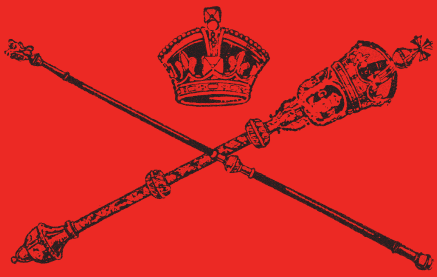

The Table

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

VOLUME 81
2013

£15.00

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EDITED BY
NICOLAS BESLY

VOLUME 81
2013

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

ISBN 978-0-904979-38-5
ISSN 0264-7133

CONTENTS

EDITORIAL

This edition of *The Table* contains a mix of the topical and the more reflective. The first article is by Steven Reynolds, Deputy Clerk of the New South Wales Legislative Council. It is about clerks making mistakes. The article illustrates the importance of accuracy in clerking, and gives some humorous examples of mistakes, including those which have had significant consequences. After examining the causes of clerkly mistakes the article concludes by distinguishing between those mistakes that matter to clerks (a typo in the minutes of proceedings, for example) and those that matter to members (much fewer in number, and essentially those which embarrass the member). The message of this thoughtful and enjoyable piece is that mistakes are inevitable; what is important is constructively to learn from them. The editor has proofread this article with particular care.

The next article records the latest chapter in the perennial saga of House of Lords reform. After decades of debates, committees, votes and white papers, in 2011 the coalition Government at Westminster produced a draft bill providing for elections to the House of Lords for 80% of its members. In order, presumably, to try to obtain widespread support for the draft bill, it was committed to a joint committee of 26 members for pre-legislative scrutiny. Things did not go smoothly. The two chief clerks of the joint committee—Liam Laurence Smyth, Clerk of the Journals of the House of Commons, and Rhodri Walters, until recently Reading Clerk of the House of Lords—tell the story.

The next article is one of two in this edition which give a narrative of an issue of privilege which occupied a considerable amount of parliamentary time. Michael Ries, Deputy Clerk of the Queensland Parliament, recounts how a former member of the Legislative Assembly appeared at the bar of the house as the first prisoner to answer contempt charges—in this instance 41 charges. The case brought to light a number of procedural and logistical issues, which are well told in the article.

The fourth article is a comprehensive study of select committee activity in the House of Lords. Written by Michael Torrance, Secretary to the Management Board of the House of Lords, it begins by examining the historical development of select committees, and ends by explaining the recent expansion of committee activity, together with innovations in their structure. It is an illuminating read.

The next article also covers the history and development of an important aspect of parliamentary procedure at Westminster: in this case, public petitions to the House of Commons. Margaret McKinnon, until recently Clerk of Public

Petitions at the House of Commons, gives an interesting account from the beginning of petitions, perhaps in the 12th century, to the present day.

The final article covers another significant privilege case. Anne Stokes, Senior Clerk at the Legislative Assembly of Ontario, relays how a debate about the location of two gas plants led to the resignation of the Premier and a cabinet minister, an unexpected prorogation, a *prima facie* finding that there was a case of privilege and an investigation by a committee.

This edition also contains the usual range of notes about general parliamentary developments and privilege. The annual comparative study was on the scheduling of business in the chamber, and has revealed some notable differences in practice.

The editor is grateful to all who have contributed to what is hopefully an interesting edition.

Steven Reynolds' article (on mistakes by clerks) is based on a paper presented to a conference of the Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT). The editor is keen to strengthen ties between material in *The Table* and discussions at conferences of Commonwealth clerks, particularly SOCATT. Any contributions based on issues covered at such conferences would be gratefully received.

MEMBERS OF THE SOCIETY

New South Wales Legislative Assembly

On 25 May 2012 **Helen Minnican** was appointed Clerk-Assistant—Committees & Corporate.

New South Wales Legislative Council

On 10 February 2012 **Stephen Frappell** was appointed Clerk Assistant—Procedure.

On 10 August 2012 **Beverly Duffy** was appointed Clerk Assistant—Committees.

Alberta Legislative Assembly

Dr W J David McNeil, Clerk of the Legislative Assembly of Alberta, received the Queen Elizabeth II Diamond Jubilee Medal on 20 November 2012 from His Honour Col. (Ret'd) the Honourable Donald S Ethell, Lieutenant Governor of Alberta. The Diamond Jubilee Medal is a national honour recognising citizens who have made significant contributions to their communities.

Dr McNeil has been the Clerk of the Legislative Assembly of Alberta since 1987. His prior public service includes duties with the Alberta Government Personnel Administration Office and the Government of Saskatchewan. He has been actively involved with organisations such as the Commonwealth Parliamentary Association, Athabasca University and the United Way.

Canada House of Commons

The Law Clerk and Parliamentary Counsel, **Robert Walsh**, retired in January 2012. He had been a Table Officer since 1993.

In June 2012 **Jean-Philippe Brochu** was appointed as Deputy Principal Clerk and replaced **Mrs Marie Danielle Vachon** at the Table Research Branch.

British Columbia Legislative Assembly

A plaque commemorating **E. George MacMinn**'s 54 years as a Table Officer was unveiled on 8 August 2012 in the "Clerk's Courtyard" of the British Columbia Parliament Buildings. Mr MacMinn served as Clerk Consultant from 1 September 2011 to 31 August 2013, pursuant to a motion adopted by the House on 2 June 2011. In attendance at the unveiling were delegates participating in the annual professional development seminar of the Association of Clerks-at-the-Table in Canada.

United Kingdom House of Commons

Robert Rogers, Clerk of the House, received a knighthood in the New Year's honours list 2013 (published on 29 December 2012).

Sir Donald Limon, Clerk of the House from 1994 to 1997, died on 26 July 2012.

"YOU HAVE COMMITTED A GREAT OFFENCE AND HAVE BUT A WEAK ANSWER TO MAKE FOR YOURSELF": WHEN CLERKS MAKE MISTAKES

STEVEN REYNOLDS
Deputy Clerk, New South Wales Legislative Council[1]

"I never made a mistake in my life; at least, never one that I couldn't explain away afterwards." (Rudyard Kipling *Under The Deodars*)

"Success does not consist in never making mistakes but in never making the same one a second time." (George Bernard Shaw[2])

Mistakes matter. To clerks advising members in the chamber, mistakes matter a lot. With parliamentary proceedings being broadcast, webcast and recorded, any trip up or omission can become a very public event. The pace of proceedings and the imperative to keep the business of the House moving reduces the time to pick up errors and recover from mistakes.

The consequences of mistakes can be significant. Mistakes can affect legislation passing through the House, accidently thwart tactical moves by an opposition and create precedents which will affect the operation of the House in years to come. Professionally, repeated mistakes will lower the confidence of members in the officer providing advice—one mistake may be easily forgiven; several mistakes less so.

If this is distressing to anyone beginning work in the chamber, spare a thought for predecessors in the role, who lived in a far less forgiving age. In the early 17th century, when the role of the clerk was growing in range and responsibility, errors were certainly not taken lightly. A complaint was made to the Committee

[1] This article was first presented as a paper to the 2014 professional development conference of ANZACATT (Australia and New Zealand Association of Clerks-at-the-Table). The author would like to thank the following for their assistance in locating examples for this article: David Blunt, Clerk of the Parliaments, New South Wales Legislative Council; John Evans, former Clerk of the Parliaments, NSW Legislative Council; Gareth Griffith, Manager, Parliamentary Research Service, NSW; Victoria Vaughan-Smith, Assistant Manager—Reference, NSW Parliamentary Library; Liam Laurence Smyth, Clerk of the Journals, House of Commons; Andrew Kennon, Clerk of Committees, House of Commons; Rhodri Walters, Reading Clerk, Clerk of Outdoor Committees and Head of Corporate Services, House of Lords; and Nicolas Besly, editor, *The Table*.

[2] While this quote is extensively repeated on the internet it does not appear in the *Oxford Dictionary* of *Quotations* and never appears on the web with a source reference. It is possible that this quote is in fact erroneously attributed; the author would be grateful to anyone who can provide a source from any of Shaw's writings.

of Privileges that a clerk had made a mistake in a writ by leaving out certain words. The Lord Chancellor stated:

> "You have committed a great offence and have but a weake answer to make for your self for there went out writs in the new Parliament in the years 1614 …"

For this fault it was ordered "that by the howse he should be committed to the Fleete till the Howse's pleasure weare further knowne."[3]

In that period it was easy to be perceived as making a mistake as a clerk. The clerk Henry Scobell, in the turbulent era of Cromwell's Parliament, innocently inserted into the Journal of the House for 20 April 1653: "This day his Excellency the Lord General dissolved this Parliament." Factually correct though the statement was, it was perhaps a misreading of the times and of Cromwell's view of his actions, because the clerk was called to the bar of the House in 1659 to be rebuked for a breach of privilege, and his words ordered to be erased as a forgery.[4]

Times changed but tolerance for mistakes by clerks changed more slowly. In 1882 a less harsh but still embarrassing approach was taken by a presiding officer in the NSW Parliament when the Tamworth Gas and Coke Company's Bill was returned from the lower house with a message indicating, ironically, the word "careful" had accidently been substituted for "lawful":

> "The President regretted that an error had been committed by the clerk, and he hoped that more care in the preparation of messages would be taken in future."[5]

The early clerks of the New South Wales Legislative Council dutifully recorded their mistakes (or the ones they would admit to) under the helpful index heading of "errors", which included:

- inserting the wrong year of Her Majesty's reign in an Act assented to;[6]
- omitting an amending clause limiting crown land leases to five years when printing a bill;[7]
- distributing by error a pamphlet containing a speech made by the Treasurer;[8]
- various mistakes in messages sent to the Assembly, requiring reconsideration.[9]

No doubt in a spirit of fair mindedness, they also took to recording the errors

[3] From Camden Miscellany, vol. XX p 7 and p 8, quoted in J. R Stevenson "the Office of the Clerk of the Parliaments in New South Wales", APSA News vol. 5, no. 3 (1960), available through the NSW Legislative Council.

[4] Williams O. C. "The Clerks of the House of Commons" *The Table* vol 2, 1933, p 26.

[5] LC Debates, 4 October 1882, p 697.

[6] LC Consolidated Indexes, vol. 1, 1856–74, p 338.

[7] LC Minutes of Proceedings, vol. 73, 1908 (2).

[8] LC Debates, 1896, vol. 55.

[9] LC Consolidated Indexes, vol. 1, 1856–74, p 338; vol. 2, 1874–93, p 419.

of presiding officers and chairs of committees under the same subject heading.

While mistakes are important, they are common to all parliaments. Although inconvenient and potentially embarrassing, most are far from catastrophic. The approach taken to mistakes is important. Dealt with honestly they can be an opportunity to learn and minimise future mistakes. Alternatively, the attempt to recover from a mistake can further weaken the confidence of members and the staff of the parliament. This article briefly examines examples from the UK where mistakes by parliamentary officers, operating in difficult circumstances, had publicly embarrassing consequences. Reflections are then made about the causes of mistakes and approaches to minimise their recurrence, so far as that is possible. The paper concludes with a plea for a culture where mistakes are treated as an opportunity to learn to avoid making similar mistakes in the future.

