arranges for the bill to be listed on the notice paper. Bills are introduced when the House is dealing with government business. Following its first reading, copies of the bill (and the explanatory memorandum) which, until this time, have been treated as confidential, are given to members and made available to the public on the Parliament's website. An exception to the requirement to give notice is provided by standing order 178, by which a minister may present without notice an Appropriation or Supply Bill, or a proposal dealing with taxation.

The minister usually moves immediately that the bill "be now read a second time". He or she then makes a second reading speech explaining the purpose, general principles and effect of the bill. At the end of the minister's speech, debate on the bill is adjourned and set down as an item of business for a future sitting. This pause in proceedings gives members time to study the bill before speaking and voting on it, and allows time for public discussion and reaction. Although listed on the notice paper "for the next sitting", the second reading debate does not usually commence for several sitting days, and sometimes much later. The timing depends on the Government's legislative programme and is usually negotiated with the Opposition. When the debate resumes, an Opposition member, often a "shadow" minister, outlines the Opposition's position on the bill. Government and non-Government members then usually

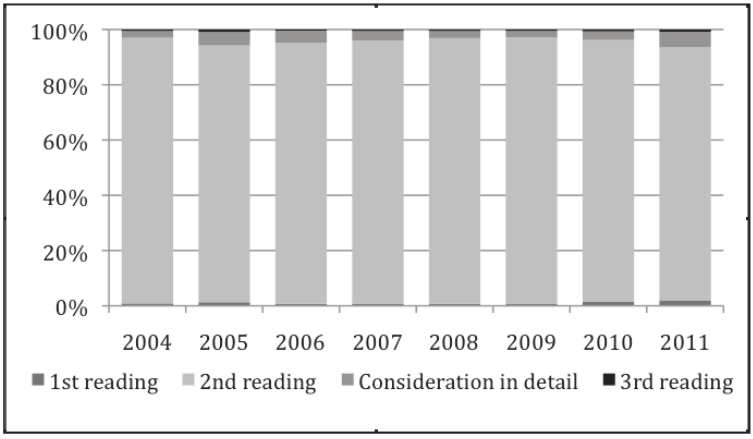

Figure 1 Percentage of time spent on stages of bills, 2004–11

speak in turn. The total time for the debate is not restricted by the standing orders. As demonstrated by Figure 1, the greatest proportion of time spent on bills is on second reading.

In the consideration in detail stage, members may speak briefly (five minutes each) an unlimited number of times on each proposal put forward. However, members may be in agreement that a particular bill does not need to be examined in detail. In this case the consideration in detail stage may be by-passed. The chair ascertains the wish of the members in the House and, if no-one objects, allows the bill to proceed directly to third reading.[3]

A marked increase in legislative activity since federation has seen a reduction in House time spent on consideration of individual bills. Between 1901 and 1910, an average of 23 Acts per year was passed, each considered on average in 25 hours. By 1992, the average number of Acts passed had risen to 264, each considered on average in 2.2 hours.[4] This trend has continued: in both the 41st and 42nd Parliaments, debate on each bill lasted on average a little over two hours (see Table 1).

Table 1 Consideration of bills in minutes

Parliament	Total bills	Total time (mins)	Average time per bill (mins)
41st (2004–07)	653	84,628	129.5
42nd (2007–10)	571	74,798	130.9

Source: Chamber Research Office, "House of Representatives consideration of legislation", 29 November 2010

Alternative paths for legislation

Referral to the Main Committee: Following a minister's second reading speech in the House, a bill may be referred to the Main Committee for the remainder of the second reading and the consideration in detail stages. The Main Committee is a committee established to be an alternative to the main chamber of the House for the consideration of a restricted range of business, including less controversial bills. Before their third reading, bills which have been considered in the Main Committee go through an additional stage—the report stage—when the House considers and votes on the bill as reported back

[3] The passage of bills through the House and the Senate can be seen in each house's bill lists, available at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillslst%2Fbillslst_c203aa1c-1876-41a8-bc76-1de328bdb726%22>.

[4] House of Representatives Standing Committee on Procedure, 1993, *About Time: Bills, Questions and Working Hours*, Appendix 5, p. 48.

to it from the Main Committee. Debate at this stage is restricted to matters the Main Committee could not agree on.

Referral to a standing committee: A bill may be referred for an advisory report to a committee which specialises in the subject area of the bill. The committee can hear witnesses and gather evidence relating to the bill and can recommend action to the House, although it cannot amend the bill itself.

House and joint committees have not considered bills often. Pursuant to changes in the standing orders made at the beginning of the 43rd Parliament, the House Selection Committee has been given the role of considering all bills and deciding whether any should be referred to a standing committee. (Since 2010, the Selection Committee has referred 18 bills to five House committees—those on Climate Change, Environment and the Arts; Economics; Education and Employment; Health and Social Policy; and Legal Affairs—and one joint committee—on the National Broadband Network.[5])

Measures to limit time on debate on bills

Where a government wishes to curtail or limit one or more stages of debate on a bill, it may move the closure of question motion (the "gag", provided by standing order 81), which curtails debate on the question immediately before the House.[6] A government may also use a procedure to limit debate (the "guillotine"), prescribed in standing orders 82–85 (see Appendix 1 for details of these standing orders). A guillotine motion is usually moved prior to the commencement of the debate it proposes to limit. In the Australian context, it is preceded by a declaration of urgency: the House must first agree that the matter is urgent before it proceeds to determine special exemptions to the time constraints of the standing orders.

Pursuant to standing orders, motions to close the question immediately before the House, or to declare a bill or motion urgent, may not be amended or debated. While the motion to close a question may be moved by any member, motions to declare urgent a bill or motion may be moved only by a minister.

Statistics for the number of bills declared urgent show considerable change, from a high point of 311 bills in the 36th Parliament (1990–93) to none in the last Parliament (see Table 2). As reported by the Procedure Committee in 1993,

[5] Chamber Research Office, "Bills referred to Committees of the House of Representatives and Joint Committees for report", 12 May 2011.

[6] In the 42nd Parliament, the closure motion was used to limit debate on 21 bills. Typically in these cases, the question is put on the second reading, agreed to on division, and the third reading carried on the voices. More information is available in *House of Representatives Practice*, 5 ed., 2005, pp. 516–18.

the increase then was attributed by governments to the imposition from 1986 of Senate deadlines for the receipt of legislation from the House.[7] The Procedure Committee, however, noted that the motion had been used more frequently as many bills were being introduced towards the end of the sitting period, and called on the Government to timetable its legislation more effectively.[8]

Table 2 Guillotine motions and bills declared urgent, 1958–2011*

Parliament		Guillotines	Urgent bills
22nd	(1956–58)	7	20
23rd	(1959–61)	6	6
24th	(1962–63)	0	0
25th	(1964–66)	1	1
26th	(1967–69)	1	2
27th	(1969–72)	4	25
28th	(1973–74)	14	32
29th	(1974–75)	11	27
30th	(1976–77)	2	2
31st	(1978–80)	4	14
32nd	(1980–83)	1	1
33rd	(1983–84)	2	2
34th	(1985–87)	13	67
35th	(1987–90)	11	161
36th	(1990–93)	12	311
37th	(1993–96)	13	126
38th	(1996–98)	6	18
39th	(1998–2001)	1	16
40th	(2002–04)	5	5
41st	(2004–07)	2	4
42nd	(2007–10)	0	30†
43rd	(2010–)	0	8†
Totals		116	878

Source: Chamber Research Office, "Bills declared urgent in the House of Representatives since 1918", 28 March 2011

Notes: * *The guillotine motion was introduced in 1918. It was first used in 1958 to declare urgent more than one bill at a time.*

† *While not declared urgent, debate on these bills was subject to an allotment of time.*

[7] House of Representatives Standing Committee on Procedure, 1993, *About Time: Bills, Questions and Working Hours*, p. 4.

[8] *Ibid*, p. 4.

The decline in the use of the guillotine since the 38th Parliament is accounted for by a number of factors. The establishment of the Main Committee in 1994 provided increased debating time, particularly for bills of a less controversial nature. Additionally, the introduction of three sitting periods each year instead of two meant that the Government could introduce bills during one period with the expectation that they would not pass until the next.

In recent years standing orders have been suspended to enable the introduction and passage of a bill through all stages without delay by a specified time, or to limit the duration of particular stages, without first declaring the bill urgent (see Appendix 2 for an example of this motion). The suspension of standing orders to programme the passage of a bill is, in effect, a kind of guillotine. Leaders of the House have increasingly moved these in preference to the formal guillotine procedures; the latter require two or three separate motions to achieve the same end—that is, suspension of standing orders (if more than one bill), declaration of urgency and allotment of time.

"Programming" motions may specify, for example, that:

- debate on bills be adjourned until a later hour after their introduction, and that when called on, a cognate debate take place with associated bills;[9]
- at the conclusion of the second reading debate or a specified time—"whichever is earlier"—a Minister sum up the debate;[10]
- the bill be taken as a whole during consideration in detail for a specified period of time (e.g. "a period not exceeding 60 minutes");[11]
- during consideration in detail stage, "a Minister may move Government amendments together and one question be proposed on the amendments";[12]
- any Government amendment that has been circulated for at least two hours shall be treated as if it has been moved;[13]
- any question(s) necessary to complete specified stages of the bill "be put without amendment or debate";[14] and
- any variation to the arrangement "be made only by a Minister moving a motion without notice".[15]

[9] *Votes and Proceedings* 4 February 2009, 2008–09/827.
[10] *Votes and Proceedings* 29 November 2005, 2004–07/803.
[11] *Votes and Proceedings* 29 November 2005, 2004–07/803.
[12] *Votes and Proceedings* 1 December 2005, 2004–07/821.
[13] *Votes and Proceedings* 14 June 2006, 2004–07/1193.
[14] *Votes and Proceedings* 4 February 2009, 2008–09/827.
[15] *Votes and Proceedings* 29 November 2005, 2004–07/803.

When time for Government business is under pressure, negotiations between the Leader of the House and Manager of Opposition Business or party Whips and other members may result in agreements regarding the number of speakers on particular bills or the maximum length of members' speeches. In the 43rd Parliament, the maximum speaking time for members (other than main speakers) on second reading debates was reduced from 20 to 15 minutes. The impact of this change on scheduling is yet to be determined. The Selection Committee is currently responsible for scheduling and determining speaking times on private members' bills. It may also set reduced maximum speaking times for members (other than main speakers) on second reading debates on all bills.

The timetabling of bills in the House of Representatives ultimately depends not only on the formal requirements of the standing orders but also on perspectives of urgency and any agreement reached, or not reached, between Government and Opposition.

Appendix 1: standing orders relevant to bill timetabling

"81 Closure of question

After a question has been proposed from the Chair, a Member may move without notice, and whether or not any other Member is speaking—

That the question be now put.

The question must be put immediately and resolved without amendment or debate.

82 Urgent bill

(a) A Minister may declare a bill to be urgent at any time.

(b) When a bill is declared urgent, the question—

That the bill be considered urgent—

must be put immediately and resolved without amendment or debate.

(c) If the question is agreed to, a Minister may move at any time, except when a Member is speaking, a motion specifying times for any stage of the bill. Any motion shall be subject to *standing orders 84 (limited debate on allotment of time) and 85 (proceedings on urgent matter).*

(d) The order for the consideration in detail stage may allocate times to particular clauses or parts of the bill.

83 Urgent motion

(a) Once a motion has been moved, a Minister may declare the motion to be urgent.

(b) When a motion is declared urgent, the question—
That the motion be considered urgent—
must be put immediately and resolved without amendment or debate.

(c) If the question is agreed to, a Minister may immediately move a motion specifying times for the urgent motion. Any motion is subject to *standing orders 84 (limited debate on allotment of time) and 85 (proceedings on urgent matter).*

84 Limited debate on motion for allotment of time

(a) The maximum times for debate on a motion for allotment of time are: whole debate 20 minutes; each Member 5 minutes.

(b) After 20 minutes, or if debate concludes earlier, the Speaker must immediately put the question on any amendment or motion already proposed from the Chair.

85 Proceedings on urgent matter

(a) If a time has been set for the start of an urgent matter, at the set time the business before the House or the Main Committee must be interrupted and all necessary steps taken so that the urgent matter can proceed.

(b) At the end of the times allotted for particular proceedings the Speaker must conclude the proceedings:

(i) First the Speaker shall immediately put any question already proposed from the Chair, and then put any other question required to dispose of the urgent matter.

(ii) If the Government has circulated copies of amendments, new clauses and schedules, and modifications to a bill, at least two hours before the end of the allotted time, they shall be treated as if they have been moved.

(c) *Standing order 81,* providing for the closure of a question, shall not apply to any proceedings for which time has been allotted."

Appendix 2: guillotine-like motions

A motion that resembles the guillotine inasmuch as it contains specific timetabling, but which, unlike the guillotine motion, suspends so much of standing and sessional orders to enable the immediate introduction of a bill (or bills):

"SUSPENSION OF STANDING AND SESSIONAL ORDERS—CONSIDERATION OF ANTI-TERRORISM BILL (NO. 2) 2005
That, in relation to proceedings on the Anti-Terrorism Bill (No. 2) 2005, so much of the standing and sessional orders be suspended to enable:

(1) at the conclusion of the second reading debate or at 8 p.m. on Tuesday 29 November 2005, whichever is the earlier, a Minister to be called to sum up the second reading debate without delay and thereafter the following occurring:
    (a) the immediate question before the House to be put, then any question or questions necessary to complete the second reading stage of the bill to be put;
    (b) the bill then to be taken as a whole during consideration in detail for a period not exceeding 60 minutes, immediately after which the question then before the House to be put, then the putting without amendment or debate of any question or questions necessary to complete the consideration of the bill; and
(2) any variation to this arrangement to be made only by a Minister moving a motion without notice."

Votes and Proceedings 29 November 2005, 2004–05/803

Senate

The Australian Senate has provisions in its standing orders to "guillotine" debate on a bill by declaring the bill to be an urgent bill and imposing time limits on its consideration. Allotments of time can apply to the bill as a whole or to particular stages of its consideration. Allotments of time may be expressed either as units of time or specified times. For example, two hours may be allotted for the consideration of all remaining stages of a bill. Alternatively, consideration of the bill may be required to conclude at, say, 7 pm.

The guillotine is used infrequently and generally when the consideration of a bill is required to be completed before the Senate rises and there is a view that a minority of the Senate is unnecessarily delaying the Senate's final resolution of the matter. More frequently a "benign guillotine" operates. Under this procedure, the Senate agrees to a motion to vary its sitting hours and set the routine of business, nominating the bills that need to be finalised before the adjournment can be moved by a Minister. The procedure is activated by a Government notice which is not usually given unless there is an understanding

that a majority will support the motion when it is moved. It is used almost invariably when the Senate, at its adjournment, will not meet again for several weeks (at least three but usually more). Under this procedure there is usually no timetabling of various stages of the bill (or bills) or indeed of the bills to be considered. If a bill is being considered under a limitation of debate (guillotine), a motion for the closure may not be moved. Where an informal or benign guillotine is in operation, there is no restriction on use of the closure.

Both the terms of a guillotine and a benign guillotine can only be amended by a further motion agreed to by the Senate.

Australian Capital Territory Legislative Assembly

Does your chamber or parliament timetable the passage of bills?

No. The decision as to when bills are presented and debated rests with the relevant Ministers or members. The only influence the chamber has on the timelines for bills is the standing order that dictates that bills presented in a sitting period must not proceed to further stages within the same sitting period unless the bill is declared urgent. The only other requirement is that bills that have been presented are forwarded to the Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) for review and report prior to being brought back on for debate. A recent survey revealed that the average number of days between the introduction and passage of bills is 60 days (Seventh Assembly).

Is it possible to "guillotine" debate on a bill? If so, in what circumstances?

Yes. A bill which has been declared urgent may have time limits set for the various stages of the debate.

New South Wales: joint entry on behalf of the Legislative Assembly and Legislative Council

In recent years, the Parliament has passed around 120 Government bills each calendar year. Bills have taken an average of 33 calendar days/eight sitting days from introduction in either House to assent.

Does your chamber or parliament timetable the passage of bills?

There is no systematic timetabling for the passage of bills, either Government bills or private members' bills, through the New South Wales Parliament.

In relation to Government bills, the majority are introduced in the Legislative Assembly. The Legislative Assembly standing orders provide that once a bill has been introduced, it must remain on the table for five clear days before debate on the bill may be resumed. Other than this provision there are no requirements in the standing orders in relation to the time it takes for bills to be passed. In reality, it is not uncommon for standing orders to be suspended to permit the introduction of bills without notice, or the introduction of a bill and its passage through all stages in one sitting.

In the Legislative Council, on receipt of a Government bill from the Legislative Assembly the bill is introduced and read a first time, before standing and sessional orders may be suspended to allow the passage of the bill through all its remaining stages. Where the suspension of standing and sessional orders is agreed to, as is the norm, there is nothing to prevent the bill from progressing through all stages in one day, although this is unusual. Most Assembly bills progress on a subsequent sitting day. For Government bills introduced in the Council, the requirement for the bill to be adjourned for five calendar days after it is introduced and read a first time can be dispensed with if the House agrees to declare the bill urgent; however, again this is unusual.

While there is no systematic timetabling for the passage of Government bills through the New South Wales Parliament, in the past the Legislative Council has adopted sessional orders implementing cut-off dates on the receipt of bills from the Assembly and the introduction of bills in the Council. These sessional orders were introduced in response to the practice of successive governments to push a raft of bills through the House during the final days of a session. For example, the House adopted a sessional order in 2009 which required that a bill introduced by a minister or received from the Legislative Assembly be deferred to the next sitting period unless it was introduced within the first two-thirds of the sitting period.

In relation to private members' bills, there is again no mechanism for timetabling the passage of such bills through the Parliament, beyond the requirement that they remain on the table for five calendar days after their introduction in either House. However, the member introducing or sponsoring a private members' bill inevitably needs to consult the Government about its passage, which normally means that the bill can remain on the notice/business paper of either House for a considerable period of time.

Is it possible to "guillotine" debate on a bill? If so, in what circumstances?

Standing order 90 of the Legislative Assembly provides for a closure to be applied by application of a guillotine notice. It reads:

"The Premier, or a Minister acting on the Premier's behalf, may at any time state in the House the intention of the Government to deal with any business to a certain stage at a specified time at the next or a subsequent sitting.

Written notification must subsequently be given to the Speaker and the Party Leaders and the notice shall be published in the Business Paper.

To give effect to the notification a member shall move at the specified time on the date given or at a later time at the same sitting the motion "That the question be now put".

The carrying of this question is an instruction to the Speaker to put to the vote every question necessary to give effect to the notification. No further debate, amendment or reply is permitted.

After the carrying of the closure, the Speaker shall put to the vote any amendments proposed by a Minister provided that the amendments were lodged with the Clerk and printed and circulated by the Clerk at least 2 hours before the specified time.

The closure may not be moved on any question contained in a notification of allocation of time under this standing order.

If the closure under this standing order is agreed to during the agreement in principle stage and there have been no Minister's amendments circulated, the Speaker shall forthwith put to the vote the question on the agreement in principle and, if passed, the Speaker shall declare the bill to have passed the House."

This standing order, which was first adopted in 1925, does not require the Government to allocate time for discussion. When a notice is given indicating the item (or items) of business, the stages to be completed and the times before which the closure may not be applied, the requirements of the standing orders have been fulfilled. There is no compulsion for the item specified to be "called on" before the time stated in the notice and if not moved on the sitting day, the notice for the guillotine lapses.

No particular circumstances need to occur to enable a guillotine to be applied. Rather, the application of a guillotine is at the discretion of the Government. Guillotine notices are not used regularly, though they have been used on a number of occasions across the years and tend to be used towards the end of a sitting period. The last time a guillotine notice was given was in November 2003.

There are also provisions in the Legislative Assembly standing orders to allow a closure motion to be moved during debate. Standing orders 86 to 89 relate to the closure motion and provide:

"A motion may be made by any Member, "That the question be now put". Such motion:

(1) May be moved whilst another Member is addressing the House;
(2) Shall be put forthwith and decided without amendment or debate;
(3) Must be carried by at least 30 Members in the affirmative; and
(4) May not be moved before 10.30 a.m. on any day when the House meets at an earlier time.

Whenever the closure is carried on a motion, the mover of the original motion, if entitled to a reply, shall be permitted to speak for up to 30 minutes or a lesser time if specified.

The carrying of the closure only affects the last question proposed to the House.

When the House has carried the question "That the question be now put" and any reply has been made, the Speaker shall then put any questions that are consequential on the carriage of the closure motion."

In the Legislative Council, standing order 99 allows a member who has the call to move, without notice, "That the question be now put". However, the standing order has not been used since its adoption in the current standing orders in 2004. The last occasion its predecessor was used was in 1906.

Northern Territory Legislative Assembly

Passage of bills is not subject to timetabling. It is possible to attempt to guillotine debate on a bill, but it is subject to the will of the Assembly and is certainly not common practice.

Queensland Legislative Assembly

Does your chamber or parliament timetable the passage of bills?

No. Standing order 128(8) provides:

"After the member who presented a Bill completes their second reading speech further debate on the question 'That the Bill be now read a second time' shall be adjourned for a period of at least 13 whole calendar days."

However, this timetable can be superseded by motion of the House.

If not, in what circumstances are bills timetabled and with what degree of frequency?

A motion to consider several bills at the same time (cognate debate) may be

passed or a bill or bills can be declared urgent and considered by a specified time.

Is it possible to "guillotine" debate on a bill? If so, in what circumstances?

Yes. There is no set period of time for the length of debate on any stage of a bill during its passage through the House. However, standing orders allow bills of an urgent nature to be passed expeditiously through the various stages. In such cases the Leader of the House moves a motion to declare a bill urgent and time limits will be allotted for each remaining stage. This motion is referred to as applying the "guillotine" because it has the effect of curtailing the debate at the times specified in the motion. The motion to close debate can be moved at any time.

Bills in the past have been "guillotined" for various reasons. For example, it may be imperative that a bill be passed within a very strict timeframe. (A revenue bill was "guillotined" where it was integral to the budget that the bill be passed during that budget week to ensure that provisional subsidies for retailers were not paid.) A planning bill was "guillotined" after every opposition member who wanted to speak on the bill had spoken (and following 13 hours of debate). A building bill was "guillotined" to avoid the House continually having to sit unreasonably long hours past midnight.

Tasmania House of Assembly

Bills are not timetabled. The guillotine may be moved on any bill but a minimum of three hours must be allocated to debate on a bill and at least one further hour of debate after the guillotine is moved. The closure motion ("gag") is not in general use in Tasmania and has only been applied in the most extreme of circumstances (on three occasions since 1896).

Tasmania Legislative Council

There is not a formal timetable for the passage of bills or motions, including bills for supply. Bills are occasionally expedited by way of suspending standing orders and the precedence of business may similarly be altered. The length of time taken for the passage of a bill and an associated debate rests with members.

Victoria Legislative Assembly

Most bills are adjourned for two weeks after they are made public. To consider a bill before the two weeks have passed, the Legislative Assembly must rescind

its motion to adjourn debate, before making the bill an order of the day on the desired date.

Bills in the Assembly are then timetabled primarily through a guillotine system called the government business programme. It is routine for all bills to be included in the government business programme.

The Assembly can also declare a bill urgent, although this has not happened since the government business programme was introduced.

The two methods of timetabling are explained below.

Government business programme

The Legislative Assembly set the first government business programme in 1993. Members gave reasons at the time, including:

- efficient and effective use of the Assembly's time;
- to stop late-night sittings;
- to stop time-wasting and filibustering, and raise Parliament's standard as a consequence;
- to guide when the Assembly will debate bills.

The Assembly has used the government business programme since 1993. Despite some changes, the main elements are the same.

Before a sitting week starts, the government works out which business to programme, and can discuss this with the other parties.

When the Legislative Assembly meets (first day of the sitting week), the government proposes which business to programme, and the completion time for debate. Members can debate the motion for up to 30 minutes.