The Acts of Parliament (Correction of Mistakes) Bill

The strange and ultimately futile attempt by the UK Government in the 1970s to introduce the Acts of Parliament (Correction of Mistakes) Bill is an example of an overreaction to an one-off mistake at time of an unusually heavy and complex parliamentary workload. Mistakes differ in their consequences: a simple ad hoc mistake such as leaving out a line of text matters little if it is a conference paper, but matters a great deal if it is a bill being certified by a clerk for assent. While the immediate error was quickly rectified, the Government sought to produce a quick fix to future instances of human error by clerks and members. The House of Commons soon concluded, however, that the solution proposed was a bigger mistake than the situations it sought to fix.

The story began, like many parliamentary mishaps, at the end of a parliamentary session. In November 1976 the House of Lords was faced with "the six most important and controversial government bills of the session 1975–76".[10] One of these controversial bills was the Rent (Agriculture) Bill: "a Bill to afford security of tenure for agricultural workers housed by their employers and their successors". Received from the House of Commons on 27 July, the second reading debate took four and half hours before the question was put on 5 October. This was the precursor to a four-day committee stage held between 20 to 29 October.

During the committee stage 80 amendments were agreed, then during the debate on the report stage a further 81 amendments were tabled on 11 November. One of these later amendments, made by the government and agreed by the House, contained the seed of future trouble. The bill was reprinted as

[10] M. G. Pownall, "Westminster (Mistakes in Acts—Rent (Agriculture) Act 1976) in *The Table* Vol XLV, 1977, p 128–30. Most of the factual detail regarding the bill is derived from this source unless otherwise attributed.

amended on report, and passed after third reading on 15 November.

As detailed in the 1977 volume of *The Table*,[11] that day was exceptionally busy for the staff of the Public Bill Office in the House of Lords: Royal Assent had been given to 17 bills, while complex amendments were being considered to a different bill where the Commons had disagreed with 50 amendments proposed by the Lords. In this procedural hothouse on the evening of 15 November the officers of the Public Bill Office had to convert the line references for the 129 amendments agreed to the Rent (Agriculture) Bill in the House of Lords to match the references in the original bill brought form the Commons. During this matching process the government amendment was wrongly converted and three lines of text were incorrectly removed from the bill, which was then sent back to the Commons without the error being discovered:

> "Once the mistake was made there was little time to put it right, for the session had only a few days to run and Bills were moving between the two Houses with alarming rapidity."[12]

The result of the incorrectly transcribed amendment was to undo a significant time limit set on the decision-making authority in the bill: "Not to make too pretty a point, it made [the bill] into a load of nonsense!"[13]

The amendment, in its incorrect form, was agreed by the House of Commons on 17 November, although several other amendments were disagreed to and returned to the House of Lords on 18 November. The Lords then considered and did not insist on the amendments disagreed to, and the bill was submitted for Royal Assent on 21 November 1976 and received it the following day. The incorrect form of the bill had therefore been agreed by both Houses.

It was only at the stage of printing the Act that the Public Bill Office in the Lords discovered their mistake and its impact on the bill. The Clerk of the Parliaments did not consider he had the ability to rectify the mistake contrary to the form agreed to by both Houses. The only way the error could therefore be corrected was by an amending bill, which was introduced in January 1977, the Rent (Agriculture) Amendment Bill. This successfully restored the intent of the House by amending the bill as originally intended.

The debate is interesting for the reflections of various members on mistakes by clerks:

> "I think we can all recognise that an essentially minor slip of this kind can and is almost bound by the law of averages to happen from time to time. Indeed, it is amazing that it does not happen more often. It is really very rare that this happens and I feel that is a great credit to the work of the officials in both

11 *Ibid*., p 128.
12 *Ibid*., p 128.
13 HL Debates, 1 February 1977, col 728.

Houses."[14]

> "I feel that we should most certainly say this afternoon that your Lordships' House is very well served by its clerks and that, although it may appear at first sight that this is an error which is to be attributed to them, we should not forget that not only were 129 amendments attached to the Rent (Agriculture) Act but that a very substantial number of other bills were in their hands at the same time. To quote one example, no less than 169 amendments were attached to the Health Services Bill, all of which must be accurate."[15]

Certainly these members took a more realistic approach than some of their 17th century counterparts. The lesson most reasonable onlookers would draw from this incident is that mistakes are likely to happen when parliaments consider a large volume of complex legislation within timeframes where proper checking cannot take place. What the executive took from the incident, however, was that there needed to be better ways quickly to change errors in legislation. The response was, in the words of one member: "A bill designed to allow ministers to correct mistakes in rotten legislation that had been rushed through the House."[16]

On 27 April 1977 the Government introduced "a Bill to facilitate the Correction of Mistakes in Acts of Parliament", or the Acts of Parliament (Correction of Mistakes) Bill in its short title. It enabled the clerk to lay before both Houses a statement that a mistake had been made which, in his opinion, affected the text of an Act. This tabling of a statement by the clerk would become the trigger for the minister to table a draft order "making such changes in the Act to which the statement relates and such consequential changes in any other enactment as appear to him required in order to bring the law into conformity with what, in his opinion, it would be had the mistake not been made" (clause 1(3)). The purpose was to avoid the need for amending legislation to be brought before Parliament when an error such as that made in the Rent (Agriculture) Bill was made.

Introduced on 27 April, the bill was withdrawn on 11 May 1977 without debate. It was reported that the opposition was suspicious of the intent behind it.[17] The Lord Chancellor withdrew the bill from government business on the ground that as a purely technical bill to rectify clerical errors it was undesirable to proceed if it did not have support from the opposition.[18] The decision to withdraw the bill was reported in *The Times* with the headline: "Mistake Bill was

14 HL Debates, 1 February 1977, col 728.
15 HL Debates, 1 February 1977, cols 729–30.
16 Norman Tebbit, HC Debates, 25 May 1977, vol 932, col 1434.
17 "Mistake Bill was a Mistake: Minister Admits", *The Times*, 11 May 1977.
18 Pownall, *op. cit.*, p 130.

a Mistake: Minister Admits".

In response to the attempt to pass the bill, the member for Chingford, Norman Tebbit MP, on 25 May sought leave to introduce the Limitation of Legislation bill: "a bill to stop others from introducing bills".[19] Criticising the tendency of all governments to rush through too much detailed legislation in too short a time, he referred to the "legislative incontinence" of the Parliament:

> "[although] incontinence implies an unwilling or unintended dribble. This Parliament is no unintentional dribbler of legislation. It pours out the stuff—presumably by intent—year after year."[20]

Complex, high-volume work undertaken in short timeframes is a challenge for the most skilled workers. Clerks and Table Office staff are experts, and the experience and repetition of tasks over a number of years allows them, when under pressure, to operate at a level of proficiency in high-pressure situations such that mistakes are rare.

But they are mortal, and mistakes are and will be made. Some will not be noticed by anyone other than the persons who made and detected the mistake; few mistakes will face the embarrassment of correcting legislation. It is notable that even in the case above it was the Public Bill Office, rather than anyone external, who first detected the mistake.

Mistakes in *Erskine May*

The above is a rare documented example of an error made by parliamentary staff—but there are others. For instance in *Erskine May* there is an example where the heading alone is enough to send a chill down the spine of any clerk: "Royal Assent Given by Mistake".[21] In this instance there were two bills in 1844 covering the same topic: the Eastern Counties Railway. One had passed through all its stages, while the other was awaiting further debate in the House of Lords. Unfortunately the wrong bill was sent for and given Royal Assent on 10 May. As with the Rent (Agriculture) Act 1976, corrective legislation was required. This had the effect that, on the correct Eastern Counties Railway Bill being given Royal Assent, it would have the effect as if it had been agreed to on 10 May, and the wrong Eastern Counties Railway Bill would then be deemed not to have received Royal Assent.

May also provide examples where bills covering similar subject matter had their titles incorrectly transposed, so that Royal Assent was given in each case to a bill where the title belonged to a different bill. In 1809 the error was made with two bills both relating to the town of Worthing; in 1821 two local Acts were

19 HC Debates , 25 May 1977, vol. 932, col 1431.

20 *Ibid.*

21 Jack, M (ed.), *Erskine May Parliamentary Practice* (24th edition, 2011), p 666.

similarly mixed up and later corrected by a new Act.[22]

While these examples may be comical to read, they should be understood like the 1977 example as the almost inevitable consequence of a high volume of legislation:

> "During the period from 1809 to 1814, for instance, the average number of private bills passed *per year* was nearly 300—how many were projected and not passed, of course, we do not know. But it is clear that with business going through at such as dizzy rate something had to suffer … and in this case it was quality and accuracy that became the casualties. No matter with what celerity bills were rushed through their required stages; no matter with what error of amendment or ingrossment they were brought forward for their third and final reading, there still remained at the end of each session a backlog of private business that had to be completed before the close. And needless to say, those that left were inevitably pushed through with scant regard for the proprieties, and the standard of legislation suffered accordingly. Half-baked and half digested bills, many of them completely unchecked, passed into law as Acts of Parliament, and the chaos that reigned increasingly inside the House bid fair to spread into the courts."[23]

Types of errors by clerks

The types of errors made by clerks in parliamentary proceedings can take a number of forms and have different causes. As indicated above, the consequences can be very public, but in the large majority of cases the errors are either detected, or pass through without being noticed by most or all participants in the process. While not an exhaustive list, the causes include:

- volume and pressure of work, particularly at the end of parliamentary sessions;
- fatigue;
- inexperience;
- lack of attention or distraction;
- equipment or technological failure;
- judgement errors.

Volume of work

Volume of work errors are possibly the most common source of mistakes. Certainly in Australian jurisdictions the last two or three weeks of each parliamentary session is a time of very large legislative programmes and long sittings. During the last two sitting weeks of 2001 the NSW Legislative

[22] *Ibid.*, p 666.
[23] Marsden P, *The Officers of the Commons 1363–1965*, pp 68–69.

Council received 21 bills from the Assembly, introduced three of their own and concluded consideration of 37 bills. The House sat for more than 42 hours over three days to conclude the session. The following year it considered 47 bills in the final two-week period, representing 66% of the bills passed during that session.[24] This pales into insignificance compared to the final days of the 43rd Federal Parliament. In the final sitting week the Senate had 42 bills listed on its notice paper, and in the end over 50 bills were passed. The week before, reportedly, 23 non-controversial bills were passed in less than two hours.[25]

The dilemma is that the volume and speed of work means it is much easier for details to be overlooked. Perhaps more important than the initial mistakes that are made is that there is little time for mistakes to be detected in the normal checking process. The type of complex transposition of amendments in the Rent (Agriculture) Bill ideally requires careful checking by a person or persons separate from the officers involved in the original transposition. It is not clear whether this occurred, but would be no surprise if the omission of this stage was the primary cause of the error—certainly when given more time, after it was too late, the Public Bill Office discovered their earlier error. When work pressures are at their highest the need for existing systems of checking to continue, at an accelerated pace, is even more important.

Fatigue

At these times, a related cause of error is more about the physical rather than mental limits of parliamentary officers. It is not uncommon in many jurisdictions for several days at the end of session to involve long nights, with debates on multiple bills being heard until the early hours of the morning, followed by a repeat the next day. In the NSW Legislative Council the final three weeks of the sitting period for 2013 saw back to back sittings after midnight for two of those weeks, while controversial bills can involve sittings up to 5 am, followed by the next day's sitting beginning a few hours later.[26]

Tired, sleep-deprived clerks make mistakes more frequently than well-rested officers. There is strong scientific evidence that complex tasks, such as driving a car, are affected by tiredness, with fatigue contributing to more than 20% of road crashes.[27] Evidence suggests an association between increasing fatigue

[24] The concentration of government bills into the final sitting period has declined somewhat in recent years since the regular introduction of a cut-off date provision for bills to enter the House, similar to that used in the Senate.

[25] Crook, A, "The final countdown: Parliament's pre-election laundry list", *Crikey.com.au*, 24 June 2013.

[26] See, for example, debate on Victims' Rights and Support Bill, *LC Minutes*, 29 May 2013, concluding at 4.45 am.

[27] Vicroads—fatigue and road safety website, 2012.

and declines in cognitive function, impaired performance and increased error rates.[28] In fact being awake for 20 hours is said to impair performance to the same level as having a blood alcohol level of 0.1, or more than four standard drinks consumed within two hours. For the highly complex, mentally demanding work undertaken by clerks at the table the conclusion is that fatigue will lead to more errors.

Systems of checking should be able to detect errors, but not if the checkers themselves are working at 4 am for the second night in a row. In this respect the experiments by Houses such as the Federal House of Representatives and the Victorian Parliament in fatigue management and rotation are to be applauded as measures which not only address work health and safety issues but will reduce errors.

Inexperience

Inexperience is a significant cause of error. The understanding of parliamentary law, procedure and precedent, and detailed understanding of specific standing orders is a challenge which takes many years to acquire. To become an expert a long apprenticeship is required, observing at close hand the work of experienced clerks providing advice in real time in the chamber and being supervised in providing that advice. While many events occur in a pattern each sitting week, even the most experienced clerks can find themselves in situations where a question has arisen for the first time in their career. In the current workplace with great mobility, faster career paths and greater choices, many officers find themselves in the chamber expected to give advice after very limited exposure to the knowledge base they are required to draw from. Mistakes will be made more frequently by inexperienced clerks.

This is no different from any other profession or form of expertise. Nobel Prize winner Daniel Kahneman, in his bestseller *Thinking, Fast and Slow*[29] contrasts "fast" thinking—fast, automatic intuitive thinking—and "slow" thinking, which is more logical, painstaking and slow. The first type is a result of frequent exposure to a situation or type of problem, whereas the second occurs when a problem is unusual and requires deliberate and effortful thought. The typical advice required in the chamber requires "fast" thinking, but for one new to the situations they are facing providing advice will usually require "slow" thinking if errors are to be avoided.

Addressing inexperience as a source of potential error is quite different to minimising other errors. Succession planning is of course important, as it

[28] Dawson D, MCulloch K, *Managing Fatigue: It's about sleep—stupid*, cited in draft Fatigue Management factsheet, Parliament of Victoria, September 2013.

[29] 2011, Penguin.

always has been, but it is not the whole answer. Accelerated learning needs to match accelerated career paths. The individual needs to put in time to learn and master the basic understandings required, and experienced staff need to focus on sharing their knowledge reflectively and intensively. Above all a learning environment needs to be cultivated, an important part of which is the sharing honestly of mistakes made and solutions to them. When all else fails, having a telephone in the chamber with the clerk at the other end of the line has proven a lifesaver for the author of this article.

Equipment failure

If inexperience is an increasing factor in recent times, equipment failure must be even more so. Chambers once relying upon little more complex than a notepad or an hour glass now have electronic timers, microphones, cameras and broadcasting systems, webstreaming, pagers, laptops and handheld devices. All of these can and do fail, both of their own accord and as a result of "user error". For instance, the Clerk of the Journals in the House of Commons, Liam Laurence Smyth recalls:

> "that as a fairly new Table Clerk, I whispered to the chair that I had accidentally pressed the timer too hard, giving a member extra speaking time. The Deputy Speaker replied that if anyone queried it, he'd blame the error on a digital malfunction—"but, Liam, we won't let them know whose digit it was!""[30]

In the NSW Legislative Council the division bell and the bell to adjourn the House are located side by side at one end of the Table, and it has not been unknown for staff new to the chamber to accidently flick the wrong switch and appear to be sending proceedings to a dramatic early close.

But many errors are the domain of engineers, contractors and electricians, with clerks and members as innocent victims. In New South Wales in 2011 a new, state-of-the-art committee room experienced initial glitches with the broadcasting system. After an arduous committee hearing the room was cleared and the broadcast was switched off by the staff, but unfortunately due to a connection error the equipment continued to broadcast throughout the building, including the press gallery, during which time a member of the committee discussed with another member a visit to a gynaecologist.[31]

Equipment failure is probably the area in which clerks have least ability to reduce errors, other than ensuring their engineering and IT staff regularly test equipment and that staff are trained in its use. But it is likely that these will

[30] Laurence Smyth, L, email to author, 28 October 2013, used with his kind permission.

[31] Consistent with the discretion shown by the NSW press gallery, this was duly reported in a gossip column.

continue to be some of the errors which cause most embarrassment to members and, as a consequence, clerks and other parliamentary staff.

Distraction errors

Errors that can be made by even the most experienced clerks involve distractions, or momentary failure to pay attention. A member talks to the clerk in the chamber just at the time that a member in debate stands and fails to move the correct motion, or the clerk only hears the last part of a point of order taken and provides incomplete advice to the chair. New sessional orders can be source of trip-ups, if a clerk temporarily forgets the changes to the existing standing orders. The nature of parliamentary proceedings is that long periods of relative procedural inactivity (such as routine second reading debates) can be suddenly interrupted by a series of quick proceedings—reporting a message, tabling a document, postponing an item, suspending standing orders—in rapid succession. While experience assists in anticipating these, a succession of events increases the likelihood that something important may be overlooked.

The most effective strategy to minimise such mistakes is to accept that a clerk is only human and cannot concentrate fully on three things at once. It is the responsibility of other clerks at the table, and staff watching proceedings, to pick up what the distracted clerk misses. Mistakes of this type are collective responsibilities, while ultimate responsibility may lie with the senior officer and should not be shirked.

Judgement in responding to errors

There is another category of error which is not dealt with in this paper, but is extremely important, as the example above of poor Henry Scobell and Oliver Cromwell illustrates.[32] Successful officers at the table require good judgement, a keen sense of when it is appropriate to intervene and give advice or when to do so is being "political". The balance between upholding the procedures and precedents of the House and having a pragmatic understanding of the will of current members is crucial. Too far in one direction leads to expediency and the rights of the minority of members being ignored; too far in the other ultimately can lead to the clerk being ignored. As expressed by a former UK House of Commons Speaker:

> "In any case a Speaker who allows clerks at the Table to feel that they are running Parliament and that the Speaker could always be relied upon to accept their advice would soon lose the respect both of the clerks and of

[32] The unfortunate incident of the journal entry was not a one off—he has been described as "one of those unfortunate persons who, in doing what they conceive to be right, contrive to incur everybody's censure", Williams, *op. cit.*, p 26.

> Members of Parliament ... If [the members] wanted the Clerk to be the Speaker then they should appoint the Clerk as the Speaker."[33]

This is really the subject of a separate paper, and one this author would not be willing to write. It is very difficult for anyone outside the circumstances of the decision-making to determine what is good judgement and what is poor judgement in the context of the role of a clerk.

Good judgement is relevant, however, in the way the errors discussed above are responded to. No system in the world has found a way of eradicating human error. When an error occurs good judgement is required by the clerk and senior management as to whether it requires a systemic response—such as establishing a new layer of checking—or whether it is an ad hoc mistake explained by the circumstances, such as a lapse in concentration at 3 am. Applying a systemic response to a one-off mistake is likely to create its own problems—the Acts of Parliament (Correction of Mistakes) Bill is a good illustration.

A culture of learning from mistakes

The best way to avoid future error is to learn from past error. This is particularly true of errors caused by lack of experience. A parliamentary officer repeatedly making exactly the same mistake is in the wrong role, but making mistakes is unfortunately part of learning. Responses to learning from mistakes differ. One approach is to encourage "perfection through fear", where staff come to dread the personal consequences of making a mistake. The aim of this approach is to minimise errors. However, adding to the personal embarrassment of an individual the anticipation of anger or a dressing down from their senior has an important consequence that works against reducing error. Individuals will keep their mistakes largely hidden from their colleagues. Those colleagues, unaware of what has occurred, may make similar errors in future, not having been sensitised to them or having learnt from their colleagues. A worst-case scenario would have officers actively concealing their mistakes for fear of their senior officers' reaction.

The most important thing about mistakes is that they are discovered quickly. To that end, it is desirable that house departments have a culture where people check each other's work and readily share mistakes when they occur. If mistakes are seen as something to avoid but not a moral failing they are more likely to be revealed to the clerk. Of course this requires the clerk to set the tone by sharing their own mistakes on the rare times they occur. If staff assume the clerk or other senior officers are infallible, the consequence will be that, on those

[33] Thomas, G, *Mr Speaker: the Memoires of Viscount Tonypandy* (Century Publishing: 1985) pp 217–18.

occasions that more junior staff pick up an omission or error by a senior officer, they will not check whether this was indeed an error.

Two current clerks from the Commons provide examples of how a culture of learning from mistakes can work:

> "As the senior Table Clerk on duty at the end of Wednesday sittings, I fairly often send an end-of-day email to the Clerk of the House, copied to other Table Clerks, to let them know anything of consequence, especially if it might have ripples for the following day ... [he then details a procedural mistake he had made] … In that case, a frank admission by me to colleagues of this mistake was followed a lively discussion on whether we ought to get the standing order itself revised or repealed as indefensible/unworkable/obsolete/immaterial."[34]

> "We … try and encourage people to share their near misses and minor collisions, as well as to 'fess up to them with their chair asap. This requires the tone to be set from the top."[35]

The way in which a culture of learning from mistakes can be developed is many and varied, and mechanisms such as end of sitting week debriefs, precedents files and so on are examples of means to an end. The most important contributor is the attitude of senior officers, how they act when mistakes occur—both those rare mistakes they are responsible for and those mistakes made by their staff.

The mistakes that matter to members

There is a final point which should not be overlooked. The mistakes that matter most to members are far narrower than those which matter to clerks. Clerks are rightly concerned about mistakes in documents, minutes and journals, errors which could then become precedents, failures to follow the standing orders and other irregularities in procedure. The majority of members simply want to pursue their political outcomes without being personally embarrassed in front of other members in the chamber by their lack of knowledge of parliamentary procedure. The timeliness of advice is in many cases more important to members than accuracy—as shocking as that may sound. A member speaking a second time in a debate is not so much concerned that they are in breach of the standing orders—their real concern is the embarrassment if someone points that out and they are sat down mid-speech.

In this regard it is interesting that in the debate over the amending legislation in 1977 the positive and understanding comments about the work of the clerks

[34] Laurence Smyth, L, Clerk of the Journals, House of Commons, email correspondence to author, 28 October 2013.