Usually the items on the government business programme are bills. Occasionally, the government includes other business, for example a motion to agree to the address-in-reply to the Governor's Speech.

The government can propose an amendment to the programme, which members may debate for up to 30 minutes. Changes to the programme take effect one hour after the Legislative Assembly agrees to them.

At the completion time, usually 4 pm on a Thursday, the chair interrupts debate. Members can no longer debate any items on the business programme.

If the Legislative Assembly is debating a non-programmed item, the Speaker interrupts the member speaking, and suspends the debate. The debate continues after the Assembly completes all the programmed business. The interrupted member can then finish their speech.

The chair asks members to vote on all programmed items. The procedure can be complicated, particularly if there are a few programmed bills. In

particular, the way the Assembly deals with amendments can be confusing.

Here in outline are the most common procedures.

Second reading debate and reasoned amendment

Members vote whether to pass the bill's second reading. If a member has moved a reasoned amendment, members vote on that first, and then on the second reading.

Debating an amendment at the completion time

If members are debating an amendment to a bill's wording, they vote on that amendment. This is the only way members can vote on an opposition amendment (other than a reasoned amendment) at completion time.

Other amendments

Government amendments are treated differently from opposition amendments. Members vote on any government amendments if they have been public for at least two hours. This happens even if members have not debated the amendments at all.

In contrast, members do not vote on any remaining opposition amendments. Those amendments automatically fail.

Passing the bill

Members vote on all other questions needed to pass the bill, usually combined into one question. If the third reading needs an absolute or special majority members vote on that question separately.

Points of order

At the completion time, members cannot take points of order (about procedure or conduct in the chamber) until the Assembly has dealt with all programmed business.

Declaring an urgent bill

A minister may also move that a bill be treated as urgent. If this motion passes, a minister may at any time move another motion specifying the time which is to be allotted for one or more of—

(a) the stages of the bill (including anything preliminary to its introduction) before the second reading;
(b) the second reading;
(c) the consideration in detail stage, or any parts of it;
(d) the remaining stages.

The times allotted by the House for urgent bills or motions override anything to the contrary in any standing or sessional order and are exclusive of

any adjournment or suspension of a sitting.

When the time allotted has expired the chair immediately puts the question on any amendment or motion (or both) already proposed. If the bill has reached the consideration in detail stage, the chair puts any clauses, schedules, amendments to clauses and schedules, new clauses and new schedules required by the government, followed by any motions necessary to complete the business before the House. No other amendments, new clauses or new schedules will be proposed.

The government must circulate to members copies of its proposed amendments, new clauses and new schedules at least two hours before the time set aside has passed.

Victoria Legislative Council

Timetabling of bills and closure motions are provided for by Council standing orders, but have not been a recent feature of the Legislative Council's proceedings.

The Legislative Council standing orders 2010, chapter 11, provide that the House may adopt a Government Business Program for a sitting week. This procedure is otherwise known as a guillotine. Standing order 11.01 provides that—

"Agreement of Government Business Program

(1) Before the Council meets for business in any week, the Leader of the Government or his or her nominee will consult with the Leaders of other parties or their nominees with a view to reaching agreement on the manner in which the Council is to deal with Government Business in that week.

(2) Before the calling on of Government Business on the first day of the sitting week the Leader of the Government or his or her nominee may move without leave a motion setting times and dates by which consideration of specified Bills or items of Government Business and/or Government Bills have to be completed in that sitting week."

Amendment of the agreed Business Program can be effected by a motion without notice, moved during a change of business. However, the change to the program does not come into operation until one hour after the amending motion is agreed to (standing order 11.02).

If, at the time of the expiration of the completion time set out in clause 11.01(2) above, not all bills or questions and amendments on a bill have been

dealt with, those questions are put by the chair without further debate (standing orders 11.04 and 11.05).

The Government Business Program was most recently used during the 55th Parliament (2003–06) when the Government had a majority in the House. Since then the Government has only indicated informally its legislative intentions for any given sitting week. The Leader of the Government in the House advises the Clerk at the end of each day's sitting the order in which bills should appear on the next day's notice paper. However, this does not indicate that the Government intends to complete consideration of all bills.

The House, and more particularly the Government, has been able to complete consideration of bills in ways other than using a formal business program, in particular—

- Extending the day's sitting, which is done by successfully moving a motion without notice at 10 pm to extend the sitting for either a specified or unspecified period (10 pm is the time that business is interrupted by the chair to adjourn the House, pursuant to standing orders).
- Sitting on a Friday, during which Government business takes precedence (with the exception of Formal Business and Question Time) and business is interrupted at 4 pm for the Adjournment Debate. The House will sit on a Friday unless the House has resolved on the Thursday that the House will next meet on a future date. This latter practice is most common and Friday sittings are infrequent.

In the 56th Parliament the Government did not have a majority in the Council, so it was not surprising that the Business Program was not used. However, it is interesting to note that the new Government has a majority in the Council in this, the 57th Parliament, but has thus far not used the Business Program, instead occasionally using extensions of sittings, as described above.

Western Australia Legislative Assembly

The Western Australian Legislative Assembly does not timetable the passage of bills. Standing order 168(1) requires that after the question for the second reading has been moved debate will not be resumed for at least three calendar weeks. There is, however, provision for a motion "that the bill be considered an urgent bill" (SO 168(2)) to allow it to progress immediately.

The motion to set an allocation of time for the passage of a bill (guillotine) was first used in the Assembly on 7 September 1949. This was moved as a suspension of standing orders in order to timetable appropriation bills. The prac-

tice was rarely used until the mid 1990s, when it became a common tool for time management. However, in the past 10 years it has been used on only three occasions.

Western Australia Legislative Council

The Legislative Council does not timetable the passage of bills.

It is very rare for standing orders to be suspended to enable the setting of a specific allocation of time for the passage of bills (guillotine). There have been no recent instances of its use.

CANADA

House of Commons

The House of Commons does not have a formalised process similar to that in use in the United Kingdom House of Commons for programming legislation. Responsibility for managing the flow of government business falls upon the Government House Leader, who seeks the cooperation of the House Leaders of the other parties represented in the Commons at House Leaders' meetings. These meetings are convened by the Government House Leader to discuss, negotiate and arrange legislative business so that it will flow as smoothly as possible. At such meetings the Government House Leader may lay out a tentative proposal for the use of House time and the order in which government business may be presented so that opposition critics on various topics will have an opportunity to plan to be available when the relevant debates take place. These meetings take place *in camera* and the decisions taken are not made public.

Each Thursday, after Oral Questions, the Speaker recognises the House Leader of the Official Opposition to ask the Government House Leader about the government orders to be considered by the House in the succeeding days or week. The Government House Leader then proceeds to outline for the House what business the government intends to bring forward. This practice is commonly known as the "Business Statement" or the "Thursday Statement". The Weekly Business Statement is not referred to in the standing orders but is permitted subject to the discretion of the chair, the government being under no procedural obligation to announce to the House in advance which items of business it intends to call or when. Furthermore, the government is not bound by anything said in the Weekly Business Statement.

There is one type of legislation—supply bills—that has, since 1968, been

subject to a fixed timetable. Since then, the parliamentary calendar has been divided into three periods, during which 22 days are allotted to the business of supply, in three supply periods ending 10 December, 26 March and 30 June. This provides the opposition the opportunity to have its grievances addressed, through the debate of motions on opposition days during each period, before it considers and approves the financial requirements of the Crown. The standing orders provide for the passage at the end of the last allotted day in each supply period at all stages of any bill or bills based on the final, main or supplementary estimates.

In relation to the question of whether it is possible to "guillotine" debate on a bill, the curtailment of debate is possible with the use of the following procedural mechanisms.

Closure

The closure rule provides the government with a procedure to prevent the further adjournment of debate on any matter and to require that the question be put at the end of the sitting in which a motion of closure is adopted.

Closure may be applied to any debatable matter, including bills and motions. The rule was conceived for use in a Committee of the Whole as much as in the House, but it cannot be applied to the business of its standing, special, legislative or joint committees. When these committees are considering bills the House may, however, use the time allocation rule to impose a deadline on the committee stage or to force a committee to report the bill under consideration to the House.

Generally speaking, how much debate the government will allow on a measure before moving closure depends on a number of factors, including its desire to adhere to its legislative timetable. The Speaker has occasionally been asked to use discretionary authority to refuse to put a closure motion to the House on the ground that the measure had not yet been given enough debating time. Invariably, the Speaker has declined to interfere with the application of the rule, deciding in each case that the chair has no authority to intervene in the process when the closure rule is applied properly.

Time allocation

While time allocation is not used routinely, it is the most frequently used mechanism for curtailing debate. The rule (standing order 78) contains three distinct sections, each specifying the conditions applying to the allocation of time, depending on the degree of support among the representatives of the recognised parties in the House:

(1) All parties agree: the first section of the rule envisages agreement among the representatives of all the recognised parties in the House to allocate time to the proceedings at any or all stages of a public bill. No notice is required. In proposing the motion, a Minister first states that such an agreement has been reached and then sets out the terms of the agreement, specifying the number of days or hours of debate to be allocated. The Speaker then puts the question to the House, which is decided without debate or amendment.
(2) Majority of parties agree: the second section of the rule envisages agreement among a majority of the representatives of the recognised parties in the House. In these circumstances, the government must be a party to any agreement reached. The motion may not cover more than one stage of the legislative process. It may, however, apply both to report stage and third reading, if it is consistent with the rule requiring a separate day for debate at third reading when a bill has been debated or amended at report stage. Again, no notice is required, and it is not necessary for debate on the stage or stages specified in the time allocation to have begun. Prior to moving the motion, the Minister states that a majority of party representatives have agreed to a proposed allocation of time. The motion specifies how many days or hours are to be allocated.
(3) No agreement: the third section of the rule permits the government to propose an allocation of time unilaterally. In this case, an oral notice of intention to move the motion is required. The motion can only propose the allocation of time for one stage of the legislative process, that being the stage then under consideration. However, the motion can cover both report stage and third reading, provided it is consistent with the rule which requires a separate day for third reading when a bill has been debated or amended at report stage. The amount of time allocated for any stage may not be less than one sitting day.

Suspension of standing orders for matter of urgent nature

When a situation arises that the government considers urgent, a Minister may move, pursuant to standing order 53, at any time when the Speaker is in the chair, that the House suspend certain standing orders respecting notice requirements and the times of sitting in connection with that matter. For example, this provision can be used to waive notice for the introduction of a bill or for any stage at which a notice is required.

Senate

Time allocation in the Senate

Time allocation establishes a limit on the time for debate on an item of government business. Only the government can propose time allocation and only for its own business under the *Rules of the Senate*. Time allocation does not bring debate to an immediate close; rather it provides a means for the government to ensure that a decision will be taken on a particular stage of an item of its business. Time can be allotted on an item with the agreement of the opposition or, if the government fails to reach agreement with the opposition, through a motion adopted by the Senate. Time allocation is not used on a regular basis and when used it is primarily to limit time spent on government bills, although it can also be applied to motions, committee reports and other items identified as government business on the order paper. Rules providing for time allocation were introduced in the Senate in 1991. Since 2006 the government has been in a minority in the Senate and for this reason time allocation has not been used.

Before the government can implement time allocation on an item of its business, the Leader of the Government or the deputy leader must first seek the agreement of the opposition. If an agreement is reached between the government and the opposition, the government leader or the deputy leader will advise the Senate of the agreement and its terms. In the recent past, such agreements have stated the time and date that debate on a stage of a bill will terminate, rather than specifying the number of hours to be taken for the remainder of the debate. Although it is not compulsory, recent practice has also seen the deputy leader present a motion outlining the terms of the agreement for adoption by the Senate. This motion is voted on immediately, without debate or amendment.

If the government and opposition fail to reach agreement on time allocation for any stage of adjourned debate on an item of government business, the Leader of the Government or the deputy leader may announce this at any time during a sitting of the Senate. A notice of motion must then be given in which the government indicates the number of hours or days of debate that will be allotted to that particular stage of the item.

Unlike where there is agreement between the government and opposition to allocate time, in the case of no agreement the motion to allot time can apply only to one stage of debate on an item.

The minimum time to be provided for any stage of debate under time allocation varies with the nature of the item under debate. For a substantive

motion or for the second reading of a public bill, at least six more hours must be provided. For a committee to report a bill back to the Senate, at least one day, during the period from Monday to Friday, must be provided. For the report and third reading stages (combined) of a public bill, a single period of at least six more hours must be provided. In recent practice, the six-hour minimum required for motions and bills has become the usual amount of time given in time allocation motions.

Amendments to time allocation motions

Motions to allocate time in the Senate cannot be amended nor can debate be adjourned.

"Guillotine" and closure of debate on bills

The rules and practices of the Senate do not provide for the possibility of "guillotine" or closure of debate.

Alberta Legislative Assembly

The Legislative Assembly of Alberta has a timetabling mechanism called time allocation. As indicated in the Alberta standing orders—

> "Time allocation
> 21(1) A member of the Executive Council may, on at least one day's notice, propose a motion for the purpose of allotting a specified number of hours for consideration and disposal of proceedings on a Government motion or a Government Bill and the motion shall not be subject to debate or amendment except as provided in suborder (3).
>
> (2) A motion under suborder (1)
>
> (a) that applies to a Government Bill shall only refer to one stage of consideration for the Bill,
>
> (b) shall only apply when the Bill or motion that is the subject of the time allocation motion has already been debated in the Assembly or been considered in Committee of the Whole.
>
> (3) A member of the Executive Council may outline the reasons for the motion under suborder (1) and a Member of the Official Opposition may respond but neither speech may exceed 5 minutes."

In 2010 time allocation was applied to three bills during the Assembly's fall sitting, limiting consideration of these bills at Committee of the Whole and third reading and therefore shortening the total potential time during which

the bills might have otherwise been debated (effectively guillotining debate).

A time allocation motion is not subject to amendment.

There is a "guillotine" provision in the standing orders for an appropriation bill whereby if such a bill has been moved for second reading on any day, the Speaker shall interrupt the proceedings 15 minutes prior to the normal adjournment hour and put the question on every appropriation bill then standing on the order paper for second reading. These questions are decided without debate or amendment. The same procedure applies for an appropriation bill at Committee of the Whole (the Committee immediately rises and reports after the question regarding the approval of the bill is decided) and third reading.

British Columbia Legislative Assembly

The British Columbia legislature does not routinely timetable the passage of bills to limit or control the amount of time the House will spend on particular bills. In general, most debate will routinely occur at second reading and committee stages.

There are three key standing orders that relate to the time spent on bills: standing order 45A governs second reading debate, standing order 81 provides the typical stages of a bill and, for atypical circumstances, standing order 81.1 makes provisions to govern the time allocation of a bill (which is not commonly undertaken).

Standing order 45A provides general time limits on debate for second reading of and amendments to public bills, public bills in the hands of private members and private bills. The time prescribed may vary according to a member's role (i.e. mover, leader of recognised party or designated member). In each case a member may not exceed the time specified in standing order 45A and may not transfer unused time to other members. The table below outlines the time allotments for debate on second reading and amendments.

Mover	Leader of government or designate	Leader of recognised opposition parties or designate	Any other member
40 minutes	2 hours	2 hours	30 minutes

Standing order 81 describes the typical process for most bills, stating that "every bill shall receive three readings, on different days, prior to being passed.

After the Second Reading it shall be ordered for committal on a subsequent day. On urgent or extraordinary occasions, a bill may be read twice or thrice, or advanced two or more stages in one day."

However, the Legislative Assembly may proceed by time allocation pursuant to standing order 81.1. Under this standing order, a Minister, usually the Government House Leader, may rise, under subsection (1), to state that an agreement has been reached to "allot a specified number of days or hours to the proceedings at one or more stages of any public bill". If an agreement between the House Leaders cannot be reached, under subsection (2), a Minister—usually the Government House Leader—"may propose without notice a motion for the purpose of allotting a specified number of days or hours for the consideration and disposal of proceedings at one or more stages of a public bill."This motion is immediately decided without debate or amendment. This standing order was first employed on 27 May 2002.

Since 2002 time allocation has been used seven times, usually towards the end of a session, when the remaining time for consideration of public bills still on the order paper is limited. Standing order 81.1 was used twice in 2010 to time allocate debate on two pieces of legislation: Consumption Tax Rebate and Transition Act (Bill 9), and Clean Energy Act (Bill 17). In respect of both bills, an opposition motion at second reading to send the bills to a parliamentary committee for further review was defeated.

Manitoba Legislative Assembly

While most of them are not commonly used, there are certain measures available to members of the Manitoba Legislative Assembly to "timetable" the passage of a bill and also to "guillotine" debate on a bill.

The Manitoba Rules, Orders and Forms of Proceeding contain a provision for closure of debate. The closure motion, which may not be debated or adjourned, sets out specific provisions for the rapid conclusion of debate on the original bill. This rule has not been used in recent memory.

The rules also contain a provision for time allocation of bills which would allow the Government House Leader to propose a motion allotting a specified number of hours to consider and dispose of a government bill. Brief speeches are permitted in debate on this motion, though it cannot be amended. Since its inclusion in the rules in 2002 the time allocation provisions have not been used.

In recent years it has become fairly common for the House to pass sessional orders setting out detailed provisions for the passage of selected bills. On one

occasion the terms of a sessional order were changed through the passage of an amending motion in the House. The provisions generally include deadlines for each stage of the selected bills' passage, including committee consideration. As a result of these orders, termination of debate on various stages of bills has been enforced by the Speaker in the House. Since 2004 seven sessional orders have been passed and enforced in the Manitoba legislature.

Northwest Territories Legislative Assembly

The rules of the Legislative Assembly set out the timelines for the passage of bills: the introduction of a bill, the dates for first and second reading, the subsequent referral of a bill to a standing committee, the report back to the House and the referral of the bill to Committee of the Whole. The rules also set out the period of time that the standing committees have to review the bills (120 days) and the process for the committee to report the bills back to the House. A standing committee may, by motion, request an extension of the 120-day review period. When dealing with a bill that is not reported back to the House in accordance with the rules, a Minister may issue a "Notice of Intent" and have the bill, on the third sitting day after the notice, placed in Committee of the Whole.

There are two exceptions to the above process. First, appropriation bills are dealt with in a different manner and the process is included in the rules. Unless otherwise ordered by the Assembly, an estimates document tabled by the government is deemed referred to Committee of the Whole. In Committee of the Whole questions are put to the Minister of Finance on the details of the tabled estimates document. The adoption of a motion to concur in any estimates document is an Order of the Assembly to bring forward an appropriation bill based thereon. An appropriation bill may receive first, second and third reading on the same day.

A second exception is in the case of bills under the purview of the Assembly (i.e. elections legislation, legislation governing the Assembly and the Executive Council, and members' pension legislation). These bills are introduced by a member of the Board of Management and, by motion of the House, can be moved directly into Committee of the Whole. These bills are not required to go before a standing committee.

The rules of the Legislative Assembly allow a member to speak for no more than 20 minutes at any time in debate. There are some exceptions, but the rules do apply to the debate of bills. A member may only speak once except the mover concluding debate. The Rules governing debate in Committee of the

Whole allow a member to speak for ten minutes at any one time and, subject to the discretion of the chair, a member may speak more than once to a matter under discussion, but not until every member wishing to speak has spoken.

Ontario Legislative Assembly

The Legislative Assembly of Ontario does not timetable the passage of bills. The length of time each bill is debated is neither predetermined nor standardised by the House. Each member is entitled to speak once during both second and third reading debate on a bill. The time allotted to members will vary depending on the number of hours of debate that have occurred. The first speaker of any recognised party is allotted a 60-minute speech; this is followed by 20-minute speeches until seven hours of debate is reached; and then speeches are reduced to 10 minutes until everyone wishing to speak has done so.[16] While theoretically this could result in close to 40 hours debate at each reading, the government has tools at its disposal to react to perceived filibustering or otherwise to bring an early end to debates.

Standing order 47 allows for bills to be "time allocated" at the discretion of the Government House Leader after six and a half hours of debate have occurred at second reading. The time allocation motion, which specifies how a bill is to proceed through the remaining stages of the parliamentary process, is allotted up to two hours of debate. The two hours include debate on any amendments to the original motion, which may be moved during the course of the debate. Standing order 47 reads as follows—

> "**Time allocation motion**
> 47. (a) The Government House Leader may move a motion with notice providing for the allocation of time to any proceeding on a government bill or substantive government motion.
> **Equal division of time**
> **Vote and 10 minute bell**
> (b) Two hours of debate, apportioned equally among the recognized Parties, shall be allotted to debate on the motion, at the end of which time the Speaker shall without further debate or amendment put every question necessary to dispose of the motion. If a recorded vote is requested by five members, division bells shall be limited to 10 minutes.
> When time allocation motion may be moved
> (c) A time allocation motion may not be moved until second reading debate

[16] Standing order 24.

has been completed or six and one-half hours of debate have taken place on second reading consideration of any government bill or on a substantive government motion. Upon completion of six and one-half hours of debate, or when the member who has the floor at that point has completed his or her remarks, the Speaker shall deem the debate to be adjourned unless the Government House Leader specifies otherwise.

Same

(d) A time allocation motion may not be moved on the same calendar day that any of the bills that are the subject of the motion have been called as government Orders."

Not all bills are time allocated. Time allocation motions are used on an ad hoc basis in response to a number of factors, not least the predilection of the government of the day. For this reason, the frequency of their use varies by government and time in office.

There have also been examples of substantive government motions that, when passed, have had the effect of "timetabling" business before the House.[17] Since there is no restriction on the time available to debate these motions, they usually require the support of all parties in order to pass in a timely manner. As a result they are moved relatively infrequently.

The orderliness of this type of motion was challenged in 2003 when only two of the three parties represented in the House supported the motion. The members of third party argued that the motion was out of order as it did not meet the requirements for a time allocation motion. The Speaker ruled that the motion was not a time allocation motion, but otherwise met all of the requirements for a substantive motion, and in this particular case did not abuse the rights of the minority by artificially reducing the time available for debate.[18] Debate on this substantive motion was eventually stopped as the result of a closure motion that was passed by the House.

In the Ontario legislature, motions for closure are governed by standing order 48, which states—

"**Motion for closure**

48. A motion for closure, which may be moved without notice, until it is decided shall preclude all amendment of the main question, and shall be in the following words: "That this question be now put". Unless it appears to the Speaker that such motion is an abuse of the Standing Orders of the House or an infringement of the rights of the minority, the question shall be

[17] Journals, 9 December 2008.

[18] Journals, 3 December 2003.

put forthwith and decided without amendment or debate. If a motion for closure is resolved in the affirmative, the original question shall be put forthwith and decided without amendment or debate."

Unlike time allocation motions, motions for closure may be moved at any time during debate and refer only to one question at a time. Whereas time allocation motions may prescribe how the House (and committee) will deal with the remaining stages of a bill, closure motions refer only to the main question before the House (or committee). Consequently, it would take several successful closure motions to accomplish the same outcome as one successful time allocation motion.

Closure motions are also subject to the approval of the Speaker, who, under the standing order, has the authority to disallow them. During the current parliament, two closure motions have been moved during debate in the legislature. In both cases, the question was not allowed to be put and insufficient debate was cited as the rationale. Over the same time period (42 months), 41 time allocation motions have been moved and carried.

Québec National Assembly

At the National Assembly, the concept of "timetabling" does not exist. Each member is allotted speaking time at each stage of the legislative process, except for the introduction of bills, for which there are no debates.

The Minister or member introducing the bill may speak for 30 minutes or 1 hour, depending on the stage in its consideration. This is also true for the Premier and the other leaders of the parliamentary groups or their representatives. The other members are allowed 10 or 20 minutes.

Therefore, the length of the debate on a given bill varies according to the number of speakers. Also, the standing orders provide for time limits for the consideration of the stages of a bill leading to final passage. In this regard, each stage of the legislative process must be taken on separate sitting days and one week must separate the introduction of a bill and its passage in principle.

Motion for the previous question

To expedite the adoption of a motion, the standing orders[19] provide the possibility to move a motion for the previous question. This procedure is very rarely used, the last time being in November 2001.

[19] *Standing Orders of the National Assembly*, 202 to 204.

Closure motion

A closure motion may be used to conclude the clause-by-clause consideration of a bill in committee.[20] This procedure is also very rarely used, the last time being in December 1996.

Exceptional legislative procedure

In practice, when the Government wants to precipitate the passage of a bill—either owing to the urgency of the situation or because the bill is contested by the members sitting in opposition and the latter use all means at their disposal in the rules of procedure to delay its passage—it generally avails itself of the exceptional legislative procedure (also known as a "gag order"). This procedure, which may used with regard to only one bill at a time, establishes limits on the time allotted for debate at each remaining stage of the bill. Immediately the motion is carried, the following time allocations are applied: five hours for the debate on passage in principle, five hours for clause-by-clause consideration in a committee of the whole, one hour for the report stage, and one hour for the debate on the motion for the passage of the bill. Furthermore, the debate at any stage of the bill concludes when the number of hours specified has elapsed or when all members wishing to speak have been heard. Finally, all of these stages may be taken during one and the same sitting.[21]

The exceptional legislative procedure thus ensures a specified time for the consideration of bills. Hence, a bill for which all stages of its consideration are included in an exceptional legislative procedure will be examined for approximately 14 hours.

Saskatchewan Legislative Assembly

Does your chamber or parliament timetable the passage of bills?

No.

If not, in what circumstances are bills timetabled and with what degree of frequency?

The standing orders do not timetable specific bills. However, Saskatchewan has a parliamentary calendar that sets a threshold for the number of hours of debate before a bill is required to be voted upon. If a government bill is introduced in the fall sitting of a session and receives 20 hours of debate, the

[20] *Ibid.*, standing order 251.
[21] *Ibid.*, standing order 257.1.

standing orders require that the bill must be voted on the day prior to the end date of the spring session. A similar standing order requires that "budget bills" introduced in association with the annual budgetary estimates must also be voted on the day prior to the end of the spring session. The threshold of five hours is required for each budget bill. These are maximums and often the bills are voted with fewer hours.

In 2010 two bills met the threshold and the criteria for the expedited process. Bill 80—the Construction Industry Labour Relations Amendment Act—and Bill 132—the Wildlife Habitat Protection (Land Designation) Amendment Act, 2009—received more than the requisite 20 hours of debate. The rules required the committee to meet on Bill 80 and vote on one combined question. The rules also permitted that a quorum was not required. A quorum was present although none of the Opposition members attended the meeting.

In order to meet the requisite hours of debate, Bill 132 was considered in committee for five hours the evening before the deadline for the passage of bills. The committee also agreed two new clauses. According to the rules for the expedited process, had the committee not introduced or passed the new clauses, the clauses could not have been introduced the next morning.

Under the expedited process, during Routine Proceedings both bills were reported and were read a third time without debate. Also under the expedited process, on Orders of the Day the resolutions were called and the final Appropriation Bill was introduced. This was also the first time under the new rules that the final Appropriation Bill was dealt with in this manner.

How does timetabling affect different stages of bills?

Following the first reading, the 20-hour threshold can be achieved at any stage of the bill's process.

How are amendments to timetabling motions made (e.g. to provide more time than originally envisaged or to rearrange the proceedings to be taken on particular days)?

A sessional order would need to be adopted to amend the requisite number of hours.

Is it possible to "guillotine" debate on a bill? If so, in what circumstances?

Yes. The practice in Saskatchewan is to introduce a motion to establish a time allocation schedule for each stage for proceedings on the bill. Time allocation has very rarely been used in Saskatchewan and has only been adopted during

periods of obstruction or filibustering. Suspension of bills does not apply to appropriation or specified bills.

Yukon Legislative Assembly

The Yukon Legislative Assembly does not timetable the passage of individual bills. There is no form of time allocation or closure that can be applied to a bill. Yukon's "guillotine" procedure is, arguably, more draconian in that it is used to terminate a spring or fall sitting of the Assembly and to end debate on all government bills simultaneously.

This feature was added to the standing orders in 2001 when the party leaders negotiated changes to the standing orders. The purpose of the changes was to establish a more regular calendar of business for the Assembly. The "guillotine" procedures were contained in a new chapter—chapter 14—which deals with sittings of the Assembly.

The first feature of chapter 14 is a mechanism for calling the Assembly into session when it stands adjourned for an indefinite period of time. This states that when the Premier wishes to see the Assembly recalled the Speaker must be advised "in sufficient time to allow the Speaker opportunity to give a minimum of two weeks notice [to members] of the date on which the House shall meet."

Chapter 14 also stipulates that the Assembly will sit for a maximum of 60 sitting days per year, divided between a spring and fall sitting. All bills to be dealt with during a sitting must be introduced and given first reading by the fifth sitting day. By the seventh sitting day the House Leaders are to decide how many sitting days will be allocated to that sitting (minimum of 20, maximum of 40). If the House Leaders cannot reach an agreement the Speaker will rule that both the spring and fall sittings for that calendar year will be a maximum of 30 sitting days.

To make the time limit work a procedure had to be developed by which a spring or fall sitting could be brought to an orderly ending and the business before the Assembly dealt with. Therefore, chapter 14 also contains rules dealing with the termination of business on the final day of a sitting and the fate of government bills then before the House.

The normal hour of adjournment is 5.30 p.m. If the Assembly is in Committee of the Whole at 5.00 p.m. on the final sitting day (which it has been in every instance since the 2003 fall sitting) the chair will interrupt the proceedings. The chair will then ask the Government House Leader (or a minister if the Government House Leader is not present) to identify which government bills then before the committee should be put to a vote. This is done without

further debate or amendment. Once the committee has rendered its decision upon the designated bills the chair rises and reports to the Speaker on the proceedings in Committee of the Whole. The Speaker will then ask the Government House Leader to identify which bills then before the House should be put to a vote. The only restriction is that the bills must have had at least some debate at second reading. Once the Government House Leader has identified these bills the Speaker will put the motion for third reading to the House, again without further debate or amendment.

If the Assembly is not in Committee of the Whole at 5.00 p.m. the Speaker will invoke the "guillotine" process at the normal hour of adjournment: 5.30 p.m. The Assembly then proceeds with any routine business associated with the end of a sitting. The normal time of adjournment does not apply once the "guillotine" has begun to drop.

Chapter 14 of the standing orders of the Yukon Legislative Assembly may be viewed at <http://www.legassembly.gov.yk.ca/standing/chap14.html>

CYPRUS HOUSE OF REPRESENTATIVES

The Cyprus House of Representatives does not timetable the passage of bills (harmonising EU legislation is excluded, if this is forwarded on time by the government to the parliament, to which the House needs to reply within a reasonable amount of time, as specified accordingly in each directive).

The President's and Parliamentary Party Leaders' Meeting can suggest a time limit ("guillotine") for a debate on a bill, but this is always pending the approval of the plenary of the House.

STATES OF GUERNSEY

Bills are not timetabled in Guernsey.

INDIA

Lok Sabha

The constitution of India does not prescribe any time period for passing of bills by the Houses of Parliament. However, it is relevant to refer to articles 108 and 109 of the constitution, which prescribe time periods in certain cases.

Article 108 provides, *inter alia*, that when a bill has been passed by one House and transmitted to the other House and more than six months elapse from the date of reception of the bill by the other House without the bill being passed by it, the President may, unless the bill has elapsed by reason of dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the bill. This provision is discretionary and does not apply to constitution (amendment) bills and money bills.

Article 109 provides, *inter alia*, that after a money bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall, within a period of 14 days from the date of receipt of the bill, return the bill to the House of the People with its recommendations. The House of the People may thereupon accept or reject all or any of the recommendations of the Council of States. However, if a money bill is not returned to the House of People within the said period of 14 days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of People.

With the coming into force of the departmentally-related standing committees, almost all bills after introduction are referred by the Speaker to these committees for examination and report. The standing committees are required to report on the bills in the given time (rule 331 H(c)). If, however, a committee is unable to make its report within the given time, the chairman of the committee may ask the Speaker for an extension of time.

As regards timetabling the passage of bills by Parliament, for the purpose of timely completion of business of the House, the Business Advisory Committee, headed by the Hon'ble Speaker of House of the People, is constituted to recommend time for discussion of government legislative and other business.

Regarding timetabling of amendments to bills or motions, the rules of the House of the People provide that such amendments shall be given notice of by the members at least one day before the bill or motion is to be taken up by the House.

Regarding guillotining debate on a bill, rule 109 of the rules of the House provides, *inter alia*, that at any stage of a bill which is under discussion in the House a motion that the debate on the bill be adjourned may be moved with the consent of the Speaker.

Rajya Sabha

The Business Advisory Committee of Rajya Sabha recommends the time that should be allocated for the discussion of the stage or stages of such government bills and other business as the chairman in consultation with the Leader of the House may direct, and for the discussion of the stage or stages of private members' bills and resolutions. The Committee has the power to indicate in the proposed allocation of time the different hours at which the various stages of the bill or other business shall be completed. Before the commencement of each session, a programme of government legislative and other business is received from the Ministry of Parliamentary Affairs to be placed before the Business Advisory Committee, for which an allocation of time is to be made. The same is circulated amongst the members of the Committee.

While considering the allocation of time to various items of business, the Committee takes into account such factors as the volume and significance of the bill, the general desire and interest of members in the subject, the time taken for similar matters in the past or in the other House, the need and urgency of a measure to be disposed or discussed expeditiously or otherwise and the total time available at the disposal of the House.

As per the well-established practice, the recommendations of the Committee are reported to the House by the chair in the form of an announcement generally on the same day on which the sitting of the Committee is held or the next day. The announcement is treated as final and no formal motion in respect thereof is moved. The recommendations of the Committee, as announced in the House, are notified in the Parliamentary Bulletin Part-II for the information of all members of the House.

Rule 36 of the Rules of Procedure and Conduct of Business in the Council of States provides that at the appointed hour in accordance with the Allocation of Time Order, for the completion of a particular stage of a bill or other business, the chairman shall forthwith put every question necessary to dispose of all the outstanding matters in connection with that stage of the bill or other business. Rule 37 of the Rules of Procedure states that no variation in the Allocation of Time Order shall be made except by the chairman, who may make such variation if he is satisfied after taking the sense of the Council that there is a general agreement for such variation.

Gujarat Legislative Assembly

No provision is enumerated in the rules of procedure about timetabling the passage of bills.

Rajasthan Legislative Assembly

As per the provisions of the Rules of Procedure and Conduct of Business in the Rajasthan Legislative Assembly and also the well-established practice obtaining since its inception, every item of business to be taken up in the House is routed through the Business Advisory Committee (BAC). Bills are no exception to this situation. The timetabling—particularly of the day and numbers of the bills to be taken up that day—of government bills as well as private members' bills is decided in the BAC, which consists of leaders and other important functionaries of all political parties represented in the House. Conventionally, the Rajasthan Legislative Assembly sits for limited time in a year and the better part of it is devoted to the passage of the budget, different motions and other issues of political significance. As such, all legislation is passed—with first, second and third readings—within the time allotted by the BAC. As the BAC is representative of all political parties, a consensus of all parties to the timetabling of the bills already exists and thus no amendment to the timetabling of bills is made. Further, Rajasthan Legislative Assembly, being a political institution, is composed of diverse ideology and thought processes and therefore disagreements amongst its constituents are not infrequent. Such occasions witness the passage of bills amidst din, not "guillotine", while observing all the formal readings involved with the passage of legislation.

Uttarakhand Legislative Assembly

The Business Advisory Committee decides the date and time of discussion on a bill. This practice is followed for all bills. Debates may be guillotined in special circumstances like passing of Demands for Grants.

Under the Rules of Procedure—

> "Rule 176(1) The Speaker, in consultation with the Leader of the House will allot not more than 15+4 days for the discussion and voting of Demands for Grants."

The time and date of disposal of outstanding Demands for Grants already notified can be altered or extended by the House to enable the House to discuss the Demands for Grants of more ministries or departments.

> "Rule 176(7) On the last day of the days allotted under Sub-Rule(1), approximately half an hour before the scheduled adjournment of the sitting, the Speaker will forthwith put every question necessary to dispose of all the

outstanding matters in connection with the Demands for Grants and in this process, no motion to postpone the proceedings would be introduced, no obstacles would be put and no delaying motion will be moved in this regard."

STATES OF JERSEY

The States of Jersey does not currently timetable the passage of bills. However, no bill can be debated until it has been lodged "au Greffe" (i.e. printed and published) for at least six weeks, meaning that Ministers must factor this period into their own timetable for bringing forward new legislation. Any amendments must be lodged for two weeks before they can be debated, meaning that late amendments after the debate has started are not possible.

A closure motion ("guillotine") can be proposed at any stage in the passage of a bill in relation to the part of the debate taking place at that time (debate on principles, debates on individual articles, debate on third reading). There are nevertheless certain restrictions on such motions. A closure motion can only be proposed if at least one hour has passed from the end of the proposer's speech, 30 minutes advance notice of the intention to make the proposal has been given and only a member who has not spoken in the debate has made the proposal. In practice very few such motions are proposed during debates on bills and very few of those are adopted.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Does your parliament timetable the passage of bills?

Not generally, though there are a few exceptions. While the timetabling of bills does not occur in a formal sense, the Government may discuss various aspects of its legislative programme with the Business Committee.

In what circumstances are bills timetabled and with what degree of frequency?

The main appropriation bill must receive its third reading within three months of the delivery of the budget.

Treaty settlement bills (which compensate groups of Māori for land lost to the Crown subsequent to the signing of the Treaty of Waitangi in 1840) sometimes follow an agreed timetable so that arrangements can be made for members of the affected groups to be present when the bill is passed. This may happen no more than a few times each year.

Is it possible to "guillotine" debate on a bill? If so, in what circumstances?

The House

No guillotine procedure exists for debates on the first, second and third readings of bills, but all such debates are limited by the number of speeches that may be made. Usually, 12 ten-minute speeches is the limit, but for the first readings of members', private and local bills it is two ten-minute speeches, eight five-minute speeches and five minutes in reply. The Business Committee may vary these limits, but does so rarely.

Committee of the whole House

Consideration by the Committee of the whole House takes place between the second and third readings. Bills are usually considered Part by Part (or clause by clause if not drafted in Parts).

Standing orders do not limit the length of debate on any clause or Part, so the debate on any question may continue until no more calls are sought. However, members may move closure motions. Invariably, this is done by government members, so a majority in support of the motion is usually assured. In order that debates are not terminated without an opportunity for full consideration, the acceptance of closure motions is at the chairperson's discretion. Factors that the chairperson may take into account when deciding whether to accept a closure motion include the number of members still seeking calls; the length and significance of the Part or clauses under consideration; and whether the debate is struggling to retain relevance or has become merely repetitive.

The Committee of the whole House may, by leave, consider all questions concurrently. This is often the result of an arrangement between the parties, and will also include an agreed time at which the debate will conclude.

Appropriation and Imprest Supply Bills

The procedure for bills that are part of the financial cycle varies significantly from that for other bills. For example, there is no amendment or debate on the question for the first and third readings of Imprest Supply bills. Time available for debates at various stages is also determined differently from other bills:

Third reading of main Appropriation Bill and second reading of Imprest Supply Bill (one debate)	Whole debate: 3 hours
Budget debate (second reading of main Appropriation Bill)	Whole debate (excluding delivery of the budget statement): 14 hours

Estimates debate (Committee of the whole House on main Appropriation Bill)	Whole debate: 8 hours
Appropriation (Supplementary Estimates) Bill second reading (including second reading of an Imprest Supply Bill)	Whole debate: 3 hours
Financial review debate (Committee of the whole House on Appropriation (Financial Review) Bill)	Whole debate: 4 hours

SOUTH AFRICA PARLIAMENT

Section 45(1)(a) of the Constitution of the Republic of South Africa, 1996 provides that the National Assembly and the National Council of Provinces must establish a Joint Rules Committee to make rules and orders concerning their joint business, including *inter alia* determining procedures to facilitate the legislative process and setting time limits for completing any step in that process.

Section 91(4) of the Constitution provides that the President of the Republic must appoint a member of the Cabinet to be the Leader of Government Business (LOGB) in the National Assembly. The lion's share of parliamentary business emanates from the Government, and much of this is legislation. The LOGB plays a key role in co-ordinating the legislative programme and, where necessary, requesting Parliament to fast-track a bill. Traditionally, the Deputy President of the Republic has served as the LOGB (see below).

Brief overview of programming procedure

The shape of a parliamentary year in broad outline (i.e. the dates of the sessions and legislative cycles for the year) is generally determined the previous year at a meeting of the Joint Programme Committee (JPC), chaired by the Speaker and the Chairperson of the Council. The Assembly Programme Committee meets weekly during session to organise and determine, within the broad parameters set by the JPC, the business of the Assembly in the short and medium term. While dealing with day-to-day business it also plays an important role in establishing practice. The committee is chaired by the Speaker.

While the contents of the daily Assembly order paper and the sequence of business are largely determined by the decisions of the Assembly Programme

Committee, the chief whip of the majority party takes day-to-day decisions on the arrangement of business on the order paper, guided also by events and daily requirements. In doing so, he or she consults the Speaker and the Leader of Government Business where appropriate.

Joint Programme Committee

This is a senior committee, chaired by the Speaker and the Chairperson of the Council and consisting of the Leader of Government Business and the senior office-bearers of both Houses, including whips from all parties.

The committee usually sits two or three times per year. At a meeting towards the end of the calendar year it determines the broad parliamentary programme for the subsequent year. It is responsible for determining the annual programme of Parliament, including the legislative programme. It monitors and oversees the implementation of Parliament's annual legislative programme and may set deadlines for the introduction of bills. It takes decisions on prioritisation of business, and may set time limits for steps in the legislative process and timeframes for the passage of bills through Parliament. It is also responsible for fast-tracking bills.

In order to perform its task, the committee requires the executive to provide it with a provisional legislative programme for the year, listing the bills the executive intends to introduce, together with timeframes showing when each bill is expected to be ready for introduction. Also required is a detailed programme for Budget Votes and the other stages of the Main Appropriation Bill.

National Assembly Programme Committee (NAPC)

The task of this committee is to manage the programme of business of the Assembly. While the Joint Programme Committee, which sits infrequently (usually not more than twice a year), determines the broad outlines of the annual programme and timetable of Parliament, the NAPC meets weekly during session, to:

- decide on the short- and medium-term legislative and other programme of the Assembly including, where necessary, the functioning of committees;
- adjust the annual programme of the Assembly; and
- monitor and oversee the implementation of the Assembly's annual programme.

When the committee prioritises or postpones government business, it must do so in concurrence with the Leader of Government Business. The committee is chaired by the Speaker and consists of the presiding officers, the Leader

of Government Business, and whips of all parties, including the chief whip of the majority party. Traditionally it meets on Thursday mornings during session to consider a draft weekly programme.

Office of Leader of Government Business

This office is housed in Parliament, and while its staff are appointed by the Secretary to Parliament, the office is responsible to the Leader of Government Business. Its functions are—

- it is responsible for the affairs of the national executive in Parliament;
- it programmes parliamentary business initiated by the national executive, within the time allocated for that purpose by the NAPC;
- it arranges the attendance of Cabinet members in respect of parliamentary business and informs Parliament of the availability of Ministers;
- it determines which legislation is forthcoming for a specific term of Parliament, and its urgency, and where necessary processes fast-tracking of a bill; and
- it liaises with committees to determine when legislation is available.

Deadlines for submission of legislation

For each term, the JPC determines deadlines for the introduction of legislation by the executive. Submission of a bill within deadline is not a guarantee that its consideration will be finalised during that term, since the passage of bills is subject to political and other considerations; but usually this will happen. Introduction here signifies due compliance with the relevant rules. Bills introduced late will be processed in the normal way but Parliament is not committed to processing such bills within the relevant term.

Time limits for bills

The time limits for stages of the legislative process are laid down in the rules. If it is not possible to meet a time limit set for a particular step in the process, this fact and the circumstances of the delay must, within a reasonable time before the time limit expires, be brought to the attention of the JPC or its subcommittee and an extension or other assistance requested.

Fast-tracking of bills

Fast-tracking is a process whereby a Joint or House rule or rules are dispensed with in order to expedite the prompt passage of an urgent bill through Parliament. A request for fast-tracking may only be made by the Leader of

Government Business, in the case of a bill initiated by the executive. In the case of any other bill, the request may be made by the member in charge. The decision to fast-track can only be made by the JPC or by its sub-committee when both the Speaker and the Chairperson of the Council are present. The decision must be ratified by both Houses on their first sitting day after the decision.

A request must be well-motivated, and the JPC has agreed the following guidelines in determining the merits of individual fast-tracking requests—

- the LOGB is required to show that prompt passage of the bill is a matter of urgency;
- the request for fast-tracking of the bill must therefore specify why fast-tracking is necessary under the circumstances, whether a delay in the passage of the bill will seriously affect the interests of the state or the general public and how those interests will be affected;
- the request for fast-tracking must also specify whether the bill introduces significant changes in policy, whether public participation took place before the request for fast-tracking was made, whether there is any opposition to the bill and whether the bill is technical in nature;
- if the bill extends the term of office of a council or statutory body, the JPC will only approve the request for fast-tracking if the LOGB can show compelling reasons why it should be approved;
- the request for fast-tracking must therefore explain why the bill in question was not introduced in Parliament before the council or statutory body's term of office expired or when it was close to expiration.

SRI LANKA PARLIAMENT

A bill undergoes the following three stages in the Parliament, as per the rules laid down in the constitution of Sri Lanka and the standing orders of the Parliament of Sri Lanka: Introduction—first reading; Consideration—second reading; Passing—third reading.

First reading

A bill is placed on the order paper for first reading after seven days from the date of publication in the Government Gazette.

Second reading

After a lapse of seven days from introducing the bill in the Parliament, the bill

is placed on the order paper for second reading. However, if a petition has been filed in the Supreme Court against a bill under article 121 of the constitution, such a bill is fixed for second reading after the determinations of the Supreme Court is announced in Parliament under standing order 50(2).

The Committee on Parliamentary Business decides the date of the second reading and the hours of the debate.

Notice of amendments has to be given to the Secretary-General of Parliament in writing.

Third reading

Generally, third reading also takes place on the same day of the second reading.

Urgent Bills

The above procedure is different in regard to Urgent Bills.

Under Article 122 of the constitution a bill which in the opinion of the Cabinet of Ministers is urgent in the national interest and bears an endorsement to that effect under the hand of the Secretary to the Cabinet is known as an Urgent Bill. Urgent Bills are referred directly to the Supreme Court by the President for its determination of the constitutionality of the bill. The requirement that a bill has to be published in the Gazette at least seven days before it is placed in the order paper of Parliament for introduction and placed in the order book for one week prior to the second reading is dispensed with for Urgent Bills. The bill can be introduced and taken up for second reading on the same day the determination of the Supreme Court is communicated to Parliament.

Appropriation bill (annual budget)

26 days are allotted for consideration of the appropriation bill and not more than seven days are allotted for second reading. The sitting hours of such days are longer than other sitting days.

Is it possible to "guillotine" debate on a bill?

There is no hard and fast rule about the hours of debate. The Committee on Parliamentary Business decides the hours of debate on a bill. The second reading of a bill generally lasts one day but may extend to many days. There are instances where several bills have been debated and passed on a single day.

UNITED KINGDOM

House of Commons

Does your chamber or parliament timetable the passage of bills?

Yes.

If so, how is the timetable decided, and when?

The Government tables, in advance of second reading, a programme motion specifying the type of committee to which a bill is to be committed, and a date by which the committee should report (for a Public Bill Committee) and/or the number of sittings the committee stage (in Committee of the whole House) and/or the report stage and third reading should take. The timings may reflect negotiations with opposition parties. The motion is decided without debate (but sometimes with a division) immediately following the second reading of the bill.