[35] Kennon, A, Clerk of Committees, House of Commons, email correspondence to author, 29 October 2013.

fell away a little when the government's heavy legislative agenda was blamed for the original error:

> "… before the noble Lord sits down I should like to ask him whether, on the basis of a clerk's mistake, it is really necessary to hang a political polemic against the Government?
>
> **Several Noble Lords**: Yes, yes."[36]

When a mistake in advice or an omission or failure to detect something causes a member embarrassment the person responsible or a more senior officer should apologise in some form. Members are very accountable in a public way for their mistakes, and it is crucial to their confidence in the advice they receive that there is accountability from parliamentary staff. Impartiality is a vital quality that members seek in their clerks; it is demonstrated by the way parliamentary staff respond in situations such as this.

Mistakes that don't matter to members

Members want their clerks to be authoritative in their advice, and for this they will forgive the occasional mistake. However, too many mistakes will undermine faith in the authority of the advice. It is important therefore not unnecessarily to highlight errors that are not important to members. This is not inconsistent with the internal culture described above. Staff need to be rigorous in detecting errors, sharing their mistakes and ensuring lessons are learnt. But this learning through sharing is irrelevant to the member, who only desires the outcome of fewer errors. There is therefore no need to apologise to a member for errors of which they are not greatly concerned or barely aware. Errors of detail in many cases are of little interest to the political and policy outcomes sought by members, important as they may be to parliamentary clerks.

Internally it involves a recognition that confidence of the members in the advice they are provided is vital, and a professional approach is required to maintain that confidence. To some extent it is recognition that in terms of the embarrassing mistake, both the member and the clerk are in it together—"sending to the fleetes" is no longer an option.

[36] HL Debates, 1 February 1977, p 730.

FAILING BETTER: THE HOUSE OF LORDS REFORM BILL

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"All of old. Nothing else ever. Ever tried. Ever failed. No matter. Try Again. Fail again. Fail better." (Samuel Beckett, *Worstward Ho.*)

The proposals and their gestation

The history of attempts to reform the House of Lords is long, with a few successes but many more failures. The preamble to the Parliament Act 1911 notoriously states, "it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation ..." This aspiration—inserted to placate Sir Edward Grey, the Foreign Secretary—rang hollow even in 1911. Given the lack of consensus on what would be a perfectly reformed House of Lords, loaded terms such as "success" or "failure" are probably out of place: better to distinguish between the many changes mooted and the fewer changes implemented.

Among the implemented changes, the Parliament Act 1911, as amended by the Parliament Act 1949, remains a key statutory constraint on the legislative powers of the two Houses, giving primacy in making law to the Commons but preventing the Commons from postponing the end of a Parliament without the consent of the Lords.[1] The vast majority of the current members of the House of Lords are life peers appointed under the Life Peerages Act 1958. An article by Michael Davies in *The Table* described the substantial change brought about by the House of Lords Act 1999, which removed the right of all but 92 hereditary peers to sit in the House of Lords.[2] Since then, another implemented change was the creation of a separate UK Supreme Court and the consequent departure of the Law Lords, which was the subject of an article

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1 This provision has been supplemented by section 1(5) of the Fixed-term Parliaments Act 2011, which subject to certain exceptions fixes the duration of a Parliament at five years.

2 House of Lords Reform: Hereditary Peers, by Michael Davies, *The Table*, volume 67 (1999).

by Brendan Keith in *The Table*.[3] This latter reform addressed both the powers and the composition of the upper chamber: with the end of its judicial function, there was no longer a requirement for the most senior working judges to sit in the Lords.

In general, however, powers and composition are intimately linked in a way that tends to frustrate proposals for change. The 2011 draft House of Lords Reform Bill, which led to the 2012 House of Lords Reform Bill, must be considered another "failure"—change mooted but not implemented. The prospects for reform seemed brighter for a moment in 2011 than for many years, owing to the unique conjunction of political forces expressed in the Conservative–Liberal Democrat coalition Government in May 2010. The inertia of the Conservative party, temperamentally unenthusiastic about constitutional tinkering, was at least temporarily yoked to the driving force of the Deputy Prime Minister, who was not only the Leader of the Liberal Democrats, a party committed to reform as heirs to the authors of the Parliament Act 1911, but who had also been given the constitutional reform portfolio in Government. The Labour movement, now in opposition, had been pressing for reform of the Upper House for more than a century.

Furthermore, the 2011 draft House of Lords Reform Bill was able to draw upon a substantial recent history encompassing a Royal Commission, two joint select committees, several Government white papers as well as pamphlets from backbench and cross-party groups, listed below, which might have been taken, optimistically, to indicate an emerging consensus for change.

1998	White paper *Modernising Parliament: Reforming the House of Lords*
1999	Constitutional Commission on options for a new Second Chamber, chaired by Lord Mackay of Clashfern
2000	A Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham
2001	White paper *Completing the Reform*

[3] The Law Lords Depart: Constitutional Change at Westminster, by Brendan Keith, *The Table*, volume 78 (2010). Other recent articles in *The Table* dealing with the House of Lords include: Hereditary Peers Elections, by Michael Davies, *The Table*, volume 68 (2000); Hereditary Peers' By-election, by Anna Murphy, *The Table*, volume 71 (2003); and The Impact of the Parliament Acts 1911 and 1949 on a Government's Management of its Legislative Timetable, on Parliamentary Procedure and on Legislative Drafting, by Rhodri Walters, *The Table*, volume 80 (2012).

2002	First report of the Joint Committee on House of Lords Reform, 2002–03
2003	Both Houses voted on a series of resolutions relating to the composition of the House of Lords. The Lords voted for a fully appointed House, but the Commons votes were inconclusive.
2003	Consultation paper *Constitutional Reform: next steps for the House of Lords*
2004	A working group of Labour peers, chaired by Lord Hunt of Kings Heath, publish *Reform of the Powers, Procedures and Conventions of the House of Lords*
2005	A cross-party group of MPs (Ken Clarke, Robin Cook, Paul Tyler, Tony Wright and Sir George Young) publish *Reforming the House of Lords: Breaking the Deadlock*
2007	White paper *The House of Lords: Reform*
2007	Both Houses voted again on a series of resolutions relating to the composition of the House of Lords. As in 2003, the Lords voted for a fully appointed House. In 2007 the Commons decided in favour of an 80% or 100% elected House, although 71 members of the House of Commons voted for both a fully elected House and a fully appointed House.
2008	White paper *An Elected Second Chamber: Further reform of the House of Lords*

The coalition Government published their white paper, *House of Lords Reform Draft Bill* [4] on 17 May 2011, when they had been in office for a year. The white paper included a draft bill, whose principal provisions are listed below.

- To provide for a reformed House of 300 members: 80% (240) elected and 20% (60) nominated (the white paper also discussed the alternative of a 100% elected House).
- Election would be by single transferable vote for large multi-member

[4] Cm 8077.

constituencies.

- Appointed members would be chosen by a statutory Appointments Commission, which for certain purposes would be overseen by a statutory joint committee.
- Members would serve single non-renewable terms of 15 years; the membership would be elected/appointed one third at a time at each general election.
- 12 bishops would continue to sit *ex officio*; the Prime Minister could appoint persons as members to serve as ministers, for the duration of their ministerial appointment only.
- Transitional arrangements would reduce the existing membership by one third in 2015, 2020 and 2025 as one third of the new membership arrived at each general election. (Two alternative transitional arrangements were set out in the white paper but not in the draft bill.)
- By-elections for the current 90 hereditary peers would cease in 2015, although existing excepted hereditary peers could be selected to remain under transitional arrangements.
- Members would be full-time; their salaries and allowances would be set by the Independent Parliamentary Standards Authority.
- Provision was made for expulsion or suspension for misconduct; voluntary resignation; and disqualification.

Many of the key features of the draft bill had emerged from the previous proposals for reform, for example—

- The concept of a hybrid House, part-elected, part-nominated, had been proposed by the Royal Commission in 2000 and in the 1998 white paper. The 2001 white paper had proposed 20% election. *Breaking the Deadlock* had proposed a 70%-elected and 30%-nominated House, with election in thirds on a single transferable vote system at each general election. The 2007 white paper again proposed a hybrid House with election in thirds. The 2008 white paper had taken this further by proposing an 80%-elected and 20%-nominated House, with election in thirds at each general election.
- Proposals on size had varied. *Breaking the Deadlock* had suggested 385 members, and Lord Mackay of Clashfern's Commission 450 members. The 2008 white paper proposed a House smaller than the Commons without being more specific.
- Both the 2007 and 2008 white papers proposed that a reduced number of bishops should continue to sit in the reformed House. *Breaking the Deadlock* acknowledged there were strong arguments for ending the right of bishops to sit but, not wishing to upset current arrangements, had proposed a reduction to 16.
- The establishment of a statutory Appointments Commission had been

consistently proposed since the Royal Commission recommended it, the exception being the 1998 white paper which proposed the current non-statutory arrangements.
- Election for non-renewable 12-to-15 year terms had been recommended by Lord Mackay of Clashfern's Commission, *Breaking the Deadlock* and the 2008 white paper.
- The appointment of members to serve specifically as ministers had been mooted in the 2003 government consultation paper and in *Breaking the Deadlock*.
- The 1998 white paper had affirmed at some length that the current House's functions and powers would be carried over following any reform; this presumption prevailed in subsequent papers and studies.
- A lengthy transition, with current members reducing by thirds, was proposed by Lord Mackay of Clashfern's Commission and *Breaking the Deadlock*. The 2007 and 2008 white papers foresaw a transitional period, but of no specified duration.[5]

The proponents of the draft bill may have had reasonable cause for optimism when it was published, given the conjunction of political forces and the emerging consensus on the broad outlines of a reformed upper House: elected, still with significant legislative authority, but not ultimately a threat to the primacy of the House of Commons. In the end, the tensions inherent in the coalition killed off the bill, but only after a lengthy process of pre-legislative scrutiny and the initial backing of a large majority in the House of Commons.

The very large joint committee and process

In June 2011 the white paper and draft bill were debated in both Houses and remitted to a joint committee for pre-legislative scrutiny. In order to accommodate a wide spectrum of views, the joint committee was exceptionally large: 13 Lords and 13 members of the House of Commons. The chairman was Lord Richard (Labour), who had been a member of the House of Commons in the 1960s and 1970s before becoming British Permanent Representative to the UN and later a life peer. As Leader of the Lords in Tony Blair's first cabinet he was closely involved in preparations for the 1999 House of Lords Bill, which removed all but 92 hereditary peers.[6]

[5] Report of the Joint Committee on the draft House of Lords Reform Bill (2010–12, HL Paper 28–I/HC 1313–I), paragraph 6.

[6] The other members of the joint committee are listed in its report. One of the Labour members (Bill Esterson) did not attend a single meeting of the joint committee: an ominous early indication of less than wholehearted support for reform from the Labour benches, perhaps.