Is it routine for all bills? If not, in what circumstances are bills timetabled and with what degree of frequency?

Programming is routine for nearly all Government bills, other than consolidated fund bills (which are not debated), consolidation bills and finance bills.

How does timetabling affect different stages of bills?

Public Bill Committee: the programme order fixes a date by which the committee should report. A programming sub-committee of the committee then specifies the dates and times on which the committee will sit. It can also (but does not usually) specify which clauses of the bill must be dealt with by what dates.

Committee of the whole House, report and third reading: the programme order specifies the number of sittings to be devoted to each stage and the time at which the stage (or part of the bill within a stage) should be brought to a conclusion. The normal provision for a bill which is being committed to a Public Bill Committee is for report and third reading to be taken at one sitting, with one hour reserved for third reading. The standing orders provide for a Programming Committee (of the House) to arrange any subdivision of the time, but in practice this provision is not used and any desired subdivision is done by amending the programme order.

Lords amendments: usually something between one hour and one day.

In all cases the standing orders prescribe the questions which are to be put

when the time allowed expires, including all remaining Government proposals and possibly non-Government proposals, already debated, selected by the chair for separate decision. There are also provisions for some questions (such as on several consecutive Government amendments) to be dealt with as a single question.

How are amendments to timetabling motions made (e.g. to provide more time than originally envisaged or to rearrange the proceedings to be taken on particular days)?

There is provision for a programme order to be amended later with either no debate or a 45-minute debate (depending on the nature of the amendment).

Is it possible to "guillotine" debate on a bill? If so, in what circumstances?

Guillotines (in the standing orders referred to as "allocation of time motions") have largely been replaced by programme orders, but would still be used (a) if the stages to be time-limited include second reading or (b) if a bill is not programmed immediately after second reading but some limitation of time needs to be imposed later. In addition, individual debates can be brought to an end by the use of the closure.

House of Lords

Due to its self-regulating nature there is no formal timetabling of bills in the House of Lords, and no guillotining of debate. The only formal rule that operates as regards the timing of a bill's passage is standing order 46, which states that no two stages of a bill may be taken on the same day, except if a bill is not amended in Committee of the whole House, in which case the report stage may be taken immediately thereafter. SO 46 is commonly dispensed with for money bills and other finance bills, and occasionally to allow expedited passage of emergency legislation.

There is, though, guidance on the recommended minimum intervals between stages of a bill. The *Companion to the Standing Orders* provides—

> "The following minimum intervals between stages of public bills should be observed:
> (a) two weekends between the first reading (whether of a new bill or one brought from the Commons) and the debate on second reading;
> (b) fourteen days between second reading and the start of the committee stage;

(c) on all bills of considerable length and complexity, fourteen days between the end of the committee stage and the start of the report stage;
(d) three sitting days between the end of the report stage and third reading.

Notice is given when these minimum intervals are departed from, and is given by means of a § against the bill in *House of Lords Business*. However, such notice is not required when SO 46 has been suspended or dispensed with."

The *Companion* goes on to state, "Reasonable notice should whenever possible be given for consideration of Commons amendments, taking into account the number and scale of amendments and the availability of papers relating to them."

The above guidance is usually adhered to.

Although there is no formal timetabling of bills, in practice the usual channels (that is the whips and leaders of the main parties), in consultation as appropriate with other interested members, will normally agree a rough target for how long each stage of a bill will take, and then will usually agree a target for progress to be made on each day. However, such agreements are not binding and are often amended as a bill proceeds.

NATIONAL ASSEMBLY FOR WALES

The Business Committee is responsible for timetabling bills in the National Assembly for Wales. The Committee is responsible for the organisation of business: its role is to "facilitate the effective organisation of Assembly proceedings".

It is chaired by the Presiding Officer and attended by the Minister with responsibility for government business and a Business Manager from each of the political groups. It usually meets weekly during sitting weeks to organise plenary business. Each Business Manager carries a vote which is weighted according to the size of the political group each of its members represents. However, it normally seeks to decide matters by consensus, without resorting to a vote.

One of the Business Committee's functions is to agree and publish timetables for the consideration of legislation by committees. The dates for plenary stages, and the time allocated to their debate, are determined as part of the Committee's usual consideration of the organisation of plenary business (determined by the Government in relation to Government bills and by the

Business Committee in relation to non-Government bills).

During Stage 3 proceedings on a bill (the final plenary stage before a bill is passed, involving the disposal of amendments to the bill), it is possible for either the Government or a member of the Business Committee in relation to non-Government legislation to ask the Assembly to agree to one or more time limits that should apply to debates on groups of amendments. However, no such motions have been proposed to date.

Timetabling bills

In practice, once a bill is introduced, or shortly beforehand, the government (or the member in charge) will write to the Business Committee proposing a timetable for any committee stages:

– Stage 1: the deadline to report on the general principles of the bill by a committee;
– Stage 2: the provisional deadline for completion of the detailed consideration by a committee of any amendments tabled to the bill (subject to the Assembly's agreement of the general principles of the bill at Stage 1).

The relevant committee may also ask the Business Committee to consider its comments about the proposed timetable—for example, if it considers that it should be allowed more time to take evidence and report on the bill during Stage 1. The Business Committee may make subsequent changes to a timetable, as it considers appropriate, but must give reasons for such changes.

Stage 2: detailed consideration of the bill in committee

If the Assembly has agreed to the bill's general principles, the Business Committee must refer the bill back to the "responsible committee" for Stage 2 proceedings and agree the deadline for its completion.

There are other options in standing orders which do not involve committee consideration of bills during Stage 1 and Stage 2, but the route set out above is the usual course for scrutiny of bills.

Stage 3: detailed consideration in plenary of the bill

In relation to Government bills, the Government determines when Stage 3 proceedings take place and how much plenary time to allocate the proceedings. For non-Government bills, the Business Committee will make these decisions. If it becomes clear that the number of amendments tabled necessitate a longer debate, the Government may rearrange its business on that day to allow longer for Stage 3 proceedings. In practice, the Assembly sits until all amend-

ments are disposed, even if it takes longer than the scheduled time. The Presiding Officer also has some discretion in managing the number of speakers and length of debates on each group of amendments.

During Stage 3 Plenary proceedings, in relation to bills introduced by members other than members of the Government, the Business Committee may on a motion without notice ask the Assembly to agree to one or more time limits that are to apply to debates on groups of amendments. The Minister with responsibility for government business may likewise move a motion without notice in relation to Government bills. No such motions have been proposed to date.

If such a motion is agreed to, in accordance with standing order 26.37 debates on those groups of amendments must be concluded by the time limits specified in the motion, except to the extent considered necessary by the Presiding Officer: (i) as a consequence of the non-moving of an amendment leading to a change in the order in which groups are debated; or (ii) to prevent any debate on a group of amendments that has already begun when a time limit is reached from being unreasonably curtailed.

PRIVILEGE

AUSTRALIA

Australian Capital Territory Legislative Assembly

Only one matter of privilege was raised with the Speaker. As the Speaker had publicly commented on the matter, the issue was referred to the Deputy Speaker for consideration, who determined that the matter did warrant precedence. A select committee on privileges was established and the committee inquired into whether a breach of privilege or contempt of the Assembly had been committed by the Managing Director of ACTEW Corporation (a Territory-owned corporation), in relation to evidence given on matters relating to a bulk water transfer pipeline to a select committee on estimates.

The committee accepted that there was no intention to mislead the committee and that no issue of contempt of the Assembly was found. The select committee recommended that all ACT government departments and Territory-owned corporations be reminded of the obligations of witnesses before Assembly committees, particularly with regard to matters relating to claims of public interest immunity.

Queensland Legislative Assembly

Unauthorised release of committee documents

On 25 November 2009 the Speaker referred to the Integrity, Ethics and Parliamentary Privileges Committee (IEPPC or the committee) an alleged unauthorised release of committee documents by the (then) Deputy Leader of the Opposition.

The matter involved an attempt by the Deputy Leader to table documents in the House that had been provided to him by a constituent. Some of these documents appeared to be copies of documents provided to the Parliamentary Crime and Misconduct Committee (PCMC). The PCMC advised the Speaker that four of the seven documents concerned constituted correspondence between the PCMC and the complainant, which the PCMC had not given consent or authorisation to release. Another document contained notes that referred to other documents and exchanges with the PCMC. Accordingly, the Speaker found that five documents would offend standing order 209 (Reference to proceedings and disclosure of evidence and documents) and he

would not allow the documents to be tabled, and referred the matter to the IEPPC.

The IEPPC established that there were two disclosures: the initial disclosure to the Deputy Leader and the subsequent attempt by the Deputy Leader to table the documents.

With regard to the initial disclosure, there was evidence the disclosure was from the complainant herself. The committee wrote to the complainant but did not receive a response prior to the committee reporting. Inquiries by the committee found that the complainant was not specifically advised about standing order 209 and the committee determined that it was unlikely the complainant intended to breach the standing order. As a finding of contempt would require evidence of a deliberate intent on the part of the complainant to interfere with the operations of the House, the committee resolved not to take the matter of the initial disclosure further.

With regard to the attempted subsequent publication, the IEPPC examined the following—

- Was there a disclosure of a proceeding of a committee?
- Was the disclosure unauthorised?
- If so, did the unauthorised disclosure amount to a deliberate interference with the operations of the PCMC?

The committee found the attempted disclosure was unauthorised and that by attempting to table the documents the Deputy Leader of the Opposition intended to disclose the proceedings of the PCMC. The committee was of the view that, had he been successful in disclosing or publishing those proceedings, the Deputy Leader would have committed a contempt of deliberately interfering with the operations of the PCMC.

However, in this instance the Deputy Leader was prevented from disclosing or publishing by virtue of the Speaker's ruling against tabling the documents.

The IEPPC—

- found no finding of contempt;
- recommended that the Standing Orders Committee consider amending the standing orders to add a deliberate attempt to table documents which would otherwise offend standing orders to the list of examples of conduct that can be treated as a contempt;
- requested that, given the Deputy Leader of the Opposition's extensive experience as a member of the Legislative Assembly and his experience on previous ethics committees including deliberating on similar matters, he unreservedly apologise at the next opportunity; and

- reminded all members of the seriousness of unauthorised disclosure or publication of "proceedings" of a committee.

The committee's report was tabled on 25 March 2010 and the member apologised unreservedly to the House later that day. To date the standing orders have not been amended to include the committee's recommendation.

Contempt of Parliament: failure to register interests

In June 2010 the IEPPC finalised a matter referred by the Speaker in 2006 relating to an alleged failure by a former member (Mr Gordon Nuttall) to register 36 payments received in the Register of Members' Interests. This case is unique in that Mr Nuttall was currently imprisoned for receiving secret commissions (the 36 payments that he failed to disclose). Accordingly the committee sought legal advice in relation to the issue of double jeopardy. The legal advice confirmed that the principle of double jeopardy did not apply in this instance and the committee had jurisdiction to investigate the matter.

The committee examined two separate tests and their elements as derived from the standing orders—

1. whether the matter required disclosure; and
2. if so, whether the non-disclosure resulted in a contempt.

Each of the 36 payments was alleged to have not been recorded within the one month time frame specified in the standing orders.

In relation to whether the matter required disclosure, the committee identified four potential categories of interests requiring registration which the payments received could fall into—

- gifts valued at more than $500 (s. 7(2)(k));
- any liability of the member (s. 7(2)(h));
- the source of any other income over $500 (s. 7(2)(m));
- any other interest (s. 7(2)(p)).

The committee was of the view that the payments received were required to be disclosed under "income" and at the least under the catch-all provision of "any other interest".

In relation to the second test, the committee found that Mr Nuttall knowingly failed to notify the Registrar of the change in details contained in his statement of interest and accordingly the non-disclosure resulted in a contempt.

The committee considered a range of penalty options available for contempt of Parliament and various mitigating factors in relation to this case. It deter-

mined that a fine was the most appropriate penalty in this instance and given the gravity of the offence (including that at the time the former member was a cabinet minister) the imposition of the most severe penalty was warranted. The committee unanimously recommended the imposition of the maximum fine ($2,000) for each of the 36 separate contempts for non-disclosure of the payments received.

On 27 October 2010 Mr Nuttall was convicted of five counts of official corruption relating to payments he received between 2001 and 2005 and sentenced to a further five years imprisonment. On 2 November 2010 the Premier wrote to the Speaker and Registrar requesting that the former member be referred to the ethics committee for allegedly failing to disclose five payments received, in accordance with the requirements of the register of interests.

Accordingly, the Registrar referred the matter to the committee on 18 November 2010.

The committee's report was tabled on 7 April 2011 and recommended the imposition of the maximum fine ($2,000) for each of the five separate contempts for non-disclosure of the payments received. On 7 April 2011 the House noted the committee's June 2010 and April 2011 reports and ordered Mr Nuttall to appear at the bar of the House on 12 May 2011 to respond to the charges. Subsequent to his appearance on 12 May the House found the former member guilty of 41 instances of contempt of Parliament for failing to disclose payments in his Register of Interests and fined him $2,000 for each of the 41 instances of contempt and ordered that the sum be paid within 12 months.

Interference by a member with the free performance of another member's duties

On 11 June 2010 the Speaker referred an allegation to the IEPPC that the (then) Leader of the Opposition improperly interfered with the performance of a member's duties by recommending the member's discharge from a parliamentary committee, allegedly as a disciplinary measure. The member was a Liberal National Party (LNP) member at the time.

According to the member, he had compiled an email outlining the direction needed for the party and sent the document to all LNP parliamentary members as well as various party office holders. The email was later aired in the media. Various internal party matters followed, as did media attention.

The matter came to a head when the Leader of the Opposition wrote to the member stating: "I wish to advise you that in view of the events of the week, I have advised the Speaker that I have replaced you as the LNP representative on the Law, Justice and Safety Committee of the Queensland Parliament."

The Speaker, when referring the matter to the committee, stated that in relation to committee appointments, the Parliament of Queensland Act 2001 gives the power of nomination to the Leader of the House and the Leader of the Opposition but does not confer ownership of the committee position to them as the Assembly as a whole determines such matters. Further, the Leader of the Opposition has no right to remove or replace members on a committee, simply a right to move that members be removed or replaced. The Speaker indicated that while the majority of the matter related to internal political party machinations, the actions in disciplining a member for party political reasons had touched upon or involved the member's duties and responsibilities as a member of a parliamentary committee. Accordingly, Mr Speaker referred the matter to the ethics committee.

The committee considered three elements—

- whether the Leader of the Opposition's actions in nominating the discharge of the member from his role as a member of the parliamentary committee interfered with the free exercise by the committee of its authority or functions, or the member's performance of his duties;
- if so, whether this interference was improper;
- if so, whether the Leader of the Opposition intended to interfere with the free exercise by the committee of its authority or functions, or the member's performance of his duties.

The IEPPC concluded that the actions of the Leader of the Opposition amounted to interference with the free performance of the member's duties as a member of the relevant committee. On the issue of whether the interference was improper the committee considered the principles in the Code of Ethical Standards for Members. The code states that members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of parliament and avoid any action which may diminish its standing, authority or dignity. In addition, members are elected to act in the public interest and to make decisions solely in terms of the public interest.

The committee found that the Leader of the Opposition's action of nominating that the member be discharged from the committee was made on the basis of party matters that occurred in the previous week and that "the way a member conducts himself or herself in party matters is an entirely appropriate and relevant consideration in influencing the party leader's decision on whether to recommend the discharge from performance of the duties of such an important parliamentary office as a member of a committee". The com-

mittee further noted that "there is no direct evidence to indicate the Leader of the Opposition's actions failed to strengthen the public trust or confidence in the integrity of the parliamentary process or that the actions were in some way contrary to the public interest."

Accordingly, the committee found that the Leader of the Opposition's actions were not improper and concluded that there was no breach of privilege or contempt.

Victoria Legislative Council

Orders for the Production of Documents, a process prescribed in a sessional order, was frequently utilised throughout 2008 and 2009, and continued in 2010. Not satisfied with the Government's response to numerous orders of the Council for documents, non-government parties agreed to a motion on 15 September 2010 ordering the Leader of the Government in the Council to supply the as yet unprovided documents. As many of the unprovided documents had been withheld on Government claims of executive privilege, these same documents were called upon so they could be analysed by an independent legal arbiter, and the arbiter could then determine whether executive privilege could indeed be claimed. The motion stipulated that if the Government failed to provide the documents by 5 October 2010 the Leader of the Government in the Council be suspended from the Council until the following sitting day. The documents were not provided by the specified deadline, and as a result the Leader of the Government was suspended from the Council at 2.00 p.m. on 5 October until 12 noon on 6 October.

Western Australia Legislative Council

There was one instance where a possible breach of privilege was reported to the House in 2010. The details are set out below in the conclusions of the Procedure and Privileges Committee, which reported in March 2010—

"4 CONCLUSION

4.1 The Committee finds that an attempt was made to serve a summons in relation to court proceedings on Hon Jon Ford MLC within the precincts of the Parliament during a sitting of the House.

4.2 The Committee finds that Mr Ante Golem, Senior Associate, Freehills law firm was responsible for the attempt to serve the summons.

4.3 The Committee finds that the attempt to serve the summons on Hon

Jon Ford MLC within the precincts of the Parliament during a sitting of the House was a contempt of the House.

4.4 The Committee, however, notes that prompt, written apologies addressed to both Hon Jon Ford MLC and the Legislative Council were received from Mr Golem.

4.5 The Committee accepts that Mr Golem now understands the impropriety of his actions, and notes Mr Penglis' undertaking [that he will take steps to ensure that the impropriety of attempting to serve a summons at Parliament House is well understood by all members of the Freehills law firm's litigation section in Perth]."

The Committee recommended that no further action be taken, and the House agreed to that recommendation.

CANADA

House of Commons

On 27 November 2009 the Special Committee on the Canadian Mission in Afghanistan reported to the House what it considered to be a breach of its privileges in relation to its inquiries and requests for documents regarding Afghan detainees. On 10 December 2009 the House adopted an order for the production of the documents which the Committee had been trying to obtain from the government. The House adjourned for the Christmas holidays on 11 December 2009 and then on 30 December 2009 the session was prorogued. Since orders of the House for the production of documents survive prorogation, the House order of 10 December 2009 remained in effect when the new session began on 3 March 2010. The Special Committee was also re-constituted on the first sitting day of the session.

On 18 March 2010 three questions of privilege were raised in the House in relation to the 10 December order for the production of documents arguing in favour of the rights and privileges of the House of Commons to send for documents. One of the members also alleged that comments by the Minister of National Defence, as well as those made by an official from the Department of Justice in a letter to the Law Clerk of the House of Commons, intimidated officials appearing before committees.

On 25 March 2010 the government tabled a large number of documents regarding Afghan detainees "without prejudice" to the procedural arguments relating to the order of 10 December 2009.

On 31 March 2010 the Parliamentary Secretary to the Leader of the Government in the House of Commons spoke on the matter and questioned the legitimacy of the order adopted by the House on 10 December 2009. He argued that the production of many of the documents listed in the order could not be accomplished by an order of the House, but rather required an address to the Crown. The Minister of Justice and Attorney General of Canada then intervened, challenging the arguments raised by the opposition members and questioning the legitimacy of the questions of privilege. The Minister argued that the comments of the Minister of Defence and the Justice Department official were matters of debate, that parliamentary privilege was neither indefinite nor unlimited, and that the House had no authority to demand unfettered access to documents. He then rejected the contention that the government had breached parliamentary privileges by not complying with the 10 December 2009 order. He further argued that the government had the duty to protect information that could jeopardise national security, national defence, international relations and the lives of Canadian soldiers in Afghanistan.

On 27 April 2010 the Speaker ruled on the questions of privilege. Given the complexity of the issues, the Speaker grouped them thematically for the ruling. First, citing numerous authorities, he concluded that it was procedurally acceptable for the House to use an order rather than an address to require the production of these documents. Second, regarding the allegations made about the intimidation of witnesses, he concluded that there had been no direct attempt to prevent or influence the testimony of any witness and that therefore there was no prima facie case of contempt on this point. Third, on the House's right to order the production of documents, the Speaker stated that "in a system of responsible government, the fundamental right of the House of Commons to hold the government to account for its actions is an indisputable privilege and in fact an obligation", and that it was within the powers of the House of Commons to ask for the documents specified in the order. He added that the issue before the House was to put in place a mechanism by which the documents could be made available to the House without compromising the security and confidentiality of the information they contained. The Speaker then addressed the issue of trust among members and the government in the House of Commons. He admitted that finding common ground on the matter would be difficult, but reminded members that the House and the government had had an unbroken record of some 140 years of collaboration and accommodation.

The Speaker ended the ruling by stating that, having analysed the evidence and the precedents, he could only conclude that the government's failure to

comply with order of 10 December 2009 constituted a prima facie case of privilege. He then stated that he would allow House Leaders, Ministers and party critics time to suggest some way of resolving the impasse but that if in two weeks' time the matter had not been resolved, he would return to make a statement on the motion that would be allowed in the circumstances.

Following negotiations, an agreement of a majority of political parties was reached to allow a group of MPs to take an oath of confidentiality and examine unredacted documents to determine whether the material was relevant. Under the compromise, documents deemed relevant would then be passed on to a panel of experts who would determine how to release the information to all MPs and the public "without compromising national security."

Manitoba Legislative Assembly

At the start of the sitting day on 3 May 2010 the Official Opposition House Leader raised a matter of privilege regarding the manner of the introduction of Bill 31—the Budget Implementation and Tax Statutes Amendment Act. The Opposition House Leader suggested that, given the size, scope and importance of the bill, and the number of days remaining in the session, there would be insufficient time fully to consider the bill, thus infringing and limiting members' abilities to perform their duties effectively. Speaker George Hickes ruled no prima facie case of privilege, noting first that the member failed to move a motion suggesting a remedy to the situation, and second that allegations of breach of privilege by a member that amount to complaints about procedures and practices in the House are, by their very nature, matters of order.

During Question Period on 7 June 2010 an independent member rose on a matter of privilege contending that he was prevented from doing his job as a member due to his inability to make explicit reference to a document that had been presented to the Legislative Assembly Management Commission as an estimates submission by an independent office of the Assembly. On 16 June 2010 Deputy Speaker Marilyn Brick ruled no prima facie case of privilege; however she explained that the particular circumstances of this situation warranted special attention. Touching on the nature of freedom of speech, the Deputy Speaker noted that this privilege does not mean that members are free to say whatever they want in the House. Rather, freedom of speech is the ability of members to say what they want in the House without interference or prosecution from the courts and from outsiders. At the time this issue was raised, the report in question had not been made public or disclosed to the media, meaning that provisions of the Legislative Assembly Management Commission Act

prohibiting public disclosure of estimates submissions were in effect. Members were therefore being asked to rephrase questions, not as means of stifling debate or preventing issues from being raised, but as a means of ensuring the provisions of the law were not being breached. The Deputy Speaker then went on to indicate that since the time the matter of privilege had been taken under advisement the document in question had been provided to the media, opening up the realm of public consideration of the issue, including debate in the legislature.

Northwest Territories Legislative Assembly

A member rose on a point of privilege on 4 February 2010. A regular member claimed that a Minister, while they were exiting the chamber, had called him an inappropriate name and threatened the member. The Speaker, after listening to submissions by several members who witnessed the incident, did not find that name calling constituted a prima facie breach of parliamentary privilege.

A second event occurred on 12 February 2010 when a regular member, in her statement "Replies to Opening Address", revealed what members of the Executive Council considered to be information provided to a standing committee in confidence. The Speaker again heard submissions from both regular members and members of the Executive Council. Much of the debate centered on the principles of consensus government agreed to by all parties in the 16th Legislative Assembly. One of these principles refers to the greater access to confidential information which regular members enjoy in consensus government and the resulting greater responsibility that those same members have to keep such information confidential. In his ruling delivered on 17 February 2011 the Speaker agreed that by releasing information that was provided to a committee in confidence, a prima facie case of parliamentary privilege had been established.

Ontario Legislative Assembly

Delayed release of MPPs from the 2010 Budget lock-up

On 25 May 2010—Budget Day—Official Opposition House Leader John Yakabuski rose on a point of order just after the Minister of Finance moved the Budget motion but before the Legislative Pages began delivering the Budget papers to members in the chamber. Mr Yakabuski indicated that Official Opposition members who were in the Budget lock-up were not allowed to leave in a timely manner and were still on their way to the chamber.

Another member of the Official Opposition, Ted Arnott (Wellington—Halton Hills), spoke to the point of order, stating that the reason for the delay was that the Ontario Provincial Police (OPP) was waiting to hear from the office of the Minister of Finance before releasing members from the lock-up. The Speaker delayed proceedings for a few minutes to allow for more members to arrive, after which the Budget papers were tabled and distributed and the Minister of Finance presented the Budget.

On 6 April 2010 Norm Miller (Parry Sound—Muskoka), a member of the Official Opposition, sent a notice of intention to raise a point of privilege to the Speaker. He then raised the point of privilege in the House on 12 April 2010, claiming a breach of privilege on the basis that members of the Official Opposition were physically obstructed, impeded and interfered with when they tried to make their way to the chamber for the Budget presentation. According to Mr Miller, this obstruction occurred against the members' will and was contrary to the lock-up protocol issued by the Ministry of Finance. Peter Kormos (Welland), Government House Leader Monique Smith (Nipissing) and Christine Elliott (Whitby—Oshawa) also spoke to the point of privilege.

On 4 May 2010 the Speaker ruled that there was a prima facie case of privilege concerning the delayed release of MPPs from the Budget lock-up. In his ruling, he indicated that:

> "In the case at hand, there appears to be no disputing that some members of the Official Opposition missed the moving of the Budget motion, that they missed it because they were not released from the lock-up in a timely manner, and that had I not delayed proceedings for a few moments shortly after 4 p.m. on Budget day, they might have missed part of the Budget presentation itself.
>
> For a prima facie case of privilege to be established, it is enough to ascertain that members wanted to attend the House and were at least for a time, and against their will, prevented from doing so. It is of no significance where such an obstruction occurred or what parliamentary proceeding members were prevented from attending.
>
> Further investigation may well reveal a plausible explanation or mitigating circumstances for what occurred in the Budget lock-up on March 25, but I do believe that such further investigation is warranted.
>
> I find therefore that a prima facie case of privilege has been established."

The House referred the matter to the Standing Committee on the Legislative Assembly for consideration. Initially, the sub-committee, which is

composed of a representative from each recognised party, met and agreed to hear from the Finance Minister's chief of staff and the OPP officer involved with the release of the members. When the full committee met, all parties agreed to hear from four additional witnesses: Mr Arnott, Mr Yakabuski, Peter Tabuns (Toronto—Danforth) and the OPP Acting Inspector. The committee met on 12 and 19 May, 2 June, 15 September, and 6 , 20 and 27 October (seven meetings), during which it heard from six witnesses.

The committee's report was tabled in the House on 23 November 2010. In the report, the committee discussed the role that Budget lock-ups play in the legislature. The committee recognised that:

> "Since the lock-up is not a proceeding in Parliament and occurs outside the legislative precincts, the government and its security providers—not the Speaker and the Sergeant-at-Arms—plan for and oversee its logistics."

Furthermore, the committee stated that:

> "These Budget lock-ups are not mandated by the Standing Orders, but they are helpful because they enable MPPs and stakeholders alike to expedite communication of comprehensive information about the Budget shortly after the Budget is tabled in the House."

The committee found that the delayed release of MPPs from the Budget lock-up on 25 March did not amount to a breach of privilege. The delay was a product of miscommunication, not an intentional or deliberate plan to prevent members from getting to the House. Nevertheless, it was an incident that should not be repeated. Accordingly, the committee adopted three recommendations that would help prevent the same incident from occurring when dealing with government-sponsored lock-ups and would enable members to carry out their parliamentary responsibilities. The report was appended with supplementary documents. Dissenting opinions of the Progressive Conservative members and New Democratic Party member of the committee were also appended to the report.

Québec National Assembly

Bill 103

On 2 June 2010, at the item of business set aside for the introduction of bills, the Minister of Culture, Communications and the Status of Women and Minister responsible for the application of the Charter of the French language introduced Bill 103, An Act to amend the Charter of the French Language and

other legislative provisions. The Official Opposition House Leader then raised a complaint of breach of privilege or contempt.

According to the Official Opposition House Leader, the introduction of this bill was contrary to a motion moved during Business Standing in the Name of Members in Opposition on 19 May 2010 and carried unanimously. This motion stated:

> "THAT, in the wake of the striking down of Bill 104 by the Supreme Court of Canada, the National Assembly of Québec demands of the Liberal government that it reject any solution whose effect would be to allow the parents of children who are currently ineligible for the English schools to purchase a right of access to the English schools for their children by way of a temporary stay in an unsubsidized private school."

After having suspended the sitting of the Assembly for a few hours to take the matter under advisement, the President gave his ruling. He specified that the National Assembly can make orders only within the ambit of its prerogatives and its authority. He recalled that the motion carried on 19 May 2010, however, is a resolution, whose power of constraint is strictly political or moral and that this motion therefore cannot have the effect of preventing the Assembly from exercising one of its fundamental roles, namely its legislative function. Only the Assembly is empowered to determine whether it is expedient to consider this bill. There is consequently no prima facie contempt of Parliament, and the bill may be introduced.

Hydro-Québec contracts

On 29 September 2010 the Assembly unanimously carried the following motion:

> "THAT the National Assembly demand that Hydro-Québec release as expeditiously as possible the information relating to all contracts granted from 2004 to 2010, particularly the names of the companies that submitted tenders, the method of awarding contracts, the amount of each bid, as well as the actual amount of disbursements, including cost overrun, for each contract granted, and that this motion become an order of the Assembly."

Following the complaint of breach of privilege or contempt raised by the Official Opposition House Leader at the sitting of 11 November 2010 concerning Hydro-Québec, the chair gave the following ruling on 23 November 2010:

"Among the parliamentary privileges enjoyed by the National Assembly, the right to order the production of documents is one of its most indisputable constitutional privileges. The motion carried on 29 September 2010 without question constitutes an order to produce documents that demands that Hydro-Québec transmit to the Assembly information in relation to all contracts granted from 2000 to 2010.

When the Assembly demands that documents be produced, these must be transmitted thereto and their availability on the Internet in no way amounts to their transmission. To determine whether Hydro-Québec committed, prima facie, a breach of privilege or contempt, two elements must be taken into consideration. First, we must identify the intention of the Assembly which, in its motion, asks Hydro-Québec to forward the documents to it as expeditiously as possible. Then, the intention of Hydro-Québec to follow up on the order that was carried must be assessed. The terms of the motion do not specify a time limit. Consequently, the expression "as expeditiously as possible" must be interpreted in the light of several elements, including the nature of the request made by the Assembly, the date of this request and Hydro-Québec's desire to take action thereon.

Six weeks passed between the moment the order was carried and the transmission of the notice to rise on a matter of privilege or contempt. The chair recognises the magnitude of the task to be carried out, but also recognises the magnitude of the means at the disposal of Hydro-Québec. Moreover, it is disquieting that Hydro-Québec waited until a breach of privilege or contempt was notified to the Assembly before indicating its intention to follow up on the order. The terms of the order are clear. Hydro-Québec has no other choice but to transmit all of the information requested.

However, the concerns expressed, particularly regarding trade and security issues, are legitimate. Hence Hydro-Québec is invited to identify the information which it considers to be of strategic importance. The Assembly will then determine to what extent it will take Hydro-Québec's concerns into consideration.

Even if the facts adduced allow us to believe that there is, at first glance, a breach of privilege or contempt, an additional delay is hereby granted. Consequently, Hydro-Québec has until 2 December 2010 to transmit to the Assembly all of the documents requested. Subsequently, if Hydro-Québec has not complied with this directive, procedure relating to a breach of privilege or contempt may continue."[1]

[1] Votes and Proceedings, 23 November 2010, No. 158, pp 1811–12.

Subsequently, on 1 December 2010 the chair met representatives of Hydro-Québec, the leaders of the parliamentary groups and the independent members to establish the terms and conditions surrounding the production of documents.

Between 2 December 2010 and 31 May 2011 Hydro-Québec produced several series of documents containing information relating to contracts it had granted from 2000 to 2010. The parliamentarians must now decide how to follow-up this matter.

Saskatchewan Legislative Assembly

On 4 May 2010 Speaker Toth found sufficient evidence to find a prima facie case of privilege had been established regarding inconsistent information provided by a Minister. The Minister of Health had said that he had consulted the Information and Privacy Commissioner four times regarding a change to a regulation. In an unusual event, the Information and Privacy Commissioner wrote a letter to members indicating that he had not been consulted on the regulation changes. The Speaker stated, "It is apparent from the letter, that the Commissioner had been consulted but not about the regulations recently put into existence by the Order in Council noted. It is also apparent that the Commissioner was consulted but between 2004 and 2007, on regulations which had in his words significant difference." The Opposition wanted the matter sent to Standing Committee on Privileges. The motion was defeated and the Minister apologised to the Assembly the next day.

INDIA

Lok Sabha

The Committee of Privileges (15th Lok Sabha) presented their first report to the Speaker on 28 February 2011 on the notice of a question of privilege given by Shri R.P.N. Singh, MP and Minister of State for Road Transport and Highways. The report was laid on the table of the House on 4 March 2011. The notice was given by the Minister regarding his detention at district Raebareli while he was going to inspect the construction work of a bridge at Dalamau on the river Ganga by district authorities. The Committee concluded that a Minister in the performance of his executive function does not enjoy any privileges which are admissible to members to help them discharge their parliamentary duties. But as the Minister was an MP in the first instance the fact

of his detention, even though informal, had to be communicated to the Hon'ble Speaker under rule 229 of the Rules of Procedure and Conduct of Business in Lok Sabha. The Committee observed that Shri Charanjit Singh Bakshi, the then District Magistrate, Raebareli, and Shri P.K. Mishra, the then Superintendent of Police, Raebareli, had committed a breach of privilege and contempt of the House in not intimating the detention of the Minister to the Speaker of the Lok Sabha as required under rule 229. The Committee therefore recommended that their severe displeasure over this dereliction of duty by the said officials may be communicated to the cadre controlling authorities of these officials (i.e. the Secretary, Ministry of Personnel and the Secretary, Ministry of Home Affairs, Government of India) as well as the Chief Secretary, Government of Uttar Pradesh.

The Committee also strongly deprecated the conduct of Kunwar Fateh Bahadur, Principal Secretary (Home), Government of Uttar Pradesh, in this incident and recommended that the grave displeasure of the Committee be communicated to his cadre controlling authority (i.e. the Secretary, Ministry of Personnel).

Rajya Sabha

During 2010 the 56th report of the Committee of Privileges was presented to the House. The report dealt with the case of allegedly lowering the dignity of the Lok Sabha (House of the People) and committing a breach of its privilege by publishing an article/editorial casting reflections on members of the Lok Sabha in a daily by a member of the Rajya Sabha (Council of States) who also happened to be the Executive Editor of that daily. The brief facts and recommendations of the report are as follows.

The then Hon'ble Speaker, Lok Sabha, in a letter addressed to Hon'ble Chairman, Rajya Sabha, informed that he had received notice of a question of privilege from certain members of the Lok Sabha for allegedly lowering the dignity of the Lok Sabha by publishing an article/editorial in a daily by a member of the Rajya Sabha who was also the Executive Editor of the daily which cast reflections on members of the Lok Sabha.

According to the procedure laid down in the report of the Joint Sitting of Committees of Privileges of the Lok Sabha and the Rajya Sabha, when a question of breach of privilege or contempt of the House is raised in either House in which a member of the other House is involved, the presiding officer of the House in which the question of privilege is raised refers the case to the presiding officer of the other House only if he is satisfied, prime facie, on hearing the

member who raises the question or on perusing any document where the complaint is based on a document that a breach of privilege has been committed. Upon the case being so referred, it is the duty of the presiding officer of the other House to deal with the matter in the same way as if it were a case of breach of privilege of that House or of a member thereof. In view of this established procedure, the Speaker referred this matter to the Chairman for such action, if any, as may be deemed appropriate. The Chairman, Rajya Sabha, thereafter referred the matter to the Committee of Privileges, Rajya Sabha, under rule 203 of the Rules of Procedure and Conduct of Business in the Rajya Sabha for examination, investigation and report.

The Committee heard the member concerned in person, who submitted to the Committee that he did not intend to lower the dignity of the House or any of its members in any manner. He also submitted a regret letter to the Committee. In the letter he inter alia submitted that the impugned article was written without any personal prejudice and was not intended to hurt the feelings of any member of the House. However, if it had been construed to have lowered the dignity of the House and its members, he regretted that. Taking note of the expression of regret by the member concerned during his oral submission as well as in writing, the Committee of Privileges, Rajya Sabha, recommended that the matter need not be pursued further.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Parliamentary privilege and comity with courts—breach of suppression order

In a personal explanation, a member disclosed a conviction despite being subject to permanent name suppression. This immediately raised issues for the Office of the Clerk and other broadcasters, given the nature of the information and that the member had volunteered the information about himself rather than another person.

The Office of the Clerk, as broadcaster, applied the principle of comity with the courts to replays of Parliament TV coverage. As the member made the statement before question time, the question time replay was able to be broadcast without this item and without editing the replay. Normally the replay would start with the prayer. The contractor who supplies video-on-demand services also left this statement out until the suppression order was lifted a few days later.

Despite the contents of the statement being subject to a suppression order,

broadcasters used this material in their news broadcasts. Some broadcasters may have been under the mistaken impression that because it was said in Parliament they were free to report it. In fact there is no such legal immunity in New Zealand when it comes to court orders.

The Privileges Committee recommended in May 2009 that the standing orders be revised to recognise clearly both the need to avoid prejudice to matters before the court and the general principle of comity between Parliament and the courts. The committee particularly recommended that a formal process be established for obtaining a waiver from the Speaker to enable a member to speak in the House about matters before the courts or subject to court orders in some circumstances. A further recommendation was that principles to be taken into account when exercising the discretion to issue a waiver be set out in the standing orders. These recommendations have not as yet been adopted by the House, but may be considered as part of the general review of standing orders.

UNITED KINGDOM

House of Commons

R v Chaytor and others

The application of parliamentary privilege in criminal cases was the subject of a landmark decision in 2010 by the UK Supreme Court. In the wake of the scandal in 2009 over members' allowances, a handful of members faced prosecution on criminal charges. The first three members (David Chaytor, Jim Devine and Eliot Morley) to be charged with false accounting under the Theft Act 1968 contended, together with a member of the House of Lords facing similar charges, that the Crown Court had no jurisdiction to try them in respect of these charges on the ground that this would infringe parliamentary privilege. The members' application was dismissed in turn by the Crown Court (on 11 June 2010), the Court of Appeal (on 30 July 2010) and finally on 10 November 2010 by the UK Supreme Court, whose full judgment (of 1 December 2010) is published on its website: http://www.supremecourt.gov.uk/docs/UKSC_2010_0195_judgment_v3.pdf.

Lord Phillips of Worth Matravers, the President of the UK Supreme Court, considered that the issues in relation to Article 9 of the Bill of Rights 1689 were relatively narrow and clear cut, compared to those that arose in relation to the exclusive cognizance of Parliament. He found that the "sparse" jurisprudence supported the proposition that the principal matter to which Article 9 is

directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. Adopting this approach, the submission of claim forms for allowances and expenses did not qualify for protection under the Bill of Rights. Scrutiny of claims by the courts would have no adverse impact on the core or essential business of Parliament and would not inhibit debate or freedom of speech: "the only thing that it will inhibit is the making of dishonest claims".

Lord Phillips described the protection of Article 9 as absolute: "it is capable of variation by primary legislation, but not capable of waiver, even by Parliamentary resolution. Its effect where it applies is to prevent those injured by civil wrongdoing from obtaining redress and to prevent the prosecution of Members for conduct which is criminal".

Exclusive cognizance, according to Lord Phillips, refers to the exclusive right of each House to manage its own affairs without interference from the other or from outside Parliament. He found that the boundaries of exclusive cognizance result from accord between the two Houses and the courts as to what falls within the Houses' exclusive province. Unlike the absolute privilege imposed by Article 9, exclusive cognizance can be waived or relinquished by Parliament; and the areas subject to exclusive cognizance have very significantly changed, in part as a result of primary legislation.

Lord Phillips endorsed the reasoning in *Bear v State of South Australia* [1981] that actions in contract and tort arising out of the internal administration of the House were not precluded by the exclusive cognizance of the House. But in respect of judicial review, Lord Phillips took the cases of *Re McGuinness's Application* [1997] and *R v Parliamentary Commissioner for Standards, ex parte Al Fayed* [1998] to illustrate the principle that the courts will respect the right of each House to reach its own decisions in relation to the conduct of its own affairs.

He agreed with the 1999 Joint Committee on Parliamentary Privilege in distinguishing decisions on matters of administration taken by parliamentary committees, which were protected by privilege from attack in the courts, from the implementation of those decisions, which was not subject to privilege.

The Speaker of the House of Commons did not intervene formally in the court proceedings, having accepted advice that the question was one for the courts to decide; yet in his concurring judgment Lord Rodger of Earlsferry stated that the very fact that the House authorities had co-operated with the police investigations suggested that the House authorities did not see the allegations as falling into the category in respect of which the House would claim the privilege of exclusive cognizance and that the fact that the Speaker had not

intervened to assert the privilege pointed in the same direction. The drawing of this latter inference was certainly not intended since the House authorities had been at pains not to influence the case in any way.

One interesting aspect of the UK Supreme Court's judgment in respect of Article 9 and exclusive cognizance is the reliance it placed on parliamentary material which (it might have been argued) ought not be impeached or questioned in any court: the report of the Select Committee on the Official Secrets Acts of 1939; the second report of the Joint Committee on the Publication of Proceedings in Parliament in 1970; the report from the Joint Committee on Parliamentary Privilege in 1999 (which has not been formally adopted by either House); a memorandum submitted to the Committee on Standards and Privileges by the Parliamentary Commissioner for Standards in 2003; an agreed statement following a meeting on 3 April 2008 between the chairman of the Committee on Standards and Privileges, the Parliamentary Commissioner for Standards and the Metropolitan Police Commissioner; the Speaker's Protocol of 8 December 2008 on search warrants in the precincts; the terms of reference set on 20 July 2009 by the Members Estimate Committee for a review of members' claims by Sir Thomas Legg; a minute from the Clerk of the House to the Speaker, which somehow found its way into the hands of the defence solicitors, dated 9 September 2009; the Speaker's statement to the House of 8 February 2010 about the application of the *sub judice* rule to the case; and a letter from the Clerk of the Parliaments to the solicitor acting for the peer involved, dated 4 March 2010. The Clerk of the House's minute to the Speaker was quoted in the various courts and taken as signifying, to various extents, Parliament's view.

In paragraph 68 of the UK Supreme Court judgment, Lord Phillips referred to *R v Graham-Campbell, ex parte Herbert* [1935], where the doctrine of exclusive cognizance had been applied to the selling of alcohol on parliamentary premises beyond the normal licensing hours, and observed:

> "In summary, extensive inroads have been made into areas that previously fell within the exclusive cognizance of Parliament. Following *Ex p Herbert* there appears to have been a presumption in Parliament that statutes do not apply to activities within the Palace of Westminster unless they expressly provide to the contrary. That presumption is open to question. In 1984 three Law Lords, Lord Diplock, Lord Scarman and Lord Bridge of Harwich, on the Committee for Privileges expressed the view that sections 2 to 6 of the Mental Health Act 1983 applied to members of the House of Lords, although the Act did not expressly so state."

In the event, all three of the accused MPs were jailed: Mr Chaytor entered a guilty plea in the Crown Court and was sentenced to 18 months imprisonment, a sentence later upheld by the Court of Appeal; Mr Morley entered a guilty plea in the Crown Court and was sentenced to 16 months imprisonment; and Mr Devine pleaded not guilty and, having been acquitted on one count but convicted by the Crown Court jury on two others, was sentenced to 16 months imprisonment.

In a similar case a sitting member, Eric Illsley, entered a guilty plea in the Crown Court and was sentenced to 12 months imprisonment. There was an interval of a few weeks between Mr Illsley's plea and the judge's decision on his sentence, during which the matter remained *sub judice* under the House's own self-denying resolution. A few days before the hearing for sentencing, Mr Illsley resigned from the House, by being appointed to the technical disqualifying office of Steward of the Chiltern Hundreds. As it turned out, Mr Illsley's actual sentence of 12 months missed by the slenderest of margins the length of imprisonment which would have resulted in his automatic disqualification, defined under the Representation of the People Act 1981 as a sentence of more than a year.

The coalition Government has announced plans to introduce legislation allowing recall of members who are found guilty of serious wrongdoing, if at least 10 per cent of registered voters in the affected member's constituency request a by-election.

STANDING ORDERS

AUSTRALIA

House of Representatives

On the first day of the 43rd Parliament (28 September 2010), a number of changes to the standing orders were effected, based on reform proposals that had been agreed previously. A noticeable change was the increase in scheduled sitting hours, with the House sitting for 40 hours each sitting week (previously 36) and the Main Committee for 16 hours (previously 12 and one-half hours). Some major changes to the standing orders are discussed below. As noted, changes to committee establishment and operations were also made.

Acknowledgement of country from the chair

Each sitting day when the Speaker takes the chair he now makes an acknowledgement of country prior to reading prayers.

The form of words for is set out in the standing orders: "I acknowledge the Ngunnawal and Ngambri peoples who are the traditional custodians of the Canberra area and pay respects to the elders, past and present, of all Australia's Indigenous peoples."

Private members' business

The previous standing orders had provided considerable time for private members' business but the reform proposals increased this significantly, with a total of almost 8.5 hours being provided for private members' and committee and delegation business each sitting Monday. (This figure is understated to some extent given the extra time provided for voting on private members' business.) In the past, debate on matters was often adjourned without a vote being taken. Under the new arrangements, the Selection Committee recommends matters to be voted on, although the votes have been held on Thursdays during government business time, rather than during private members' business on Mondays.

Question Time reforms

Question Time has long been subject to criticism. Time limits have now been introduced: 45 seconds for questions and four minutes for answers. In addition

a requirement that answers be "directly relevant" has been introduced (replacing "relevant") and a limit of one point of order on relevance per answer has been set by standing orders. One supplementary question is allowed per Question Time—the Speaker has issued guidelines—for example, a supplementary question must refer explicitly to the answer just given, it may be asked by the Leader of the Opposition or a member acting with the Leader's authority, and need not be asked by the member who had asked the original question. The Leader/representative is not permitted to ask a supplementary question following an answer to a question by a government member. These changes, together with the overall limit of 90 minutes, have led to the period moving along in a more business-like manner.

Senate

The Australian Senate's standing order 50 was amended on 26 October 2010 to provide for an acknowledgement of country and Australia's traditional custodians after the prayer, at the commencement of each sitting day. The Senate agreed to an amendment proposed by the Government in accordance with agreements negotiated with minor parties and independents in the House of Representatives.

Australian Capital Territory Legislative Assembly

Following the major review of standing orders in 2008, there have been some minor amendments. In 2010 three amendments were made: the automatic authorisation for publication of certain tabled documents; the removal of some matters from the notice paper after the expiration of a time limit; and the process for dealing with late answers to questions to the Select Committee on Estimates.

New South Wales Legislative Assembly

On 11 November 2010 standing order 131 in relation to Question Time was amended to provide that answers to questions must not exceed five minutes. The amendment to the standing order was put in place to encourage Ministers to ensure that their answers are relevant to the questions asked. The amendment also made provision for additional information to be sought from Ministers, with the Speaker's discretion, and for the Speaker to have discretion to order the timing on the clock to be paused. This was included to enable the Speaker to stop the clock if successive points of order were being called during

a Minister's response so that the time taken for these points of order would not erode into the five minutes allowed for an answer. To date there have been six Question Times in the Legislative Assembly since the amended standing order came into effect and the Speaker has paused the clock during an answer on one occasion.