Committee programme

The joint committee began its work in July 2011, shortly before the summer recess. A handful of academic experts were invited to give a private seminar on the history of House of Lords reform in September. The joint committee settled into a routine of weekly meetings on Monday afternoon in most weeks when the House of Commons was sitting from October 2011 to March 2012. In contrast to the Joint Committee on House of Lords Reform in 2002–03, which had taken on the nature of cross-party talks, the Joint Committee on the draft House of Lords Reform Bill in 2011–12 adopted a conventional approach of seeking written and oral evidence. It did not take long for it to become apparent that for this joint committee each evidence session, far from being a master class conducted by the experts at the witness table, was more in the nature of a skirmish between pros and antis around the horseshoe, each side trying to make their own points in their questions or to elicit answers supportive of their own preconceived point of view. Both Houses had stipulated in the initial exchange of messages in June 2011 that the joint committee should report by 29 February 2012. By the end of 2011, a month's extension was sought—and readily granted—in both Houses to allow the joint committee time to complete its work by the end of March 2012, before the anticipated end of the session.[7]

Oral evidence sessions

Joint committees may transact formal proceedings only if a quorum from each House is present: in this case three for the Lords and four for the Commons. The Lords members were invariably assiduous in their attendance, but many of the Commons members found it hard to accord the joint committee similar precedence over their other activities.[8] Oral evidence sessions at times had to be cut short by the imminent loss of a quorum of Commons members, with consequent disruption to the joint committee's programme. The oral evidence session with Mark Harper MP, the (Conservative) Minister for Political and Constitutional Reform, on 10 October had not covered all the ground by the time it had to be brought to a close. The minister's defence of the draft bill resumed on 17 October, until the chairman had to adjourn that meeting through lack of a (Commons) quorum. With no apparent hard feelings, the minister graciously

[7] The House of Lords passed a motion on 20 December 2011 extending the deadline to 27 March 2012, with the Commons following suit on 12 January 2012. The joint committee eventually reported on 26 March, with prorogation putting an end to the exceptionally lengthy 2010–12 session not coming until 1 May 2012.

[8] The members of the House of Lords serving on the joint committee recorded an average attendance rate at meetings of 89%, with only two Lords members missing more than five meetings. The average attendance of members of the House of Commons was 67% (or 72.5% if omitting Mr Esterston, who did not attend at all). So the attendance rate was reasonably high.

returned on 7 November 2011 for his third solo appearance: he made his fourth and final appearance, in a more supporting role, alongside the (Liberal Democrat) Deputy Prime Minister, Nick Clegg MP, on 27 February 2012. Having chosen late Monday afternoon as the most likely time for members in both Houses to be free from other commitments, the joint committee found that its sittings were vulnerable to disruption by votes in either chamber, which proved to be a fairly frequent occurrence.

Apart from the initial scene-setting by the minister, the pattern of the oral evidence sessions followed a predictable course, with a mix of academics, commentators, pressure groups and representatives of quangos. One of the more illuminating exchanges came early one morning when three Australian Senators contributed by video-link (it being the late evening in Canberra). Evidence was also heard from a number of members of the House of Lords and the House of Commons. Altogether 42 individuals gave oral evidence to the joint committee,[9] over 16 sittings, amounting to 768 questions.[10]

Of particular interest to readers of this Journal are the separate appearances on 23 January 2012 by David Beamish, the Clerk of the Parliaments, and Robert Rogers, the Clerk of the House of Commons, with the latter being accompanied by Jacqy Sharpe, the Clerk of Legislation in the lower House.

David Beamish flagged up three practical aspects of the proposals in the draft bill. First, on the process of transition, he hoped that the joint committee would not be tempted by the option under which all present members would stay until the third round of elections to the House, because of the practical problems of accommodating and supporting a House with such a large number of members during the transition period: "we are bulging at the seams in the chamber as it is".[11] Secondly, he highlighted the risk that the principle laid down by Article 9 of the Bill of Rights (that proceedings in Parliament shall not be questioned in any court or place out of Parliament) could be undermined by making statutory provision limiting the House's powers over the expulsion and suspension of its own members. He was also concerned by the clause in the draft bill listing two grounds on which "the proceedings of the House of Lords are not to be called into question", lest that be read as implying that such proceedings could be questioned on other grounds. Thirdly, he expressed his reservations about

[9] A full list of witnesses is at appendix 3 of the joint committee's report.

[10] As the Hansard reporters did not assign a separate number to every recorded utterance by the members, and given the amount of interjection, backchat and commentary interrupting the flow of questions and answers, that figure may considerably underestimate the extent of members' contributions in the oral evidence.

[11] Report of the Joint Committee on the draft House of Lords Reform Bill (2010–12, HL Paper 28–II/HC 1313–II), oral evidence, 23 January 2012, Q627.

how effective legislative provisions could be in circumscribing the behaviour of a reformed House of Lords, as it would be a pity if attempts to entrench the primacy of the Commons were to detract from ensuring that the two Houses together provided effective scrutiny of the Government and their legislative programme.

David Beamish drew on his experience of the departure of most of the hereditary peers in 1999 to warn the joint committee that any process of transition would not be easy—

> "in any cull like that it is awkward that some people have to go. There is no method that will not be painful. One might observe, although this is fairly trite, that the more clubbable members tended to do better in the elections. They were better known and there were perhaps some who beavered away behind the scenes whose contribution was less appreciated."[12]

David Beamish pointed out the pitfalls of unintended consequences if attempts were made in statute either to reduce the delay imposed under the Parliament Acts where the two Houses could not reach agreement, or to apply Parliament Act principles to bills first passed by the Lords.[13]

Robert Rogers, the Clerk of the House of Commons, opened with two general points—

> "I have never been a supporter of the "zero-sum game" analysis of the powers of the Commons and the Lords. If it is the job of Parliament to scrutinise the mighty executive of the day and to call it to account, I suggest that the more effective the powers of Parliament as a whole are—I emphasise "as a whole"—the better. My second point is that the relationship between the two Houses is at the moment—and has been for many years—based on what I might call complementarity rather than competition. I think that that takes account of the different parliamentary cultures in each House, and I think that it has great strengths. The proposals in the Bill would change that."[14]

Robert Rogers foresaw competition between the Houses arising in three areas: finance, the representation of constituents and the select committee system. He elucidated the often misunderstood nature of the Commons' financial privilege and the independence of the Speaker's certification of money bills under the Parliament Act 1911, and suggested that an elected House of Lords might challenge the current primacy of the Commons—

> "Perhaps I may put myself—this is an eventuality that I can only marginally imagine—in the position of being an elected member of the House of Lords. I cannot imagine representing constituents who are taxpayers without

12 *Ibid.*, Q630.
13 *Ibid.*, QQ623–26. The draft bill made no such provisions.
14 *Ibid.*, Q651.

> feeling that I should have a role in expressing views about the way in which money is being spent. Once you start to pull on that string, perhaps you will end up with the elected Lords feeling that the Parliament Act settlement is asymmetrical and should be changed."[15]

On the representation of constituents, his concern was that members elected to represent constituents in a future House of Lords would be drawn into competition with members of the House of Commons—

> "it seems inevitable that the House of Lords would want, for example, to have opportunities to raise constituency issues. It has been said that it is expected that those issues would be of a bigger, broader character—regional, economic issues and things of that sort. I doubt that, because hard cases come to individuals, and individual representatives then decide how they are going to raise them. I think that there would be proceedings which were related to constituency problems."[16]

Robert Rogers described the select committee system as "at the moment, a perfect example of complementarity", with the Commons having a "vertical" system of select committees drilling down into each government department complemented by the Lords' horizontal system of select committees looking across issues such as the constitution, economic affairs or communications—

> "I would be not in the slightest bit surprised—indeed, I would expect it—if a House of Lords reformed or changed along the lines proposed wanted to have a direct handle on the doings of individual departments. If that were to occur, we would have a lot of competition between the Lords committee on X and the Commons committee on X. I see a potential disadvantage for Parliament as a whole if that were to occur because, although it is fine when committees agree on something, the Government of the day which was offered a menu of a Commons committee supporting something and a Lords committee criticising it—or the reverse—would have a very good excuse for dismissing the recommendations of both."[17]

Written evidence

With the general decline of printing, the report of the Joint Committee on the draft House of Lords Reform Bill is perhaps among the last to be printed as hard copy (as well as being posted on the internet) in the full traditional three volumes: report and formal minutes, oral evidence, written evidence. The oral evidence volume includes 14 memoranda-in-chief from witnesses who appeared in person, as well as four items of supplementary written material

15 *Ibid.*, Q652.
16 *Ibid.*, Q655.
17 *Ibid.*, Q656.

from the minister responding to questions raised in the hearings. The 103 items in the written evidence volume range from individual constituents' views to correspondence between the joint committee chairman and the Attorney General[18] to Unlock Democracy's summary of the 4,100 (unprinted) responses to their survey, which they made available to the joint committee.

The issues and in particular issues that exercised some of the joint committee

The joint committee addressed the draft bill's provisions under four main headings—functions, role, primacy and conventions;

- electoral system, size, voting system and constituencies;
- appointments, bishops and ministers;
- transition, salaries, IPSA, disqualification, etc.

Functions, role, primacy and conventions

The principal objection to the draft bill, expressed mainly but not only by some of the life peers on the joint committee, was about its impact on the balance of power between the two Houses. As the joint committee's report argued, if the House of Lords chose to use its powers it would be one of the most powerful second chambers in the world. The restraint the House of Lords presently exercises, as a consequence of its non-elected status, is expressed in the conventions which govern relations between the two Houses.[19] This had been recognised by the Joint Committee on Conventions, which in 2006 considered the practicality of codifying the key conventions on the relationship between the two Houses of Parliament, and which concluded, "if the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again".[20]

The Government had sought to give some reassurance by including as clause 2 of the draft bill a "general saving" provision—

"Nothing in the provisions of this Act about the membership of the House of

[18] A former Attorney General, Lord Morris of Aberavon, had proposed that the joint committee should seek the advice of the current Attorney General on whether a bill which provided for a change in composition of the House of Lords could be capable of having legal effect if it was passed without the agreement of that House under the Parliament Acts 1911 and 1949. The Attorney General's reply was that he did not believe that it was appropriate for the Law Officers to advise Parliament on issues relating to the Government's legislative programme.

[19] *Op. cit.*, paragraph 9.

[20] Joint Committee on Conventions (2005–06, HL Paper 265–I/HC 1212–I), paragraph 61.

Lords, or in any other provision of this Act—
(a) affects the status of the House of Lords as one of the two Houses of Parliament,
(b) affects the primacy of the House of Commons, or
(c) otherwise affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses."

The joint committee concurred with the overwhelming view expressed in oral and written evidence that clause 2 was not capable in itself of preserving the primacy of the House of Commons.[21] The joint committee recorded its regret that the Minister for Political and Constitutional Reform had declined to share with it the drafting instructions given to Parliamentary Counsel on the policy intention behind clause 2, declaring that it would have been helpful to the joint committee in its deliberations and that "this lack of transparency has hampered parliamentary scrutiny of the draft bill."[22]

Electoral system, size, voting system and constituencies

The size of the reformed House was one matter where the joint committee's views differed substantially from the Government's proposals. The joint committee suggested 450 instead of 300 members, without evidence for that larger number being very thoroughly examined or persuasively argued in its report.[23]

Appointments, bishops and ministers

The joint committee agreed that the Appointments Commission should be placed on a statutory footing, with a statutory joint committee of members of the two Houses to oversee it, as proposed in the draft bill.