This reform was considered by the Select Committee on Parliamentary Procedure, cited earlier. It was considered by the Legislative Assembly members of the select committee that there was no need to introduce time limits for questions given that the standing orders already require questions to be concise.

Standing order 131 in relation to Question Time, as amended, is as follows—

> "(1) Questions are asked orally and may be read and are subject to the same rules as written questions but shall not be recorded in the Questions and Answers Paper.
> (2) An answer to a question must not exceed five minutes.
> (3) At the conclusion of the Minister's answer to a question, the member who asked the question may, at the discretion of the Speaker, seek additional information from the Minister. The Minister's response on the additional information must not exceed two minutes.
> (4) The Speaker has discretion at any time during a Minister's answer to order that the timing on the clock be paused.
> (5) No question shall be asked after 45 minutes from the Speaker calling on questions or the answering of 10 questions whichever is the later.
> (6) One supplementary question per Question Time may be asked immediately by the Member asking the original question. The answer shall count as one of the 10 answers.
> (7) The Leader of the Opposition is entitled to be called first by the Speaker at the commencement of Question Time.
> (8) Ministers seeking to provide additional information to questions already answered at the current or a previous sitting shall do so at the conclusion of Question Time."

New South Wales Legislative Council

The standing orders were not significantly amended in 2010. No major review of the standing orders is pending or in progress. However, the Procedure Committee is currently looking into a number of matters in relation to the operation of the House and the standing orders.

Northern Territory Legislative Assembly

During 2010 standing orders were amended to provide for more time (an extra two days) for Estimates Committee hearings, to introduce a right of reply for aggrieved citizens who are not members of the Legislative Assembly (and associated guidelines) and to introduce a stand-alone item of business to deal with consideration of committee reports and government responses and Auditor-General's reports.

Queensland Legislative Assembly

There were no major amendments to the standing orders in 2010. However, significant changes will be required in 2011 to implement the changes to the committee system and the consideration of legislation by committees (please see the miscellaneous note).

Tasmania House of Assembly

Quorums and divisions

As a result of the move of a number of members from their parliamentary sitting day offices in an annex (which is to be demolished) to more distant temporary accommodation in the adjacent 10 Murray Street office building, the House approved changes to standing orders to allow the division bells to be rung for up to five minutes instead of the old two-minute limit. This applies to the formation of a quorum at any time during the sittings and to divisions. In the case of the latter the new rule is further clarified to provide that if the whips are satisfied that all members are present they may ask the Speaker to switch off the bells before the five minutes have elapsed. The new arrangement seems to be working satisfactorily.

Question Time

Since the March 2010 general election the rules for Question Time have been adjusted slightly to take into account the changed party situation. There are 10 Government: 10 Opposition: and 5 Greens MPs. The daily minimum allocation for Questions without Notice is now Opposition 7: Greens 3: and Government backbenchers 3. Question Time concludes after one hour has elapsed or until such time as the above quota has been filled.

Tasmania Legislative Council

A new edition of the Legislative Council's standing orders was issued in November 2010, though with only a few relatively minor changes.

Victoria Legislative Assembly

Legislative Assembly standing orders were amended in October 2010. The amendments altered arrangements for the opening of a new Parliament, in line with Standing Order Committee recommendations made in December 2009 (*Report on the Inquiry into Petitions, the Opening of Parliament, and the Passage of Legislation*). The recommendations implemented were:

- the Commissioner appointed to swear in members proceed directly to the Assembly chamber, rather than to the Council chamber;
- the Clerk of the Legislative Assembly read the Commission from the Governor to Assembly members;
- an indigenous smoking ceremony be held on the front steps upon the arrival of the Governor (no change to standing orders required);
- an indigenous Welcome to Country ceremony be conducted in the Council chamber immediately prior to the Governor's Speech (no change to standing orders required);
- the requirement for a privilege bill to be introduced on the opening day of a new Parliament or session no longer applies, but the House should still assert its right to conduct its own business through conducting formal business before the Governor's speech is reported.

Victoria Legislative Council

The standing orders were amended extensively by the Council in 2010 as the 56th Parliament was drawing to a close. The establishment of a Council Standing Committee system was the result of the House adopting recommendations in a report from the Standing Orders Committee. However, all other changes to the standing orders resulted from the highly unusual process of the Committee not reaching agreement on new standing orders and then motions to amend the standing orders being moved in the House by several members of the Committee.

Some of the most noteworthy changes to the standing orders include—

- A new Council Standing Committee system influenced by the Australian Senate model. Three pairs of committees, each consisting of a Legislation Committee and a References Committee, encompassing three broad subject

areas of economy and infrastructure, environment and planning, and legal and social issues, were established. The three Legislation Committees have been given self referencing powers in relation to annual reports and departmental/agency performance, as well as the role of scrutinising bills referred to them by the House, whereas the References Committees are only to conduct inquiries referred to them by the House. The standing orders require a References Committee to be chaired by a member nominated by the Leader of the Opposition in the Council and a Legislation Committee be chaired by a member nominated by the Leader of the Government in the Council.

- An increase from a maximum of 15 to a maximum of 20 members who may raise matters for consideration by Ministers on the question for the daily adjournment of the Council, and increased flexibility for the conduct of the adjournment debate by removing the requirement to make a complaint, make a request, pose a query or raise a matter for consideration by a single Minister.
- Provision for Ministers to respond in writing to matters raised on the adjournment which require a response within 30 days and for a procedure for members to seek an explanation where a response has not been received within that time. The principal difference between this standing order and the preceding sessional order is that precedence is not afforded to any motion regarding a Minister's failure to provide a response.
- A change to the time for Questions on Wednesday, Thursday and Friday to 12 noon (the time for Tuesday remains 2.00 p.m. upon commencement of the day's proceedings).
- Questions without notice to be asked of a Council Minister in their capacity representing an Assembly Minister.
- Statements on Reports and Papers being moved from its timeslot on a Thursday morning following Members' Statements to 5.30 p.m. on Wednesday afternoons, the day set aside for non-government business.
- General Business (non-Government business) to take precedence every Wednesday (except during Statements on Reports and Papers and Question Time). Such precedence had already been operational since mid-2007 under sessional orders adopted by the Council.
- An update of the standing order on broadcasting, recording and photographing of proceedings to include material concerning broadcasting of Council proceedings on the internet.
- A clear procedure for dealing with reasoned amendments to the second reading, including the effect of carrying a reasoned amendment. This standing order reflects recently adopted practice that the bill will not be

regarded as having been rejected if a reasoned amendment which seeks only to conditionally delay the passage of the bill is carried.

- A new standing order provides for the Minister or member (if required) to lay on the table the statement of compatibility as required by the Charter of Human Rights and Responsibilities Act 2006 prior to moving the second reading speech on a bill.

Western Australia Legislative Council

A major review of the Legislative Council's standing orders, the first such review in almost 100 years, is being undertaken by the Procedure and Privileges Committee. The Committee is due to report to the House by 11 August 2011.

CANADA

Alberta Legislative Assembly

On 10 February 2010 the Assembly resolved to amend the standing orders such that a number of committees of the legislature consist of 12 members for the balance of the 27th Legislature. On 10 March 2010 the Assembly made a further temporary amendment to the standing orders, to last until the dissolution of the 27th Legislature, by increasing the number of private members who may make a Member's Statement by one on two days of the sitting week.

Manitoba Legislative Assembly

No changes to the standing orders were made in 2010, though a sessional order was adopted to specify sitting periods for the House as well as indicating completion dates for key pieces of House business.

Northwest Territories Legislative Assembly

There were no amendments to the standing orders in 2010. A review of the rules is scheduled to take place in summer 2011, in preparation for the beginning of the 17th Legislative Assembly following the general election scheduled for 3 October 3 2011. This review is intended to provide a general update of the current rules, accommodating some changes initiated by the House and dealing with electronic technology. An example is the adoption of electronic petitions.

INDIA

Lok Sabha

The procedure of the House of the People of the Indian Parliament (the Lok Sabha) is governed by the Rules of Procedure and Conduct of Business in Lok Sabha and directions issued by the Speaker of the Lok Sabha under the residuary powers vested in her under rule 389. These rules are, in other words, the standing orders of the House only. Any amendments to these rules are to be approved by the House in pursuance of the recommendations to be made by the Rules Committee, which is headed by the Speaker.

In the 15th Lok Sabha, during the year 2010, amendments were made to certain rules, viz. 33, 39(1), 39(3), 46, 48(3), 49, 331(A)(a) and 349(xiv) and also to the directions, viz. 15, 16, 16A and 18.

Under the rules the mandate of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes *inter alia* includes examination of the reports submitted by the National Commission for SCs and STs. The Commission was divided into two separate Commissions, one each for SCs and STs by a constitutional amendment, which necessitated the amendment to rule 331(A)(a) to reflect the altered position.

Rule 349(xiv) does not allow a member to wear or display badges of any kind in the House while the House is sitting. On the suggestion of members, an exception was made to the rule to allow members to wear the national flag in the form of a lapel badge and accordingly the rule was amended.

The other rules amended relate to the procedure governing the questions which can be asked by members in the first hour of the House orally or in writing. The amendments made relate to—

(i) a change of notice period from "not less than ten and not more than twenty are clear days" to "not less than fifteen clear days";
(ii) the giving of answers to questions in the absence of the member who has put the question and removal of the provision for withdrawal of a question by a member;
(iii) the order in which Starred Question are to be asked;
(iv) the power of the Speaker to direct that an answer be given to a question even if it is not asked when called or when the member is absent;
(v) the removal of the words "suspended to devote more time on any other business" as it was not relevant (suspension here relates to suspension of Question Hour). The other amendments to the rules and directions are of an inconsequential nature.

Rajya Sabha

The Rules of Procedure relating to the asking of questions have been amended to make Question Hour more effective, as mentioned in a miscellaneous note.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Changes to rules for declaring pecuniary and other specified interests

In 2008 the Privileges Committee found a member in contempt of the House for knowingly providing false or misleading information in a return of pecuniary interests. In doing so, the committee also recommended that a review be conducted of the standing orders relating to pecuniary interests of members of Parliament. This review was referred by the House to the Standing Orders Committee in September 2009.

The Standing Orders Committee's report on the review was presented on 13 December 2010. In its report, the committee affirmed that the purpose of the register is to strengthen public trust and confidence in the parliamentary process by improving transparency, openness and accountability. The committee's recommendations sought to incorporate these principles more fully in the House's rules, and the House adopted them by way of a sessional order, with effect for the round of annual returns due in February 2011.

Some new requirements have been imposed. For example, members are now required to declare an interest in trusts of which they are trustees without having a beneficial interest. Members must also declare a beneficial interest in a trust regardless of whether it is a fixed or discretionary interest. Requirements for the declaration of real property and paid activities have also been clarified.

Since some additional areas of interest must be declared that are not strictly of pecuniary or financial benefit to members, the name of the register has been amended to "Register of Pecuniary and Other Specified Interests".

A significant new development is the introduction of a procedure for members to request that the Registrar conduct an inquiry into a member's compliance with the obligations to make returns. On receiving a request, the Registrar (who is appointed by the Clerk with the agreement of the Speaker, and is not a member of Parliament) will then consider whether to conduct such an inquiry. This means that the Speaker will no longer be involved in considering such matters. After conducting an inquiry, the Registrar will have the ability to report to the House that a question of privilege is involved, but that outcome would result only from the most serious situations. In many cases

matters may be resolved through the correction of returns, which is a course not currently available to the Speaker when considering matters of privilege.

The Registrar's new inquiry role replaces that previously accorded to the Auditor-General. The Auditor-General never exercised this function, as there were doubts about whether there was sufficient statutory power to do so. However, the Auditor-General will support the Registrar where required.

Review of standing orders in progress

It is customary for the Standing Orders Committee to conduct a review of the standing orders, procedures and practices of the House during each three-year term of Parliament. Such a review was initiated by the committee in September 2010, and the committee has received submissions on a number of matters, from the prayer commencing each sitting, to the development of members' bills, the legislative process, sitting hours and urgency. The committee intends to recommend amendments to the standing orders for adoption prior to the general election later in 2011.

SOUTH AFRICA

National Assembly

Rules for establishment of Standing Committee on Finance and Standing Committee on Appropriations

On 22 May 2009 the National Assembly Rules Committee agreed that the Money Bills Amendment Procedure and Related Matters Act, Act 9 of 2009, be referred to the Subcommittee on Review of the Assembly Rules for drafting of the necessary rules for the implementation of the provisions of the Act. The Act provides for a procedure to amend money bills before Parliament and related matters.

The subcommittee decided to follow an incremental approach in drafting all the required rules and agreed to start with the institutional arrangements, particularly since the implementation of the Act was proving to be quite complex. Further rules and rule adjustments will follow.

On 17 November 2010 the first set of rules to allow for the implementation of the Act was adopted by the National Assembly Rules Committee, namely the rules for the establishment and functions of the Standing Committee on Finance and the Standing Committee on Appropriations. In terms of the Act, the committee on finance must consider macro-economic, fiscal and revenue policy, while the committee on appropriations must consider matters of expenditure.

Prior to the promulgation of the Act, these matters were collectively considered by the Portfolio Committee on Finance.

Proposed rule adjustments for Committee on Private Members' Legislative Proposals and Special Petitions

On 22 May 2009 an opposition party member tabled a document contesting the role of the Committee on Private Members' Legislative Proposals and Special Petitions. In his document, a letter to the Speaker dated 15 May 2009, the member contended, inter alia, that "the old Rules of the National Assembly deprive me and my other 398 colleagues of the right to introduce any bill unless a number of colleagues of ours with specific knowledge of the subject matter of the bill, but nonetheless specifically designated for such purpose, reinstate that right onto me after an impermissible screening process of what I intend to introduce, and give me the approval to go ahead and introduce my intended bill".

The matter was referred to the Subcommittee on Review of the Assembly Rules for processing and report.

Following considerable discussion, members of the subcommittee agreed that there was indeed a need for a committee to screen private members' legislative proposals. However, members of the subcommittee further agreed that the Committee on Private Members' Legislative Proposals and Special Petitions would be assisted if the rules of the Assembly contained specific guidelines according to which members' legislative proposals could be vetted.

A set of adjusted rules for the functioning of the Committee on Private Members' Legislative Proposals and Special Petitions was adopted by the National Assembly Rules Committee on 17 November 2010.

UNITED KINGDOM

House of Commons

At the time of writing (May 2011) the House of Commons Procedure Committee is currently engaged with two inquiries which may lead to major changes in procedure. First, the Committee is undertaking a review of the sitting hours of the House and the parliamentary calendar. This takes as its starting point the role of an MP and what pattern of sittings would enable MPs to perform their role most effectively. The Committee has conducted a survey of all members and is shortly to take oral evidence. A report is expected in late 2011. Secondly, the Procedure Committee has been asked by the House to investigate how lay members might be added to the Committee on Standards and Privileges, the body responsible for overseeing the disciplinary code of

conduct for members. This suggestion arose from a report by the external Committee on Standards in Public Life which recommended that the addition of non-MPs would enhance public confidence in the disciplinary process following a series of scandals concerning members' allowances. The Procedure Committee is examining the issues of privilege involved in non-MPs taking decisions on parliamentary committees, as well as the practical considerations, such as the quorum and the appointments procedure. A report is expected later in 2011. As with the sittings inquiry, the Committee's findings will be put to the House for decision and implementation of any major recommendations will require standing order changes.

NATIONAL ASSEMBLY FOR WALES

Recording the employment of family members with the support of Commission funds

New standing order 31A and a consequential amendment to standing order 16 were agreed by the Assembly on 5 May 2010. Standing order 31A requires Assembly Members to disclose details of the employment of family members with the support of Assembly Commission funds. The amendment to standing order 16 enables the Committee on Standards of Conduct to investigate, report on and, if appropriate, recommend any action in respect of any complaint referred to it by the Commissioner for Standards that a member has not complied with the new standing order.

Review of standing orders

The Assembly's Business Committee embarked on a review of the Assembly's standing orders in May 2010. Its aim is to agree revised standing orders by March 2011 before the dissolution of the Third Assembly, so that they would be in place to guide the proceedings of the Fourth Assembly.

The Business Committee issued a written call for evidence on the review of standing orders on 26 May 2010, the first time it has done so. External stakeholders were invited to a public meeting in July 2010 to facilitate discussion on the areas they would like to see developed within standing orders.

The scope of the review was wide-ranging, including changes to the standing orders relating to plenary business, committees and the legislative process. The Committee considered changes to: improve the clarity of the standing orders; bring them into line with the accepted conventions and ways of working of the Third Assembly; and allow for innovation or improvement, including removing any unnecessary restrictions.

SITTING DAYS

Lines in Roman show figures for 2010; lines in *Italic* show a previous year. An asterisk indicates that sittings have been interrupted by an election in the course of the year.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Ant & Barb HR	*1*	*0*	*2*	*1*	*1*	*1*	*1*	*1*	*1*	*1*	*3*	*3*	*16*
Ant & Barb Sen	*0*	*1*	*2*	*1*	*1*	*1*	*1*	*0*	*1*	*2*	*2*	*2*	*14*
Aus H Reps*	0	11	7	0	8	10	0	0	3	8	8	0	55
Aus Sen*	0	7	7	0	3	7	0	0	3	4	9	0	40
Aus ACT	0	6	6	0	3	5	1	6	3	6	3	3	42
Aus N Terr													33
Aus NSW LA	0	3	8	4	8	11	0	1	10	8	9	3	65
Aus NSW LC	0	3	6	3	6	9	0	1	8	6	7	2	51
Aus Queen LA	0	6	6	3	3	4	0	7	5	6	3	0	43
Aus S Aus HA	*0*	*6*	*3*	*8*	*4*	*6*	*4*	*0*	*5*	*6*	*6*	*0*	*48*
Aus S Aus LC	*0*	*8*	*7*	*1*	*9*	*6*	*5*	*0*	*7*	*8*	*8*	*4*	*63*
Aus Tasm HA*	0	0	0	0	1	12	5	4	8	5	6	0	41
Aus Tasm LC*	0	0	0	0	1	9	4	2	5	3	7	0	31
Aus Vict LA*	0	6	6	3	6	6	3	4	5	3	0	1	43
Aus Vict LC*	0	6	6	3	5	6	3	5	7	3	0	0	44
Aus W Aus LA	0	3	6	3	9	6	0	6	9	6	9	0	57
Aus W Aus LC	0	0	8	4	9	7	1	6	9	6	9	1	60
Bangladesh	*1*	*15*	*6*	*0*	*4*	*15*	*7*	*0*	*9*	*0*	*5*	*0*	*62*
Belize House	*2*	*1*	*1*	*0*	*0*	*1*	*0*	*1*	*1*	*0*	*1*	*2*	*10*
Belize Senate	*1*	*2*	*2*	*0*	*0*	*1*	*0*	*1*	*0*	*1*	*1*	*2*	*11*
Berm House	*0*	*4*	*7*	*1*	*2*	*5*	*4*	*2*	*0*	*1*	*4*	*2*	*32*
Berm Sen	*0*	*1*	*7*	*0*	*1*	*2*	*4*	*4*	*0*	*1*	*2*	*2*	*24*
Botswana	*0*	*20*	*19*	*9*	*0*	*0*	*4*	*16*	*0*	*0*	*20*	*10*	*98*
Canada HC	0	0	21	16	15	14	0	0	9	16	17	12	120
Canada Sen	0	0	14	9	8	14	4	0	3	10	10	8	80
Canada Alb	0	12	12	7	0	0	0	0	0	4	13	2	50
Canada BC	0	3	15	13	12	3	0	0	0	0	0	0	46
Canada Man	0	0	4	16	16	11	0	0	0	0	1	6	54
Canada N Bruns	*8*	*15*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*5*	*12*	*40*
Canada Newf	*0*	*0*	*8*	*12*	*16*	*6*	*0*	*0*	*0*	*0*	*7*	*9*	*58*
Canada NWT	3	18	7	0	8	0	0	0	0	11	4	0	51
Canada Ontario	0	7	15	13	13	3	0	0	10	12	14	6	93
Canada PEI	*0*	*0*	*0*	*15*	*13*	*0*	*0*	*0*	*0*	*0*	*11*	*2*	*41*
Canada Québec	0	6	11	10	12	9	0	0	6	10	13	7	84
Canada Sask	0	0	15	13	12	0	0	0	0	2	17	6	65
Canada Yukon	0	0	4	16	12	0	0	0	7	15	6	0	60
Cayman Island	*0*	*0*	*13*	*0*	*0*	*7*	*0*	*0*	*10*	*0*	*15*	*0*	*45*
Cook Islands													
Cyprus	3	4	4	3	4	4	4	0	0	4	4	7	41
Dominica	*0*	*0*	*0*	*3*	*1*	*3*	*4*	*0*	*1*	*0*	*3*	*2*	*17*
Falklands	*1*	*0*	*1*	*0*	*5*	*0*	*1*	*0*	*1*	*1*	*1*	*0*	*11*
Ghana	*13*	*16*	*13*	*0*	*13*	*18*	*16*	*4*	*0*	*18*	*18*	*11*	*140*
Gibraltar	*5*	*3*	*1*	*1*	*3*	*2*	*4*	*1*	*0*	*2*	*1*	*3*	*26*
Grenada Reps	*4*	*4*	*1*	*0*	*2*	*1*	*1*	*1*	*2*	*0*	*1*	*1*	*18*
Grenada Sen	*1*	*1*	*0*	*1*	*1*	*2*	*1*	*0*	*0*	*1*	*1*	*1*	*10*
Guernsey	2	3	2	3	3	2	2	0	3	3	2	2	27
India LS	0	5	10	12	5	0	5	21	0	0	14	9	81
India RS	0	5	10	12	5	0	5	21	0	0	14	9	81
India Gujarat	0	3	24	0	0	0	0	0	2	0	0	0	29
India Haryana	*0*	*0*	*16*	*0*	*0*	*0*	*0*	*0*	*3*	*0*	*0*	*0*	*19*