The 26 Church of England bishops who currently sit in the House of Lords make a valued contribution to debates in the House and thereby to public life, but it is hard to deny that they owe their place in the legislature to the history of the established church and not to any political theory on the composition of second chambers. The Lord Bishop of Leicester's presence on the joint committee reflected the episcopal division of labour, as he customarily leads for his colleagues on the bishops' benches where constitutional matters are concerned. As recorded below, his efforts on the joint committee were rewarded, to the extent that most of the joint committee backed the Government's proposed reduction in the number of bishops sitting in Parliament, rather than more radical changes that might portend disestablishment of the Church of

[21] *Op. cit.*, paragraph 55.
[22] *Op. cit.*, paragraph 45.
[23] *Op. cit.*, paragraphs 108 to 114.

England, a different (but not wholly distinct) debate from reforming the upper chamber.

The joint committee agreed that the Prime Minister should be able to appoint a small number of additional members to a hybrid (part-elected, part-appointed) House as ministers of the Crown, with the right to sit, but not to vote, in a reformed House. The joint committee recommended that such appointments should be limited to no more than five at any one time and that such members appointed to the House of Lords specifically as ministers of the Crown should cease to be members on the termination of their ministerial appointment. This power would not have prevented the appointment of existing members as ministers in the usual way.

Transition, salaries, IPSA, disqualification, etc.

One of the most complicated aspects of the proposed reform was how to thin out—and eventually terminate—the hundreds of current members, all appointed for their lifetimes.[24] The joint committee proposed a compromise, with a transitional membership starting from a benchmark figure, derived from the total number of members attending 66% or more of sitting days in financial year 2011–12, to remain in place until the final tranche of elected members arrived in 2025, at which point they would all leave. The joint committee was content to leave the determination of salary and allowances of members of the reformed House to IPSA (the Independent Parliamentary Standards Authority), which already has responsibility for House of Commons members' pay and allowances.

Process of agreement and recording minority views

As shown in the formal minutes published with the joint committee's report, the joint committee considered a chairman's draft report informally at four meetings, before formal consideration of a revised chairman's draft report was completed over a further four sittings. Unusually, the introduction to the joint committee's report set out some "words of explanation", giving the facts of life on select committee procedure—

> "As set out in Erskine May's *Parliamentary Practice*, a report from a committee embodies the conclusions agreed to by the majority of its members, and members who dissent from the report may not make minority reports to be appended to it. If a member disagrees to certain paragraphs in the report, or to the entire report, they can record their dissent by dividing the committee against those paragraphs, or against the entire report, as appropriate. Members can

[24] Only bishops could leave the House on retirement.

> also put on record their observations and conclusions, as opposed to those of the majority, by proposing an alternative draft report or moving amendments to the draft. Any alternative draft or amendment on which a division takes place is recorded in full in the minutes of proceedings of the committee."[25]

Unanimity was elusive even where (in a departure from customary form) the chairman's initial text recognised that the joint committee was split. In prolonged informal discussion, the joint committee could not even agree in advance whether or not a majority of its members agreed with the principle of an elected upper chamber. After a brief survey of the evidence on the principle of an electoral mandate, the joint committee concluded—

> "These differing views as to the need for an electoral mandate in a reformed second chamber underlie most of the evidence, both oral and written, received by the committee. For some an electoral mandate is necessary—even paramount—and any uncertain consequences of election are deemed insufficient reasons not to proceed with the draft bill. For others, the proposals represent an unbridgeable gap between election of the House of Lords and the primacy of the House of Commons, together with an unacceptable lack of clarity about how the two Houses will operate in terms of the legislative process once there are elected members in the Lords."[26]

The joint committee admitted—

> "Not surprisingly these differences of perception exist within the committee too, as well as within political parties and across the two Houses. They will doubtless condition the debate when the bill is introduced and considered in both Houses."

The chairman's draft report contained incompatible alternatives—

> "The committee on a majority [either] agrees that the reformed second chamber of legislature should be elected [or] does not agree that the reformed second chamber of legislature has to be elected."

On a division, the former view prevailed by 13 votes to 9 but the paragraph was further amended without division, so that the text in the report as published reads—

> "The committee, on a majority, agrees that the reformed second chamber of legislature should have an electoral mandate *provided it has commensurate powers*."[27]

The joint committee rejected by a single vote (11 votes to 12) a new paragraph moved by Lord Norton of Louth stating that the joint committee had not reached a view on the primacy of the Commons—

[25] *Op. cit.*, paragraph 13.
[26] *Op. cit.*, paragraph 22.
[27] *Op. cit.*, paragraph 23 (emphasis added).

> "We received no clear evidence and reached no conclusion as to the limits of primacy. The Commons will continue to be the chamber through which the Government is elected and enjoy privilege in respect of finance. (We consider later the matter of the Parliament Acts.) Beyond that, it is difficult to reach conclusions as to the extent to which the Commons will be able to assert itself over an elected or largely elected second chamber. Even if the Parliament Acts remain in force, they are blunt weapons for determining outcomes and the regular use of their provisions would have the potential to create tension within our constitutional arrangements. The draft bill provides for no new arrangements for resolving disputes between the two chambers. We have not addressed how such disputes should be resolved. We consider that this will need to be addressed by Government before a bill is introduced."[28]

Following that narrow decision, the paragraph in the chairman's revised draft report was amended by agreement, so that the published text now reads (with emphasis added)—

> "*Opinion within the committee varied* as to the impact which any shift in the balance of power would have on House of Commons primacy. *Some members believed* that Commons primacy would remain absolute, buttressed by the provisions of the Parliament Acts: *some believed that* an electoral mandate would inexorably lead to claims of equal primacy with the Commons. *Some believed that* no attempt should be made to preserve Commons primacy, *while others believed* Commons primacy would be undermined. *A majority,* while acknowledging that the balance of power would shift, consider that the remaining pillars on which Commons primacy rests would suffice to ensure its continuation."[29]

In several other places, the joint committee's report attempted to paper over the cracks by reflecting the division of opinion in the joint committee. For example (with emphasis added)—

> "*Some members of* the committee would prefer a fully appointed House. They hold the view that as the House of Commons has primacy it holds ultimate responsibility for legislation. That being the case, they do not consider it necessary for the members of the House of Lords to be elected. However, a fully appointed House is not being proposed in the draft Bill."[30]
>
> "*A majority* agreed with the Government's proposal to use a form of

[28] *Op. cit.*, formal minutes, 5 March 2012.

[29] *Op. cit.*, paragraph 67. An amendment moved by Baroness Andrews to delete the last sentence ("A majority, while acknowledging that the balance of power would shift, consider that the remaining pillars on which Commons primacy rests would suffice to ensure its continuation") had been lost by 12 votes to 11 prior to Lord Norton of Louth's amendment being moved.

[30] *Op. cit.*, paragraph 106.

> proportional representation for elections to the House of Lords. A proportional system will best preserve the independence and political diversity of the current House of Lords and ensure that it retains a different character from that of the House of Commons. It is less likely to lead to elected members challenging the link between MPs and their constituents ... Most importantly, however, it makes it unlikely that any one party will achieve and maintain a majority in the upper chamber."[31]
>
> "The committee *is divided on whether* election should be for a non-renewable term or whether a single further term—say for ten years—might be available for any member wishing to stand again."[32]
>
> "*A majority of* the committee agree with the Government's proposal for non-renewable terms."[33]

The joint committee's formal minutes record 15 divisions on the chairman's revised draft report. The joint committee agreed that changing the process of the House's composition would affect its functions, powers and role—

> "The committee agrees with the Government's view that in order to enhance the effectiveness of the parliamentary process it is appropriate that a reformed House should perform, but not be constrained by, the functions of the present House of Lords—including initiating and revising legislation, subjecting the executive to scrutiny, and acting as a forum of debate on matters of public policy. Indeed, the committee agrees that for the first time the reformed House will, in respect of its elected members, acquire a representative function ... The committee is firmly of the opinion that a wholly or largely elected reformed House will seek to use its powers more assertively, to an extent which cannot be predicted with certainty now."[34]

With these propositions having secured assent, it is startling then to read that "The committee considers that a more assertive House would *not* enhance Parliament's overall role in relation to the activities of the executive" (emphasis added). The insertion of that negative was the result of one of only two divisions where the chairman found himself on the losing side.[35] The joint committee agreed that "Any overall strengthening of Parliament would have to be subject to a defined understanding of the relationship between the Commons and the reformed House and of any conventions governing that relationship."[36]

In an attempt to express the strength of the minority point of view, Baroness

[31] *Op. cit.*, paragraph 124.
[32] *Op. cit.*, paragraph 166.
[33] *Op. cit.*, paragraph 167.
[34] *Op. cit.*, paragraphs 33–34.
[35] *Op. cit.*, paragraph 35. The amendment was carried by 12 "contents" to 11 "not contents".
[36] *Op. cit.*, paragraph 36.

Symons of Vernham Dean moved an amendment on the issue of the potential rivalry between elected members of a reformed upper House and MPs in the House of Commons over casework, which had been one of the main topics considered at the video-link oral evidence session with Australian senators. The original text read—

> "The committee believes that in general it would be inappropriate for elected members to involve themselves in personal casework of the kind currently undertaken by MPs on behalf of their constituents."

The joint committee was evenly divided on Baroness Symons' amendment, to leave out "The committee believes" and insert "Some members of the committee believe", so the amendment was lost, in accordance with House of Lords standing order 56.[37]

Unusually, the report frequently referred to its internal dissension, even where recognising such dissent had failed to head off a vote. For example, the joint committee's conclusion on the question of retaining an appointed element in a largely elected House of Lords reads (emphasis added)—

> "If there are to be elections, the committee agrees *on a majority* with the proposal for a 80 per cent elected and 20 per cent appointed House as a means of preserving expertise and placing its mandate on a different footing from that of the Commons."[38]

The chairman's view that a 15-year term of office for members of the reformed House of Lords was to be preferred was endorsed by the joint committee.[39]

As mentioned above, the joint committee devoted considerable attention to the question of the Lords Spiritual, which was one of the matters most often raised by members of the public submitting written evidence. As the report explains, Lords Spiritual have been a part of the legislature since Parliament's earliest meetings. Under the current arrangements, 26 bishops of the Church of England sit in the House of Lords. Five sit *ex officio*: the Church's two primates, the Archbishop of Canterbury (Primate of All England) and the Archbishop of York (Primate of England), and the three diocesan bishops of the "great sees": the bishops of London, Durham and Winchester. Of the remaining 37 eligible diocesan bishops (the bishops of Sodor and Man, and Gibraltar in Europe are ineligible for service in the House of Lords), the 21 most senior by length of

[37] *Op. cit.*, paragraph 222. 11 members voted on each side in the division. In House of Lords procedure, which is followed in joint committees, the chairman has an original vote in any division but no casting vote. In the case of an equality of votes on an amendment, it is negatived, in accordance with House of Lords standing order 56.

[38] *Op. cit.*, paragraph 173. This paragraph was carried by 20 votes to 2.

[39] *Op. cit.*, paragraph 107. This paragraph was carried by 16 votes to 6.

service also sit in the House of Lords.[40] The Government's draft bill proposed that the five *ex officio* seats should continue, with only seven other bishops to be nominated by the Church of England: the joint committee agreed by 13 votes to 7 to the Government's proposal, rejecting by 13 votes to 5 the chairman's proposal to reduce their total number to seven.

Baroness Andrews was successful in winning over a majority of the joint committee, including its chairman, to her view that, in view of the significance of the constitutional change brought forward by an elected House of Lords, the Government should submit the decision to a referendum.[41]

Analysing the recorded divisions shows that the pro-reformers had a slim majority. Ten members of the joint committee could be described as being in the broadly "pro-bill" camp, and voted with the chairman in at least 10 of the divisions.[42] Eight members, who could fairly be described as "anti-bill", voted against the chairman in at least 10 of those divisions.[43]

Only the Liberal Democrat members of the joint committee presented a generally united voting bloc: both of the two main parties were divided and, while there were more members of the House of Commons in the pro-bill camp and more members of the House of Lords in the anti-bill camp, it would be untrue to say that the joint committee was split between the two Houses, as members of both Houses voted on each side in almost all of the divisions.[44]

Lord Richard found himself in a minority, voting with most of the "anti-bill" camp, in unsuccessfully resisting a proposal by John Stevenson MP that allowed for additional members of a reformed upper House to be appointed as ministers with the right to sit, but not vote, in the reformed House.[45]

The result of most of the formal divisions in the joint committee went with the chairman, so that it appeared that his revised draft report, drawn up after extensive informal discussion, had for the most part correctly judged

[40] *Op. cit.*, paragraph 271. The United Kingdom's other established church, the Church of Scotland, is not formally represented in the House of Lords. No other faith leaders sit *ex officio*.

[41] *Op. cit.*, paragraph 385.

[42] Gavin Barwell MP, Daniel Poulter MP, Laura Sandys MP and John Stevenson MP (Conservatives); Ann Coffey MP and Malcolm Wicks MP (Labour); the crossbencher Baroness Young of Hornsey; and the three Liberal Democrats: John Thurso MP, Baroness Scott of Needham Market and Lord Tyler.

[43] Labour's Baroness Andrews and Baroness Symons of Vernham Dean, and the Conservatives Eleanor Laing MP, Lord Norton of Louth, Baroness Shephard of Northwold and Lord Trefgarne. The non-affiliated Lord Bishop of Leicester and the crossbencher Lord Hennessy of Nympsfield would also fall in the "anti" camp under that same criterion.

[44] In the vote on expressing preference for 15-year terms for members of the reformed House of Lords, only Lords Trefgarne and Trimble voted against, with 20 members of the joint committee voting in favour.

[45] The amendment was carried by 11 votes to 10.

the moderately pro-bill attitude of the majority of the joint committee. Given the closeness of the divisions on several matters, exacerbated by the erratic attendance of some members, it is perhaps not surprising in retrospect that the "anti-bill" camp preferred to contest the conclusions in the chairman's revised draft report as they came up for formal endorsement, rather than to produce a coherent alternative draft report before formal consideration of the chairman's revised draft commenced. Under existing select committee procedures, it is too late, once the formal consideration of a draft report has ended, to move an alternative draft report at that stage. It might be worth examining in future whether pausing at the end of formal consideration in order to allow a "minority report" to be entered in the formal minutes might be appropriate in some circumstances.

The recommendations

Taking the joint committee's conclusions and recommendations as a whole, the Government's draft bill came through its pre-legislative scrutiny largely unscathed, apart from the questions raised over the way the draft bill had attempted to address the issue of primacy. The principal remaining differences between the joint committee and the Government covered—

- the final size of the House, with the joint committee recommending a House of 450 members, compared to the Government's proposal of 300;
- the voting method, with the joint committee recommending a modified version of the single transferable vote, to allow voters to express preferences across, as well as within parties; and
- the case for a referendum to approve changes to the composition to the House of Lords.

A so-called "Alternative Report" was issued on 23 April 2012, the day of publication of the joint committee's report, as an entirely unofficial exercise which nonetheless attracted considerable media attention.[46] The self-styled minority group claimed the allegiance of 12 of the joint committee's 26

[46] *House of Lords reform: An alternative way forward, a report by members of the Joint Committee of both Houses of Parliament on the Government's draft House of Lords Reform Bill*, April 2012. Oliver Heald MP, who was among the Alternative group, published a short pamphlet setting out his distinctive proposals for a secondary mandate system of indirect election: *An Elected Second Chamber—Building a Better House?*, Society of Conservative Lawyers, April 2012.

members.[47]

The "Alternative Report" asserted that rules of the House of Lords, as set out in the *Companion to the Standing Orders*, stipulated that select committees of the House of Lords (such as the joint committee) cannot publish minority reports, but there were no such prohibitions on members publishing an alternative report as long as it was outside the formal framework of the committee. The "Alternative Report" recommended that, in the light of the failure of the joint committee to come to a consensus, a new constitutional convention should be appointed to consider the next steps on further reform of the House of Lords and any consequential impact on the House of Commons and on Parliament as a whole. In the interim, the Government should pause work on their House of Lords Reform Bill but take forward the more modest changes proposed by Lord Steel of Aikwood's House of Lords (Amendment) Bill and consider including other proposals for immediate reform, including those put forward by Baroness Hayman and by the Leader's Group on Working Practices in the House of Lords, chaired by Lord Goodlad.

The Government response

In their formal response[48] to the joint committee's report, published on 27 June 2012 to coincide with the first reading of the bill as introduced in the 2012–13 session, the Government announced that they had accepted the majority of the joint committee's conclusions and recommendations in preparing the bill for introduction. The Government agreed with the joint committee that the "purely declaratory" clause 2 on primacy was not needed, and replaced it in the bill with a declaratory statutory provision on the continued application of the Parliament Acts 1911 and 1949. The Government did not accept that that there was any urgent need to establish new or developed conventions to address dispute resolution procedures between the two Houses. The Government accepted that the size of the reformed House should be increased to 450 members. On the voting system, the Government proposed a semi-open list, allowing voters who wished to do so to express preferences for individual candidates. On additional members appointed to serve as ministers, the Government proposed in their bill a cap of eight such ministers at one time (a little higher than the joint

[47] Baroness Andrews, Mr Tom Clarke MP, Oliver Heald MP, Lord Hennessy of Nympsfield, Mrs Eleanor Laing MP, the Lord Bishop of Leicester, Lord Norton of Louth, Lord Rooker, Baroness Shephard of Northwold, Baroness Symons of Vernham Dean, Lord Trefgarne and Lord Trimble. The "Alternative Report" made clear the "very important proviso" that while Lord Trefgarne was able to support the many practical proposals contained in the "Alternative Report", he supported a fully and properly elected second chamber.

[48] Cm 8391.

committee's proposed cap of five), but agreed with the joint committee that, once appointed, such additional members would serve out a full term of three electoral periods, in common with other appointed members of the House. The Government announced that they had accepted the joint committee's view that a declaratory statement be included in the bill to the effect that nothing in the bill should be construed as affecting Article IX of the Bill of Rights—in other words, that it should still be the case that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in court. The Government did not agree that that a compelling case had been made for incurring the significant expenditure that would be involved if a referendum were to be held on the bill's proposals.

The fate of the bill itself

The Queen's Speech on 9 May 2012, opening the 2012–13 session, included a House of Lords Reform Bill, which was duly published in 27 June 2012 and given a first reading in the House of Commons. There are ample precedents for bills concerned with the composition of the upper House starting as Commons bills.[49] No doubt, the Government wanted to ensure that they could if necessary deploy the Parliament Acts to secure the bill's royal assent eventually without the agreement of the House of Lords.

Unusually, two full days in the House of Commons were given over to the second reading debate: on 9 and 10 July 2012, with 75 backbench speeches. The bill won an overwhelming majority on second reading, by 462 votes to 124. It has become the almost invariable practice in the Commons for any public bill to be subject to a programme motion, moved immediately after second reading, which determines the committal of a bill (in this case, befitting its first-class constitutional importance, to a committee of the whole House) and either an "out-date" by which a public bill committee would have to report the bill, or the number of days to be spent on the bill in committee of the whole House, with in either case a preliminary limit on the amount of time to be allocated to consideration of the bill at its report stage and on third reading.[50]

The programme motion tabled for the House of Lords Reform Bill provided for ten days to be spent in committee on the floor of the House, with internal "knives" on identified segments of the bill falling on certain days, and a further two days on the floor of the House at report stage.

Once it became clear that the official opposition would oppose the programme motion, the Government had to face up to the likelihood that they

[49] For example, the Parliament (No. 2) Bill 1969 and the House of Lords Bill 1999.

[50] In the House of Commons, bills reported without amendment from a committee of the whole House proceed directly to third reading.

lacked a majority to overcome the combined strength of the official opposition and the dissidents on their own (Conservative) backbenches. The Leader of the House announced that the Government would not move the programme motion as it stood on the order paper, and that if the bill received a second reading, the House would be asked to take a decision on the bill's committal in the autumn. Ominously, the Noes on second reading included 90 Conservative backbenchers:[51] easily a large enough number of dissidents to enable the opposition to defeat a programme motion. Even in the absence of a programme motion, the Government could probably have secured the passage of their bill eventually, given the size of their majority on second reading—but the prospect of squandering scarce parliamentary time in a lengthy war of attrition over a plethora of new clauses and amendments, each requiring a separate closure motion to conclude debate, was clearly not enticing to the Government's business managers.

When the House returned from its summer recess, the Deputy Prime Minister confirmed in an oral statement to the House of Commons on 3 September 2012 the already widely reported decision of the coalition Government to withdraw the House of Lords Reform Bill.

Postlude

The sequel, which unfolded in 2013, may be the subject of an article in next year's volume of *The Table*. In brief, the Deputy Prime Minister exacted his revenge for the Government's decision to back down on House of Lords reform. He withdrew Liberal Democrat support for the reduction by 50 in the number of seats in the House of Commons and the re-drawing of constituency boundaries previously mandated in the Parliamentary Voting System and Constituencies Act 2010.[52] Given the special character of the Lords as a self-regulating chamber where conventions exercise a powerful restraint on the exercise of its sweeping formal powers, there is a certain irony in the way the requirement to bring in the boundary changes was postponed. Liberal Democrat and Labour members in the Lords (against the advice of the clerks, who advised that the amendment was irrelevant to the bill) moved an amendment to the Electoral Registration and Administration Bill in 2013 which delayed the implementation of the boundary review by five years. The amendment was carried and when

[51] In addition to two Conservative tellers: of the Commons members who served on the joint committee, only Mrs Eleanor Laing MP and Dr William McCrea MP voted against the second reading of the bill.

[52] This Act also resulted in the 2011 referendum on the replacement in general elections of first-past-the-post with the alternative vote—a Liberal Democrat initiative which had gone down to a heavy defeat at the hands of the electorate.

the bill returned to the Commons it was agreed there too. If the failure to reduce the size of the Commons and to redraw constituency boundaries are found to have influenced the outcome of the 2015 general election, then the failure of the House of Lords Reform Bill in 2012 will have had quite unexpected consequences.