India Him Pr	0	26	0	0	0	0	0	5	0	0	0	4	35
India Kerala	*0*	*1*	*12*	*0*	*2*	*0*	*12*	*0*	*19*	*0*	*7*	*0*	*53*
India Maharash													
India Nagaland	0	0	4	0	0	0	5	0	0	0	0	1	10
India Orissa	*0*	*0*	*12*	*0*	*0*	*0*	*12*	*3*	*0*	*0*	*0*	*7*	*34*
India Punjab	*0*	*0*	*13*	*0*	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*0*	*15*
India Rajasthan	0	5	16	2	0	0	0	2	2	0	0	0	27
India Sikkim													
India Tamil Nadu	*5*	*0*	*7*	*16*	*6*	*0*	*0*	*0*	*0*	*0*	*5*	*0*	*39*
India Uttar P													13
IoM Keys	*1*	*3*	*4*	*1*	*3*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*21*
IoM LC	*1*	*3*	*4*	*1*	*1*	*2*	*0*	*0*	*0*	*1*	*5*	*1*	*19*
IoM Tynwald	*1*	*3*	*1*	*2*	*1*	*1*	*3*	*0*	*0*	*2*	*1*	*1*	*16*
Jamaica HR	*3*	*3*	*3*	*7*	*6*	*8*	*7*	*1*	*5*	*3*	*6*	*3*	*55*
Jamaica Senate	*0*	*4*	*3*	*1*	*3*	*4*	*4*	*0*	*2*	*0*	*4*	*4*	*29*
Jersey	2	5	3	2	5	3	5	0	7	5	7	6	50
Kenya	*0*	*0*	*6*	*12*	*5*	*12*	*13*	*7*	*0*	*13*	*13*	*5*	*86*
Lesotho	*0*	*0*	*16*	*0*	*1*	*18*	*3*	*1*	*16*	*17*	*9*	*0*	*81*
Malawi													
Malaysia Reps	*0*	*0*	*12*	*6*	*0*	*8*	*0*	*0*	*14*	*19*	*5*	*0*	*64*
Malaysia Sab	*0*	*0*	*0*	*4*	*0*	*0*	*0*	*1*	*0*	*0*	*0*	*6*	*11*
Malaysia Sara	*0*	*0*	*0*	*7*	*0*	*0*	*0*	*0*	*0*	*0*	*1*	*6*	*14*
Malaysia Sen	*0*	*0*	*0*	*11*	*0*	*0*	*6*	*0*	*0*	*0*	*12*	*0*	*29*
Malaysia Melaka	*0*	*0*	*5*	*0*	*0*	*0*	*0*	*2*	*0*	*0*	*3*	*0*	*10*
Montserrat													
Namibia													
NZ H Reps													81
Nigeria Borno	*20*	*19*	*24*	*10*	*10*	*20*	*25*	*18*	*28*	*20*	*6*	*2*	*202*
Northern Ireland													
Assembly	*6*	*8*	*9*	*4*	*6*	*10*	*1*	*0*	*6*	*6*	*9*	*3*	*67*
Pak MWFP	*0*	*5*	*0*	*0*	*0*	*25*	*3*	*0*	*10*	*0*	*0*	*0*	*43*
Pak Pun Lah	*0*	*17*	*3*	*0*	*0*	*12*	*1*	*0*	*0*	*8*	*6*	*0*	*47*
St Lucia	*0*	*1*	*1*	*3*	*1*	*0*	*1*	*1*	*1*	*0*	*1*	*1*	*11*
St V & G	*1*	*0*	*0*	*1*	*1*	*1*	*0*	*2*	*0*	*0*	*0*	*4*	*10*
Samoa	*10*	*0*	*0*	*4*	*1*	*12*	*0*	*0*	*0*	*1*	*0*	*2*	*30*
Scotland	*8*	*6*	*8*	*5*	*9*	*6*	*0*	*0*	*8*	*6*	*8*	*6*	*70*
Seychelles NA	*0*	*5*	*4*	*2*	*2*	*4*	*5*	*0*	*4*	*4*	*4*	*4*	*38*
Singapore	*6*	*2*	*9*	*4*	*1*	*0*	*4*	*1*	*1*	*2*	*1*	*0*	*31*
S Africa NA	0	4	6	1	5	2	0	9	6	3	9	0	45
S Africa NCOP	*0*	*3*	*9*	*3*	*6*	*10*	*0*	*2*	*7*	*2*	*7*	*0*	*49*
S Africa NW PL	*0*	*3*	*3*	*5*	*1*	*2*	*0*	*4*	*5*	*0*	*2*	*4*	*29*
Sri Lanka													68
Swaziland	*8*	*8*	*8*	*8*	*8*	*8*	*8*	*8*	*8*	*8*	*8*	*8*	*96*
T&T HR	*4*	*2*	*4*	*2*	*4*	*3*	*4*	*0*	*4*	*7*	*2*	*2*	*38*
T&T Sen	*2*	*4*	*3*	*5*	*4*	*4*	*4*	*0*	*3*	*4*	*4*	*3*	*40*
Turks & Caic LC	*2*	*0*	*0*	*0*	*4*	*1*	*0*	*2*	*2*	*1*	*0*	*1*	*13*
Uganda													
UK Commons*	16	13	20	3	7	17	15	0	8	13	20	13	145
UK Lords*	16	12	19	3	3	17	17	0	0	16	19	14	136
Wales													65
W Samoa	*0*	*0*	*4*	*0*	*1*	*13*	*14*	*0*	*0*	*1*	*15*	*2*	*50*
Zambia	*9*	*16*	*15*	*0*	*0*	*0*	*12*	*8*	*7*	*18*	*16*	*0*	*101*

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

House of Representatives

… that idiot's advice …	3 February
… Senator Barnaby Goose…	3 February
… as I slur him …	3 February
Very few other people have been racist.	3 February
… the mad monk …	4 February
… Barnaby Rubble …	4 February
This is not a shadow finance minister; it is a freak show! It is the bearded lady of Australian politics.	4 February
The contribution from the member … confirms that the coalition freak show is back in town …	10 February
The face of modern liberalism: it is so attractive and so intelligent.	10 February
… this buffoon of a Minister …	10 February
… Sir Barnaby Bjelke-Peterson …	10 February
… Barnaby Joyce is doing to economic responsibility what Ivan Milat did to backpacker holidays.	10 February
On your broomstick, Nicola!	11 February
Sloppy Joe ...	23 February
You just grab hold of Tony's balls.	24 February
… it was Mr Abbott who advised former Liberal MP Jackie Kelly to defend the leaflet as a Chaser-style stunt.	9 March
… he is nothing other than a complete policy fraud.	16 March
We discovered what was under the budgie smugglers ...	16 March
… the member … is finally really losing it altogether.	16 March
Soft on crooks.	17 March
The member … has never seen a trough she didn't like.	13 May
… grubby donations ...	24 May
He has been out there giving hypocrites a bad name again.	25 May
… Phoney Tony ...	25 May
… the opposition leader's hypocritic oath ...	25 May
… Pig Iron Pete ...	25 May
You fool!	26 May
… a threat to national security ...	27 May
The clown opposite ...	1 June
… you nong ...	3 June
… you goose!	17 June
You're even dumber than I thought you were!	21 June
… false and deliberately deceptive ...	29 September
So the member ... agrees that we should actually cut health and education funding out of the state systems ...	29 September
The Member for ... stands condemned for his dishonesty ...	18 October
… windbag.	27 October

... follow the money.	22 November
Put my mouth where my money is, that is what you say.	22 November
You idiot.	24 November
...you dope.	24 November
... two Governor-General's speeches, two Labor governments all interwoven with the same thread of hypocrisy.	24 November
Simon got away with it.	25 November
Australian Capital Territory Legislative Assembly	
Act of a coward	9 February
Moron … pathetic moron	16 March
Grub	17 March
Guttersnipes	17 March
Slime bucket	24 March
Misrepresenting	30 June
Are you sober?	1 July
Balaclava wearing sons and daughters of Peter Reith	1 July
Low ... sleazy … slimy … straight out of the gutter … guttersnipe level	1 July
Stench of hypocrisy	18 August
Cranky	19 August
Homophobic … sexist, misogynistic	25 August
No integrity	25 August
Priorities are up your arse	25 August
Vendetta	19 October
Doormat	28 October
Farcical [*reflection on chair*]	28 October
... made this confection	28 October
Not sure what Mr Seselja has been smoking	28 October
Dodgy	18 November
Jack-in-the-box	10 December
Jellyback	19 December
Northern Territory Legislative Assembly	
If the CLP's [Country Liberal Party's] housing policy ever got up, the government would be broke because it is the most corrupt, incomplete housing policy we have ever seen in real life.	16 February
Madam SPEAKER: Order! Member for Macdonnell, you have asked the minister a question, allow him to answer it. A member: Allow him to spin it. (*Member ordered to withdraw from chamber.*)	17 February
This legislation stinks. It has a smell of corruption all about it; corruption of our parliamentary system.	23 February
I note the member for Port Darwin cannot even stay and listen.	23 February
The fraudulent member for Fong Lim	23 February
I cannot refer to the fact that the government benches are empty ... I withdraw the fact that I have noticed the government benches are completely empty.	24 February
It was about the programme which would make bugger-all difference	24 February
The cowardly attack from the member for Port Darwin on the Under Treasurer …	24 February

You dropkick	25 February
You do not know anything about Mt Todd you drongo.	27 April
Did you beat your wife?	28 April
Oh, Adam! As soon as you stood up, your members all walked out. What is going on there?	29 April
You guys come into this bloody House doing this stuff on the floor.	5 May
Gag girl!	5 May
You do not know what you are talking about. You never have! You are a fool!	6 May
Oh, shut up!	6 May
You are so thick.	8 June
We have Dopey over here	8 June
We have Loopy over here	8 June
These morons on this side	8 June
None have been built, Bungles.	8 June
You gammon girl. (*Note: "gammon" is a slang expression meaning "rubbish" or the equivalent.*)	9 June
These two bully boys are the only ones who …	9 June
You are a bunch of shonks, a bunch of liars …	9 June
Fascists! Fascists!	10 June
You goose	11 August
He is kicking schools in the head and he is smearing Territory businesses with his comments today.	12 August
... the member for Solomon is a nasty drunk ...	18 August
... so do not start with your hypocrisy. You are a joke and a hypocrite.	26 October
These [sexual offences] are not isolated incidents; they are incidents which run right across the Labor Party all over Australia.	26 October
Madam Speaker, there are four members of the Labor Party across Australia who are paedophiles, and it would be fair to say in all these cases there were members of the Labor Party who were trying to cover up for them. In the trial of Milton Orkopoulos, there were ministers from the Labor Party in the New South Wales government turning up to his trial giving character references. They were covering up for a paedophile.	26 October
This seems to be a party of paedophiles and criminals, where it is condoned and where they will cover up these things ...	26 October
On that whoopee weed.	23 November
You need to grow a brain.	24 November
... when the Leader of the Opposition clearly is in breach of the Commonwealth legislation about elections.	24 November
The minister for turds in the harbour, the member for Stuart	27 November
... you are a bully and a thug ...	30 November
You have blood on your hands—children's blood.	30 November
Someone should put you out of your misery.	2 December
You goon!	2 December
New South Wales Legislative Assembly	
… challenges to Premiers to do a better job delivering services to new South Wales have been leaked—probably by him …	24 February

Labor members are suggesting that if you are a Christian in New South Wales you are a racist and deplorable person.	24 February
[The motion before the House constituted]… an attack on a particular member of Parliament for his particular religious views	24 February
... police bashers on the other side of the House	11 March
The Member for Barwon talked of deals. What deals has he done with big banks at his last city function? Has he promised to protect their interests rather than the interest of farmers?	21 April
You sleep in the House!	11 May
You are a twit.	23 June
Bag up, idiot …	8 September
The Government has proven itself repeatedly to contain members on your side of the House who have been found to be corrupt or rotten.	10 November
You should give up smoking.	25 November
… I am mightily pissed off about his hypocrisy!	25 November
… this legislation is crap.	25 November
… gold-plated socialist who shows absolutely no empathy for those poor devils who are struggling to cope with rising electricity prices …	2 December
… could be on an internal drip from the Encyclopaedia Britannica and it would not improve her IQ …	2 December
New South Wales Legislative Council	
Whinger	11 March
Working to wind down the activities of the forest industry	12 May
Cowboy	13 May
Bovver boy	20 May
Happy as a proverbial pig	10 November
Queensland Legislative Assembly	
Crap	11 February
… I note that some members may have chosen to enjoy a bottle of wine or something at dinner and that has made them more boisterous	11 February
… No matter what you say you are still not going to get back on the front bench—no matter how hard you suck.	9 March
… the scum that you are …	10 March
… you are laying down like a mongrel dog at the feet of Tony Abbott …	4 August
You lunatic	4 August
To hell with the offender!	2 September
I take the interjection from the imbecile up the back	14 September
After four months they have finally pulled their finger out …	15 September
... from a grubby low-life minister …	16 September
… you are lower than a snake's belly …	28 October
Go on, boofhead.	25 November
Victoria Legislative Assembly	
I think the member for Yan Yean has grown very brave in this place. It is my understanding she was never quite this brave at the public meetings that were held near her electorate when the issue was discussed by the public.	23 March
Her contribution was an absolute bloody disgrace in this chamber this morning.	9 June

The member for Mildura had better not interject saying what he knows or what he does not know. I am not even sure he lives in this state, so I am not surprised he does not know what this government is doing.	9 June
This is a bloke whose own side says he is an inveterate branch stacker and someone who has not done a day's policy work in his life. His speciality is running fear and loathing campaigns. He is a pretender and a divider.	10 June
Maybe the member for South-West Coast should have had one less glass of red over dinner.	23 June
This is a spurious point of order being raised by the member for Albert Park, who is trying to cover up and hide the truth.	24 June
They are being drunken and disorderly.	11 August
Victoria Legislative Council	
The Minister looks goofy.	10 March
… crass and rude …	23 March
The Minister is on such thin ice we can hear it cracking	25 March
Noting the Treasurer's rather hysterical reaction ...	22 June
... either he has been very misleading, and perhaps lying, to the people of Victoria or alternatively he has got a case of amnesia.	25 February
The Attorney-General has behaved like a thug towards an intelligent 25-year-old woman, like a thug to the Committee, like a schoolyard bully to the Parliament.	13 April
Minister Muddle	14 April
Under the weather	2 September
Comrade Pakula	15 September
Gutless	6 October
Mrs Peulich partly asked a question and partly reached into her regular bucket of filth to throw dirt at individuals	7 October

CANADA

House of Commons	
The loudmouth member over there	12 March
Crosseur [double-crosser]	31 March
Québécois de service [token Québecker]	5 May
When asking a question of a colleague regarding another member of Parliament, the member asked his colleague to choose which words among "incompetent", "insignificant", "ignorant", "dishonest" or "lying" was the most appropriate to describe the member.	15 November
British Columbia Legislative Assembly	
Slimy words	29 March
Weasel words	29 March
Mouth-off member	31 March
Absolutely clueless	13 April
Yakking	14 April
Slink and slither	22 April
Manitoba Legislative Assembly	
Mr Monkey Wrench is at it again	19 April

Mr Speaker, the member from Wolseley "yeps" from his seat like some wild animal	31 May
What he's done, Mr Speaker, is put on the jackboots and try to silence doctors in Manitoba	8 December
Northwest Territories Legislative Assembly	
Divide people on racial lines	11 May
Québec National Assembly	
Racism	10 February
Masquerade	16 February
Weather vane	16 February
Incompetence	16 February
Despise	18 February
Demagogy	16 March
Petty party line politics	17 March
Racket	18 March
Code of silence	24 March
Hide	24 March
Lack honesty	25 March
Cowardice	31 March
Smear tactics	14 April
Backstabbers	14 April
Scandal (Liberal day care centres)	27 April
Bad faith	28 April
Fiasco	29 April
Malign the reputation	6 May
System (the way of organising the)	6 May
Influence peddling system	18 May
Slinky head	19 May
Arrogant	26 May
Mocking	27 May
Laugh (at Québecers)	27 May
Treason	2 June
Manipulate the truth	21 September
Smart alec	30 September
Twist	27 October
Cronyism	10 November
Clear his reputation	9 December
Take the public for idiots	10 December
Saskatchewan Legislative Assembly	
A Premier you could not trust	28 March
Thousands of dollars of liquor that he stole	30 March
Profound sense of entitlement	30 March
Conspire ... to fix the outcome of the 2007 general election?	13 April
Low-level hack	14 April
Mr Crankypants	15 November
Yukon Legislative Assembly	
Ravens … hop … peck	31 March

Playing the stock market	6 April
Listen to this garbage	8 April
Fearmongering	15 April
Pound their chests	6 May
Flapping their gums	6 May
Peanut gallery	6 May
A pocket full of cash	27 September
Prattle on	29 September
Slow learner	30 September
Shell game	30 September
Ignorance	7 October
Sniping	20 October

INDIA

Rajya Sabha

Everything looks yellow to a jaundiced eye. These UPA people have also started looking with a jaundiced eye.	25 February
The blind	25 February
Black marketeers and hoarders	25 February
Disgusting	11 March
Deception/cheating	11 March
Narrow minded	12 March
Sham	15 March
Villain	15 March
Histrionics	15 March
Hoodwinking/fleecing	15 March
Sucking blood, squeezing out their blood	16 March
Befooling	16 March
Treacherousness	28 April
Betrayal	28 April
Misdoings	29 April
Misdeeds	29 April
Sycophancy	29 April
Commission	29 April
Nefarious attempts	3 May
With the support of Leader of Opposition, in particular.	3 May
The Leader of Opposition covered a criminal case, a criminal act	3 May
Bungling	3 August
Thuggery, duping	4 August
Military operation	6 August
Damn it	11 August
Duplicate	13 August
Italy's mafia	20 August

Gujarat Legislative Assembly

Ruler's obstinacy	23 March
Woman's obstinacy	23 March

Himachal Pradesh Vidhan Sabha	
Hooliganism and intimidating	2 April
Leader's chief, hooligans, group of hooligans	2 April
Hooligan tax	2 April
Nagaland Legislative Assembly	
Committing extortion	25 March
007 James Bond	27 March
A Nepali citizen cannot be Home Minister	20 July
A law breaker cannot be Home Minister	20 July
A disgrace to the Nagas and nation—the Home Minister should resign	20 July
CM should stop sheltering criminals	20 July
CM should stop sheltering black marketeer	20 July
CM should stop sheltering corrupt ministers and parliamentary secretaries	20 July
Abnormal minister	22 July
Confidential	23 July
Don't teach us	23 July
Minister has no licence to buy all norms and rules	23 July
Biased attitude	23 July
Rajasthan Legislative Assembly	
Making hue and cry	24 February
Forced disrobing	24 February
Disguiser	24 February
Of pickpockets	10 March
[*To the chair*] You please do not disturb again and again do not disturb again and again	11 March
Earlier of Food Minister and now has come Transport Minister, the turn of the Transport Minister, it seems to me that the turn of each minister will keep coming every day.	12 March
Your father's [*in derogatory manner*]	12 March
Your limit	15 March
Shameless … shamelessness	15 March
Drinking spree	16 March
Clink the drinking glasses … from today clink the drinking glasses	16 March
Nonsense … you indulge in bullyism	17 March
I will set you right in two minutes	17 March
You were abusing	17 March
Crime [*to the chair*]	18 March
Puppeteer's play	19 March
Revolt	22 March
For middlemanship … doing middlemanship	22 March
Unnecessary leadership	22 March
Habitual offender	22 March
Hue and cry	25 March
Sat in the lap	26 March
They were performing acrobatics	26 March
Ridicules	30 March

Butcher	30 March
Sat in the lap of the Chief Minister	1 April
Lack manners	2 April
Good-for-nothing	2 April
Useless	2 April
All are murderers … all are murderers, you too	3 September

STATES OF JERSEY

But I think it is a slap in the face for one of the greatest assets of this island, people give their heart and soul to that place and here we are saying, basically, "Sod off, you do not matter."	15 September
The Deputy has described it as bonkers and I think that might be unparliamentary language, but it is really apt. This is bonkers.	16 September
They were hell-bent on incorporating	4 November

Note: on 17 September the Bailiff of Jersey (presiding officer) ruled that it was unparliamentary for members to use "God" in debates in expressions such as "God help us", "God knows" or "God forbid".

NEW ZEALAND HOUSE OF REPRESENTATIVES

Bloody proud	6 February
The lazy Labour member	18 February
He is a young man	24 February
Institutional racism	24 February
Sir Les Patterson	31 March
Angry Smurf	21 April
He will not be Leader of the Opposition for much longer	5 May
The last inadequate speaker	19 May
You sold out your electorate	20 May
Catweazle	27 May
Mr Wobblyman	27 May
Dr No Man	23 June
Put that in your pipe and smoke it	25 August
Almost racist speech	8 September
He got rogered	28 October
Dancing like puppets to the union tune	29 October
She is not making much difference to Labour	7 December
Lost his pills	8 December
[Labour] ripped off taxpayers in order to win the election	11 December

SOUTH AFRICA

National Assembly

The nation is being led deliberately into lawlessness	16 February
Told people to kill somebody	20 April
Rat, member is like a	13 May
Idiot, member is an	14 September

SRI LANKA PARLIAMENT

Now you are not in this august Assembly as an independent Speaker.	6 April
What did you do no sooner you became the Army Commander? The first thing you did was to remove the deputy and sit in the Tender Board as chairman.	4 May
Those who were involved in jail-breaking, those who took to arms and those who were involved in the assassination of members of Parliament are here in this House as Ministers.	5 May
Puttalam donkeys!	1 July
You totally ruined the CWE ... sister-in-law was paid a salary of Rs. 150,000 from CWE.	1 July
Tomorrow I will table in Parliament, everything, how the Phosphate company was plundered as the chairman, how commissions were taken from vehicles and all other shady deals.	1 July
You philanderer!	1 July
You are a mad hatter.	1 July
The husband of a judge was given a political appointment. The chairman of National Savings Bank …	1 July
…. influenced the executive to get the spouses appointed which is an insult to the judiciary and also the executive.	2 July
Judges are summoned and instructed by the executive himself.	2 July
Mr. Ranil Wickremasinghe was made to wear loin cloth and was chased away from Biyagama. Ranil was chased away with the loin cloth.	2 July
This devil	2 July
Donkeys	3 July
… claiming that he is the son of JR and draping a white cloth over his filthy body, he tried to deprive me of my parliamentary seat by placing a mobile phone in my prison cell and filing a case against me and making me a convict …	5 July
Since it appears that no investigation has been conducted to-date in this regard despite a complaint being lodged with the Kalutara North Police and a complaint being recorded as CIB 215/308 …	5 July
Was committing various offences, committing murders and when he was hiding … He is only good for betraying this country on the white flag issue.	5 July
You JVP rogue!	5 July
General Fonseka is the terrorist.	5 July
How many women have you raped before coming here?	3 August
… it is said that you have come here by betraying the country …	3 August
Financial frauds	3 August
Leader of donkeys	3 August
They spend their honeymoon in rooms here.	7 September
The President gave a ministerial post to the man who helped a terrorist who conspired to kill him.	7 September
… recently a Member from the Government side—a person who has shaven his head and tattooed his body …	7 September

… that shaven-headed, tattooed …	7 September
A rabid dog. Should not call him a dog because it is an insult to dogs.	7 September
… went into the Opposition Leader's room with his wife and locked the door …	7 September

NATIONAL ASSEMBLY FOR WALES

You hate us with a vengeance	24 February
Pathetic	24 February
He has given up being ashamed of himself—he sold his soul to the devil decades ago.	21 April

BOOKS ON PARLIAMENT IN 2010

AUSTRALIA

What Lies Beneath: The Work of Senators and Members in the Australian Parliament, by Scott Brenton, Parliament of Australia, Department of Parliamentary Services, free (electronic version available via the internet at the publisher's home page: www.aph.gov.au/library/pubs/monographs/Brenton/monograph.pdf), ISBN 9780980655414.

This study compares senators as a group of political representatives with members of the House of Representatives to assess the similarities and differences between their work, their roles and responsibilities, and their conceptions of representation. Drawing on surveys of 233 current and former parliamentarians and 29 interviews with prominent politicians, this study finds that the profession has changed with technological and communication developments, increases in staff and constituents, increased media intrusions, and challenges to balance work and family life. Most fundamentally, the stature of the Senate has grown from out of the shadow of the House of Representatives, while senators have also raised their profiles and become important campaign agents. While the House retains the interest of the media and others with its high profile, the Senate has carved out a strong policy and legislative focus. It is suggested that the Senate has also been more successful in attracting a more diverse cross-section of the Australian community and is now challenging the lower house as the real house of representatives.

Papers on Parliament No. 53: Lectures in the Senate Occasional Lecture Series, and Other Papers, Department of the Senate, Australia, free (electronic version available via the internet at the publisher's home page: http://www.aph.gov.au/ senate/pubs/pops/index.htm), ISSN 1031976X.

Contains transcripts of lectures on parliamentary issues, and other papers, including *Time, Chance and Parliament: Lessons from Forty Years* by Harry Evans, former Clerk of the Australian Senate, and *Reaching Bicameral Legislative Agreement in Canberra and Washington*.

Papers on Parliament No. 54: Senate Committees and Government Accountability, Department of the Senate, Australia, free (electronic version available via the internet at the publisher's home page: http://www.aph.gov.au/senate/pubs/ pops/index.htm), ISSN 1031976X.

Contains a transcript of the conference marking the 40th anniversary of the Australian Senate's legislative and general purpose standing committee system. Topics covered include The Senate Committee System: Historical Perspectives, Senate Estimates and Executive Accountability, Senate Committees and Legislation, Parliamentary Privilege and Senate Committees, and The Future of Senate Committees: Challenges and Opportunities.

The Australia Acts 1986: Australia's statutes of independence, by Anne Twomey, Federation Press, ISBN 1862878072.

The Law of Politics: Elections, Parties and Money in Australia, by Graeme Orr, Federation Press, ISBN 9781862878037.

Learning to be a Minister: heroic expectations, practical realities, by Anne Tiernan and Patrick Weller, Melbourne University Press, ISBN 0522857981.

Power Crisis: the self destruction of state Labor, by Rodney Cavalier, Cambridge University Press, ISBN 05211138329.

The Ayes have it: the history of the Queensland Parliament, 1957–1989, John Wanna and Tracey Arklay, ANU E Press $39.95 (GST inclusive), ISBN 9781921666308, ISBN 9781921666315 (online).

The book provides an account of the Queensland Parliament during three decades of sometimes high-drama politics. Beginning in the late 1950s, the book examines in detail the Queensland Parliament from the days of the "Labor split" of 1957, through to the conservative governments of Premiers Nicklin, Bjelke-Petersen and Ahern, and ending with the fall of the National Party's government led briefly by Russell Cooper in December 1989. Focusing on parliamentary politics, the book discusses the representatives who were Members of Parliament during this time. It explores their personalities, priorities and political agendas as well as the many and varied controversies.

Order in the House—The story of the Queensland Parliament, Queensland Parliamentary Service.

This book traces the history of the Queensland Parliament commencing with the penal settlement under military rule within the (then) colony of New South Wales. The story progresses from the 1st Parliament, which met in what were the former convict barracks in 1860, to the current 89-member unicameral Legislative Assembly (the 53rd Parliament). Historical and contemporary information is provided about Queensland's electoral history, the abolition of the Legislative Council, key parliamentary roles, women in the parliament and the state's indigenous suffrage.

The illustrated 32-page book, published by the Queensland

Parliamentary Service, also offers an insight into the building and restoration of Queensland's unusual "French Renaissance-style" Parliament House. Stunning photographs showcase the Legislative Assembly and Legislative Council chambers, the Queen Victoria leadlight window, the Mace and Black Rod, and the unique Wind Yarn Didgeridoo.

That Gallant Gentleman—The Remarkable Story of Colonel Charles George Gray, Kenneth R Dutton, Central Queensland University Press.

The book details the life of the man who served as the Queensland Parliament's first Parliamentary Librarian and Usher of the Black Rod, Colon Charles George Gray. Prior to this service, Colonel Gray's military career had seen him fighting as a captain in the Rifle Brigade against Napoleon's army in Spain and Portugal in 1810 and 1811 and as a subaltern in India from 1804 to 1807.

Parliament House Conservation Plan, Project Services, Queensland Government Department of Public Works.

Parliament House was built in 1865–68. The conservation plan was commissioned by the parliamentary service to assist in the ongoing management and preservation of the Parliament House building. The plan contains detailed historical information about the building, its contents and the setting, including adjacent areas where these are relevant to the cultural heritage values of the Parliamentary precinct. The plan forms part of a wider strategic review of the parliamentary buildings and precinct. The Speaker tabled the plan on 15 April 2010 and it is published on the parliament's tabled papers website at: http://www.parliament.qld.gov.au/view/legislativeAssembly/tableOffice/documents/TabledPapers/2010/5310T2073.pdf.

An Index to Parliamentary Candidates in Western Australian Elections State and Federal 1890–2010, by David Black, Western Australian Parliamentary History Project, ISBN 9781921355974.

Electoral democracy: Australian prospects, ed. by Joo-Cheong Tham, Brian Costar and Graeme Orr, Melbourne University Press, e-book RRP $39.99, paperback RRP $49.99.

Drawing together leading political scientists and legal scholars, this collection examines pressing debates about the regulation of political finance, parties and representation in Australia. It does so by testing the system and reform proposals against three fundamental—and sometimes conflicting—values: political equality, liberty and integrity.

CANADA

Against Reform, by John Pepall, University of Toronto Press, $45, ISBN 9780772786241.

Power: Where Is It?, by Donald J. Savoie, McGill-Queen's University Press, $30, ISBN 9780773537583.

Éléments de légistique: comment rédiger les lois et les règlements, by Richard Tremblay, Éditions Yvon Blais, $94.95, ISBN 9782896350582.

Les institutions du pouvoir législatif, by École nationale d'administration publique (Québec), Observatoire de l'administration publique, http://www. etatquebecois.enap.ca/docs/ste/organisation/a-legislatif.pdf.

INDIA

Practice and Procedure of Parliament, 6th edition, by Shri M.N. Kaul and Shri S.L. Shakdher, ed. by Shri P.D.T. Achary, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., ISBN 8120004213.

The publication has particular reference to the Lok Sabha and is an indispensable reference work for parliamentarians, legislators, parliamentary officials, political scientists, research scholars and all those who are interested in the institution of Parliament and its work, procedures and practices, processes and challenges.

The Indian Parliament: A Democracy at Work, by Valerian Rodrigues and B.L. Shankar, Oxford University Press, Rs. 805.50, ISBN 9780198067726.

The Parliament is the visible face of democracy in India. It is the epicentre of political life, public institutions of great verve, and a regime of rights. In a first-of-its-kind study, this book delves into the lived experience of the Indian Parliament by focusing on three distinct phases: the 1950s, the 1970s, and the 1990s and beyond. The authors argue against the widely held notion of its ongoing decline, and demonstrate how it has repeatedly and successfully responded to India's changing needs in six decades of existence.

This comprehensive and authoritative study examines the changing social composition and differing modes of representation that make up the Lok Sabha and critically explores its relationship with the Rajya Sabha. Developments in the institutional complex of the Parliament, including the functioning of the opposition and the Speaker, are traced over time, along with the processes of legislation and accountability. Major debates in the House are scrutinised, and much of the analysis is based on empirical data gathered from surveys circulated among prominent politicians and public intellectuals. It also addresses the intricate issue of relations between the judiciary and the Parliament.

In its in-depth focus on the Lok Sabha, the volume highlights the way the Parliament has come to encompass India's proverbial diversity. It especially demonstrates the route this institution has taken to engage with fractious issues of diverging linguistic and regional demands.

The Legislature and the Judiciary: Judicial Pronouncements on Parliament and State Legislatures, Rajya Sabha Secretariat, Orient Blackswan, Rs.1165.50/-, ISBN 9788125041917.

The Indian constitution provides for a federal form of government, with a division of power between the legislative and executive arms of the state. Both institutions have evolved, over the years, as mature, dynamic and relatively autonomous in their respective spheres of activity—further strengthening the edifice of democracy. While these two organs have functioned with restraint and responsibility, the legitimate concerns of the respective institutions to guard their autonomy have led to differences between the two. Since independence, the courts have been called upon on numerous occasions to resolve such conflicts.

A pioneering volume, *The Legislature and the Judiciary* explains the powers, privileges and immunities of legislatures in India. It also highlights the role of the judiciary in articulating a constitutional position on the legislature's autonomy, along with a detailed discussion of all the important cases dealt by the high courts and the Supreme Court.

In the critical foreword, eminent jurist Upendra Baxi provides a brief background to the birth of the Indian constitution. He highlights how the constitution-makers were profoundly influenced by the powers, privileges and immunities enjoyed by the House of Commons. He draws attention to the interesting fact that a majority of cases filed so far are by the legislators themselves, and explains the need for them to have privileges and immunities.

This volume consists of two sections. Section 1 details the evolution of law through judicial interpretations of provisions relating to Parliament and the state legislature. Stating, precisely, the current position of the law, it encapsulates the principles of law laid down by the high courts and the Supreme Court. Section 2 provides a brief summary of judgments. Almost all the significant rulings of the high courts and the Supreme Court relating to Parliament and the state legislatures have been incorporated in this section.

This consolidation of legal information will facilitate a clear understanding of the existing legal position of the legislature. This volume will also be a valuable resource for constitutional experts, jurists, students of political science and law, and legislators.

Parliamentary control over administration in India with reference to the role of DRSCS, by Nalindi Kumari, Manak Publications, ISBN 9788178312248.
From the jacket: "Accountability, undoubtedly, remains the core characteristic of democratic governance. And ensuring a balance between accountability and effectiveness of public administration becomes an onerous task. Ever increasing scope and complexity of administrative activities necessitated the search for new avenues of Parliamentary control. Shrinking time and attention of Parliamentary oversight also contributed in the adoption of the system of Departmentally Related Standing Committees (DRSCs) in India in 1993. This study finds that though the DRSCs have significantly enhanced the range—depth and breadth—of Parliamentary scrutiny and has potential to make it operationally purposive, it still lacks adequate devices. Beginning from a wide spectrum of theoretical perspectives, this book covers the pre-1993 mechanism; genesis; organisation and functions; process and procedures; and evaluates their role and scope. Focused on a theme of extreme contemporary relevance, the book would prove beneficial to those interested in the working of Parliamentary democracy in India as also in administrative theory and Indian administration."

Election 2009, A Complete Documentation and Analysis of Indian Parliamentary Elections since 1952, by Dr Tariq Ashraf, Rs. 5000, ISBN 8189640972.
This three-volume book provides the details of entire process of election in 2009 through which India passed to elect its new government and documents all related information in the form of statistics and data. It provides complete election results from the first Lok Sabha elections held in year 1952 to the current, held this year.

Parliament of India: The Fourteenth Lok Sabha 2004–2009: A Study, Lok Sabha Secretariat, Rs.1250/-.
This study provides an analysis of the business transacted by the 14th Lok Sabha during its tenure, by means of articles, statements and statistical tables, supported by brief introductory notes.

Office of Profit, disqualification and anti-defection: relating to election, by P. Chakravarty, Capital Law House, ISBN 8188327336.

Parliamentary versus Presidential system of Government, by G.L. Verma, Atlantic Publishers, ISBN 8126914408.
Parliamentary versus Presidential system of Government is an attempt to analyse all aspects relating to the persistent trends in Indian politics, its impact on the working of a parliamentary system and to find out whether the presidential form of government with a separation of powers can provide a panacea for political ills. It is based on a deep analysis of the present polit-

ical scenario, the report of the National Commission to Review the Working of the Constitution and the working of presidential systems in nearly 20 countries. The book will be useful to students and teachers of political science, analysts, lawyers and legislators.

Profiles Handbook: conference of presiding officers and secretaries of legislative bodies in India, Lok Sabha Secretariat.

This publication, brought out by the Lok Sabha Secretariat, includes biographical sketches of presiding officers and secretaries of the legislative bodies in India. The life sketches have been prepared on the basis of information received from the presiding officers, secretaries and the legislature secretariats concerned.

Estimate committee of the Indian Parliament, by Shabnam Thakur, Abhijeet Publications, ISBN 9789380031057.

This book covers many aspects of the working and role of the Estimates Committee of the Indian Parliament.

Whip control system in Parliaments: a study in intra-Parliamentary disciplinary control in India and abroad, by B.Goswami, Raj Publishing House, ISBN 9788189326708.

The book covers the origin and historical background of the office of whips in different countries, the constitutional and statutory position of whips in India and abroad; categories of whips and their relationship with other functionaries; status, perquisites and prerogatives of whips in the Indian parliament and state legislatures; and the functions, duties and powers of whips.

Motions and resolutions in Parliament, Lok Sabha Secretariat.

Disqualification of members on grounds of defection, Lok Sabha Secretariat.

Handbook for Members of Rajya Sabha, Lok Sabha Secretariat.

The Handbook is intended to serve as a guide on various aspects of parliamentary practice, procedure and amenities to members. The Handbook also contains information on several other miscellaneous items, which may be of interest to members of the Rajya Sabha.

Handbook for Lok Sabha Members, Lok Sabha Secretariat.

The Handbook is intended to serve as a guide on various parliamentary matters to members of the Lok Sabha, particularly new members.

Rajya Sabha and its Secretariat: A Performance Profile, 2009, Rajya Sabha Secretariat, Rs. 60/-.

International Practices for Approval of Parliamentary Budget, Rajya Sabha Secretariat.

Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha), seventh edition, Rajya Sabha Secretariat.

Directions by the Chairman, under the Rules of Procedure and Conduct of Business in Rajya Sabha, Rajya Sabha Secretariat.

Handbook of Important Decisions concerning Committee Coordination Section, Rajya Sabha Secretariat, Rs. 40/-.

NEW ZEALAND

Māori and Parliament: diverse strategies and compromises, ed. by Maria Bargh, Wellington: Huia, 9781869694050.

From http://www.huia.co.nz/shop&item_id=1273: "This book vividly depicts the strategies and tactics used by Māori politicians, their supporters and opposition to alter Parliament and the ways these have been adapted to New Zealand's changing political arrangements, particularly the Mixed Member Proportional system (MMP) or "More Māori in Parliament".

New Zealand is the only country in the world where the Indigenous people have particular electorates that represent them and where they can choose to be on a general or Māori electoral roll. Throughout history, Māori parliamentarians have looked to foster unity across party lines while still supporting different political loyalties.

Politicians, former parliamentarians, academics and political commentators discuss behind-the-scene deals, pragmatic acts with far-reaching consequences and blunt trade-offs. Their insider stories, frank admissions and humorous anecdotes provide new perspectives on New Zealand's political arrangements.

With respect: parliamentarians, officials, and judges too, by Mark Prebble, Wellington: Institute of Policy Studies, ISBN 9781877347382.

From http://ips.ac.nz/publications/publications/show/293: "With Respect is an important and practical book about the people involved at the heart of government in New Zealand. It covers history, constitutional principles and the law, but it is mostly about people and the roles they play. Recent events in New Zealand are used to illustrate the key issues. The examples include court cases, parliamentary inquiries and debates. Subjects range from the high drama of military deployments to the day-to-day business of parliamentary expenses. Events are brought to life with a combination of wisdom and wit, to give a clear picture of how government really works. With Respect is an invaluable resource for parliamentarians, public servants and students of politics, public law, public policy and public management.

Effective Māori representation in Parliament: working towards a national sustainable development strategy, by Wendy McGuiness Wellington: Sustain-

able Future Institute. From: http://www.sustainablefuture.info/: "This report adds to an ongoing conversation about the conflicting goals apparent in Māori representation—the contrasting desires for separatism and togetherness."

SOUTH AFRICA

HOOR! Hoor! Hansard: honderd jaar debat 1910–2010, by Van Wyk, At, Tafelberg, Cape Town

The above publication in Afrikaans records Hansard's role in the South African Parliament over the last 100 years, with amusing anecdotes and quotes from people who have been closely involved with Hansard for many years. An English version has not been published.

Parliament's role in overcoming inequality and structural poverty in South Africa, by Sean Allen Whiting and Adam Salmon, Institute for Poverty, Land and Agrarian Studies, Cape Town

After the Party: corruption, the ANC and South Africa's uncertain future, by Andrew Feinstein, Verso, London

Our Parliament: pocket guide, by Parliament of the Republic of South Africa, Parliament, Cape Town

UNITED KINGDOM

Parliament and Congress: Representation & Scrutiny in the Twenty-First Century, by William McKay and Charles W Johnson, Oxford.

Although *Parliament and Congress* will serve as an extremely well-informed guide to the practices of both institutions, it turns out, on reading, to be an extended series of essays on how the broad themes of representation and scrutiny developed from the same origins and yet differently on each side of the Atlantic. The authors—a former Clerk of the House of Commons and a former parliamentarian—are well qualified to provide sufficient detailed knowledge and experience to bear on these themes, thus providing their reflections and evaluations with solid, factual backing.

Nodding respectfully in the direction of Kenneth Bradshaw and David Pring's classic comparison (*Parliament and Congress*, 1972), they embark upon an entirely new interpretation of the similarities and differences between the two legislatures, while at the same time providing a necessary updating, four decades later.

The work begins with an historical analysis of the context in which Congress emerged. A codified constitution, a separation of powers and a system of checks and balances was, in time, to set the US legislature on a

different course to that of the UK Parliament, where the executive became ever more firmly entrenched on the benches of both Houses of Parliament. Nevertheless, the authors show that Congress's roots are firmly in the Westminster tradition of parliamentary practice, not least through Thomas Jefferson's *Manual of Parliamentary Practice* with its reliance on British sources including that of John Hatsell's *Precedents of proceedings in the House of Commons*. But while the authors rightly do not lose sight of history, they are also intent on advancing their new objective, which is to evaluate the "transparency, fairness and deliberative capacities" of the two institutions: in short to make a judgement about their democratic credentials in a modern age.

Once the underlying constitutional distinctions are made, the authors proceed with their assessment of transparency and effectiveness by a detailed examination of how the Houses function, how they relate to the executive and how effective their scrutiny actually is. On the way, there is detailed examination of committee work, the legislative process and key issues such as privilege and the ethical standards to which legislators should adhere.

It is difficult in a short review to give a full flavour of the depth and precision of a work covering, as it does, such a broad canvas. However, it is important to note that the authors do not shy away from being critical as well as informative. On the one hand we are warned that "commitment to a deliberative fair and transparent process is in jeopardy in contemporary Congress, especially in the House of Representatives where utilization of party discipline and the unique ability to change rules on an *ad hoc* basis virtually overnight by majority vote, allowing the majority to impose its will at the plenary stage." On the other hand, we are told that the way that scrutiny at report stage of bills in the House of Commons is affected by programming "must test the degree of acceptance of programme motions". Clearly the authors are not in the business of letting their erstwhile political masters off lightly.

The essay on privilege and contempt is a particularly good example of the authors' careful analysis of the underlying similarity of purpose (to enable the legislature in each jurisdiction to function effectively) in the context of different constitutional arrangements since certain matters of privilege derive, in the US system, directly from the Constitution. Nevertheless, in both cases precedent is used to measure the validity of the Houses' prerogatives or exclusions from the ordinary operation of the law. Moreover, freedom of speech, at the centre of modern parliamentary

privilege, is in both cases defined by statute: in Article 1 of the US Constitution and in Article IX of the UK Bill of Rights.

If the constitutional basis of the differences between the two systems is the given, the political context in which each legislature has operated in recent times is not ignored. The fact that one party (the Democrats) controlled the House and the Senate without interruption for many decades has had a stultifying effect on reform; the pendulum swing of government in the UK has provided a steadier basis for building on reform from one decade to the next.

While the book, which will surely stand as the *locus classicus* on the subject for a very long time, is not littered with footnotes, references are not difficult to follow up and a good subject index is provided which would have pleased Jonathan Swift. — Review by Sir Malcolm Jack.

Honour, Interest and Power: an Illustrated History of the House of Lords, 1660–1715, ed. by Ruth Paley and Paul Seaward, Boydell Press, £30, ISBN 9781843835769.

Perfecting Parliament: Constitutional Reform, Liberalism, and the Rise of Western Democracy, by Roger D. Congleton, Cambridge University Press, £29.99, ISBN 9780521151696.

The Origins of the English Parliament, 924–1327, by J. R. Maddicott, Oxford University Press, £32, ISBN 9780199585502.

Victoria Tower Treasures from the Parliamentary Archives, by Caroline Shenton, David Prior and Mari Takayanagi, Parliamentary Archives, £20, ISBN 9780956736307.

Parliamentary Sovereignty: Contemporary Debates—Cambridge Studies in Constitutional Law, by Jeffrey Goldsworthy, Cambridge University Press, £60, ISBN 9780521884723.

Constitutional Futures Revisited: Britain's Constitution to 2020, by Robert Hazell, Palgrave Macmillan, £23.99, ISBN 9780230252134.

The British Constitution: Continuity and Change, an inside view, by Joyce Quin, Northern Writers, £14.99, ISBN 9780955386985.

Britain's Prime Ministers: Power and Parliament (History), by Brian Williams and edited by Gill Knappett, Pitkin Publishing, £4.99, ISBN 9781841653068.

British Political Facts, by David Butler and Gareth Butler, Palgrave Macmillan, £150, ISBN 9780230252295.

Dods Guide to the General Election 2010, Dod's Parliamentary Communications, £125, ISBN 9780905702940.

WALES

Britain Votes 2010, ed. by A. Geddes, Hansard Society, £15.99, ISBN 9780199603275.

Britain Votes 2010 provides a comprehensive analysis of the 2010 general election campaign and its aftermath, exploring how the Conservative–Liberal Democrat coalition was formed. Includes the chapter: *Wales and the 2010 general election* by Jonathan Bradbury at pages 143–57.

Devolution in practice 2010, ed. by G. Lodge, Institute for Public Policy Research (IPPR), £18, ISBN 9781860303357.

This book, the third in IPPR's Devolution in Practice series, explores how devolution has changed the United Kingdom, identifying where policy is diverging and converging across the four nations. *Devolution in Practice 2010* is divided into four parts: 1: Devolution and social citizenship; 2: Devolution in a downturn; 3: Public services and social policy; 4 Devolution and delivery.

Fairness and accountability: a new funding settlement for Wales: full text: Final report: July 2010, by the Independent Commission on Funding and Finance for Wales (known as the Holtham Commission), published by the Independent Commission on Funding and Finance for Wales, unpriced, ISBN 9780750456135.

Gender and social justice in Wales, ed. by N. Charles, Cardiff University Press, £24.99, ISBN 9780708322680.

This collection of essays looks at how the policies developed by the National Assembly for Wales are having an impact on gender inequality and social justice for women in Wales.

Is an English backlash emerging? Reactions to devolution ten years on: February 2010, by J. Curtice, Institute for Public Policy Research (IPPR), unpriced.

The introduction of devolution in Scotland and Wales was one of the most important constitutional reforms implemented in the early years of Tony Blair's government. In this report IPPR looks at English public opinion on devolution.

"Reduce and Equalise" and the governance of Wales Torri a Chysoni? a Llywodraethiant Cymru, by L. Baston, The Electoral Reform Society, unpriced.

The paper analyses the effect that the Conservative–Liberal Democrat coalition's proposals to cut the number of MPs in Westminster would have in Wales, and in particular on the National Assembly for Wales.

Referendum on law-making powers of the National Assembly for Wales: report of

views of the Electoral Commission on the proposed referendum question, by the Electoral Commission, published by the Electoral Commission, unpriced.

Women and parliaments in the UK, by Dr C. Burness, Joseph Rowntree Reform Trust, unpriced, ISBN 9780956514028.

Dr Burness comments on the history of women's representation in the House of Commons, the assemblies of Wales and Northern Ireland and the Scottish Parliament and gives a breakdown of the figures by party.

CONSOLIDATED INDEX TO VOLUMES 75 (2007) – 79 (2011)

This index is in three parts: a geographical index; an index of subjects; and finally lists, of members of the Society specially noted, of privilege cases, of the topics of the annual questionnaire and of books reviewed.
The following regular features are not indexed: books (unless substantially reviewed), sitting days and unparliamentary expressions. Miscellaneous notes and amendments to standing orders are not indexed in detail.

ABBREVIATIONS

ACT	Australian Capital Territory;	NSW	New South Wales;
Austr.	Australia;	N. Terr.	Northern Territory;
BC	British Columbia;	NZ	New Zealand;
Can.	Canada;	Reps	House of Representatives;
HA	House of Assembly;	RS	Rajya Sabha;
HC	House of Commons;	SA	South Africa;
HL	House of Lords;	Sask.	Saskatchewan;
LA	Legislative Assembly;	Sen.	Senate;
LC	Legislative Council;	T & C	Turks and Caicos;
LS	Lok Sabha;	T & T	Trinidad and Tobago;
NA	National Assembly;	Vict.	Victoria;
NI	Northern Ireland;	WA	Western Australia.

GEOGRAPHICAL INDEX

For replies to the annual Questionnaire, privilege cases and reviews see the separate lists.

SUBJECT INDEX

Sources and authors of articles are given in brackets.

LISTS

Members of the Society

Abbreviations: R *retirement,* O *obituary.*

Privilege Cases

** Marks cases when the House in question took substantive action.*

Questionnaires

Reviews