As for Lords reform, officially, at any rate, the coalition Government remain committed to an elected House of Lords with a reduced number of members.[53] At the time of writing, the House of Commons had not completed its consideration of certain modest changes put forward in a private member's bill promoted by Dan Byles MP. This contains proposals allowing for the resignation of members of the House of Lords and for the disqualification of those members imprisoned for more than a year. These concepts mirrored those in Lord Steel of Aikwood's private member's bills passed in previous sessions by the House of Lords. There remains a general feeling amongst some Lords members that incremental reform, falling short of a radical reordering of the composition of the House, might be possible. But for the moment the aspiration set out in the preamble to the Parliament Act 1911 of constituting a second chamber on a popular basis remains unfulfilled.

[53] HC Deb, 29 October 2013, column 452W.

PRIVILEGE: THE LONG AND WINDING ROAD—A PRISONER'S APPEARANCE BEFORE THE BAR OF PARLIAMENT

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ABSTRACT
On 12 May 2011 Mr Gordon Nuttall, a former member of the Queensland Legislative Assembly, appeared before the Bar of the House to be heard in respect of 41 charges of contempt.

The attendance of a prisoner at the Bar of the House to address contempt charges was unprecedented in Queensland parliamentary history.

This article details the complex sequence of events which led to Mr Nuttall's appearance at the Bar; highlights the interesting procedural and logistical issues that were associated with the appearance; and comments on how the matter reflected on the institution of Parliament in Queensland.

PRIVILEGE: A PRISONER'S APPEARANCE BEFORE THE BAR OF PARLIAMENT

A long and winding road to the Bar

The appearance of Mr Gordon Nuttall before the Bar of the House on 12 May 2011 was the culmination of a complex sequence of events that spanned two terms of parliament.

On 10 November 2006 an article entitled "Magnate's secret $300,000 loan to minister" appeared in *The Australian* newspaper. The article concerned the financial affairs of former member and minister Gordon Nuttall and stated that an inspection of the Register of Members' Interests (going back five years) by *The Australian* showed that Mr Nuttall had not registered a loan. The matter received widespread media attention.

First referral to the Ethics Committee

By letter to the Speaker dated 13 November 2006, the then Acting Premier and Minister for Trade, the Honourable Anna Bligh MP, raised the allegation that Mr Nuttall, while a member, had failed to register a private loan of $300,000 in the Register of Members' Interests.

By letter dated 13 November 2006, then Speaker Reynolds referred the matter to the Ethics Committee of the 52nd Parliament. In his letter the Speaker advised that he had consulted the Registrar of Members' Interests (the

Clerk of the Parliament) and the chairperson of the Crime and Misconduct Commission (CMC).[1] The Speaker advised that the non-disclosure of this loan is the "subject of interest" to the CMC. The Speaker requested that the committee not take any action until it had established that any action by the committee would not jeopardise the CMC's investigations.

By letter to the chair of the CMC dated 21 November 2006, the Ethics Committee sought the CMC's advice regarding the possible impact of any action by the committee on the CMC's investigations.

In his response of 22 November 2006, the chair of the CMC, Mr Needham, advised that there was a potential for an investigation of this matter by the Ethics Committee to jeopardise the CMC's investigations, stating—

> "The circumstances surrounding that loan of $300,000 are the subject of an ongoing investigation by the … CMC. At this stage I am unable to predict the outcome of that investigation but as one possible outcome could be the preferment of a criminal charge I would advise that there is a potential for an investigation of this matter by the MEPPC to jeopardise the hearing of any such charge. In the circumstances, may I respectfully suggest that the MEPPC take no further action on the matter of privilege referred until I am in a position to advise you as to the outcome of the CMC's investigations."

The Ethics Committee took the view that if it was to commence an investigation into this matter whilst a CMC investigation was underway this may prejudice—

- the prospect of any possible criminal proceedings; and/or
- a person's defence to any possible criminal proceedings.

Accordingly, the Ethics Committee of the 52nd Parliament deferred its investigation pending the outcome of the CMC's investigation into a potentially related matter. The Speaker was subsequently advised of the committee's decision.

Upon its establishment in April 2009 the Ethics Committee of the 53rd Parliament resolved to continue with carriage of the matter but to defer any further action pending the results of the criminal investigation.

First criminal trial

The CMC's investigations ultimately led to a District Court trial and on 15 July 2009 Mr Nuttall was found guilty of receiving a number of secret commissions totalling $300,000 from prominent local businessman Ken Talbot and $60,000 from another businessman, Harold Shand. On 17 July 2009, Mr Nuttall was sentenced to seven years' imprisonment.

[1] The CMC is an independent statutory body tasked, amongst other things, with investigating official misconduct and corruption.

On 14 August 2009 Mr Nuttall lodged an appeal against both the conviction and sentence for receiving secret commissions. The Ethics Committee was of the view that any investigation on its part following the conviction and sentencing of Mr Nuttall would not breach the *sub judice* rule or any other rules or conventions adopted or practised by the Legislative Assembly in relation to committees, regardless of the appeal.

However, at the same time there was speculation in the press regarding possible further action by the CMC on potentially related matters. Consequently, the new Ethics Committee resolved to write to the chairperson of the CMC for official advice of the outcome of matters relating to the committee's inquiry.

On 27 August 2009 Mr Needham wrote to the committee stating that no CMC investigations would be compromised by any MEPPC investigation into Mr Nuttall's failure to register the relevant loans in the Register of Interests.

Double jeopardy?

The Ethics Committee was concerned about the possibility that an investigation by the committee into the matter may enliven section 47 of the Parliament of Queensland Act (POQA), which states—

> "If a person's conduct is both a contempt of the Assembly and an offence against another Act, the person may be proceeded against for the contempt or for the offence against the other Act, but the person is not liable to be punished twice for the same conduct."

Prima facie, an alleged failure to register the benefit in the Register of Interests is a separate matter to receiving a secret commission. To be prudent the committee sought senior counsel's opinion as to whether section 47 of the POQA was enlivened by the conviction of Mr Nuttall for receiving secret commissions.

On 2 November 2009 the committee received the advice of retired Supreme Court justice, Hon K G W Mackenzie QC. In his advice the Hon Mackenzie discussed the term "conduct" in section 47 and noted that the conduct involved in the criminal proceedings was the corrupt receipt of sums of money; in contrast the "conduct" involved in the matter referred to the committee was the failure to declare a private loan in accordance with the Register of Interests within one month. Hon Mackenzie advised that the two types of conduct were separate. Furthermore, the obligation to comply with the register requirement arose at a point that was separated in time from the receipt of the money, and failure to reveal the liability in the register was not essential to the commission of a criminal offence.

The Hon Mackenzie concluded:

> "… the "conduct" with which the committee is concerned is an omission to comply with the obligation under clause 5 schedule 2 SRO, which occurred on a date (or dates) quite distinct from the dates of the conduct upon

which the counts in the indictment are based. On the currently available information, the better view is that section 47 POQA is not an impediment to the committee further considering the matter."

Hon Mackenzie also noted that there was a well-developed principle among administrative tribunals, and bodies which have an obligation to protect professional standards, that a sanction imposed as part of disciplinary action within an organisation, or for the purpose of maintaining professional standards, is not "punishment" in the relevant sense. Hon Mackenzie quoted from the case *Karriaper v Wijesinha*,[2] where "civil disabilities", one which was the loss of a seat in Parliament, were imposed by legislation on members against whom allegations of bribery had been sustained. The Privy Council opinion was that the disabilities were not punishment. The principal purpose they served was "not to punish but to keep public life clean".

Ethics Committee investigation begins

Accordingly, in November 2009, three years after the matter was originally referred, the Ethics Committee concluded that there was no issue with the committee proceeding with its investigation into Mr Nuttall's alleged failure to register a loan in the Register of Interests. The Ethics Committee decided to provide Mr Nuttall the opportunity to be heard through the exchange of written documents. The committee was of the view that, in the circumstances, written submissions would allow the committee to gather any evidence required without going to the expense and logistical problems of conducting a private hearing for a prisoner of the state.

Ethics Committee's first report

Following receipt of submissions from Mr Nuttall on the contempt charges and the penalty, the committee tabled its report No 105 in the House on 10 June 2010.

With respect to allegations of a failure to register an interest the committee employed two separate tests, with their elements derived from the standing orders[3]—

- whether the matter required disclosure; and
- if so, whether the non-disclosure resulted in a contempt.

On the information before it, including submissions from Mr Nuttall, the

[2] (1968) AC 717.

[3] Schedule 2—*Registers of Interests*. *Standing Rules and Orders of the Legislative Assembly*: effective from 31 August 2004 (amended 26 May 2005, 30 March 2006, 20 June 2006, 8 February 2007, 1 May 2007, 24 May 2007, 12 February 2008, 28 October 2008, 26 November 2009 and 1 January 2010).

committee found that Mr Nuttall was required to disclose the payments received at least under section 7(2)(m) (any other income) or section 7(2)(p) (any other interest) of Schedule 2 of the standing orders. The committee found that Mr Nuttall committed a contempt of Parliament for failing to disclose payments received in the Register of Interests on 36 separate occasions, within the time period prescribed in section 5(2) of Schedule 2.

The committee unanimously decided to recommend the imposition of the maximum fine for each contempt to reflect the gravity of each offence and to send a strong message to members and the public about the level of accountability expected of members of Parliament.

Accordingly, the committee recommended that the House impose a fine of $2,000 for each of the 36 separate occasions of contempt for non-disclosure of the payments received from Messers Talbot and Shand.

Next step—opportunity to address the Bar of the House

Standing orders provide that when the Ethics Committee reports to the House that a person has committed a contempt and recommends that the person be charged with that contempt by the House, a question shall be put that such person be ordered to attend the Bar of the House at a specified date and time (SO 274). If at the time the person attends the Speaker shall inform them of the charge and they shall be heard in their defence either personally or by counsel. If the person does not attend the House may proceed to determine the matter in their absence.

To proceed or not to proceed?

In August 2010 the Government released advice from the Solicitor General to the media to the effect that Mr Nuttall's appearance before the Bar of Parliament could have prejudicial effect on the trail of Mr Shand and other criminal proceedings against Mr Nuttall (the trial of Mr Talbot having been discontinued following his death in an air crash on 19 June 2010). The Solicitor General's advice was that the best way to resolve the matter was to delay setting a time for an appearance before the House until the proceedings against Mr Shand and Mr Nuttall were complete.

Following some misgivings about this advice, Speaker Mickel said that he would seek separate legal advice from senior counsel as to whether the recommendations of the committee should progress prior to the criminal proceedings being concluded.

In October 2010 Mr Speaker advised the committee and the leadership groups of the House that, while the advice from senior counsel did not endorse all of the assumptions in the Solicitor General's advice, it would be prudent overall to delay proceeding with the contempt charges until after the Shand trial

scheduled for March 2011.

Second criminal trial

On 27 October 2010 Mr Nuttall was also convicted of five counts of official corruption relating to five payments he received from businessman Brendan McKennariey between 2001 and 2005. He was subsequently sentenced to a cumulative five years' imprisonment, making his total sentence 12 years.

Second referral to the Ethics Committee

On 2 November 2010 the Premier wrote to the Speaker and Registrar to request that consideration be given to referring this second matter to the Ethics Committee.

The Registrar discussed the matter with the Speaker and agreed that the correspondence amounted to a complaint in accordance with section 14 of Schedule 2 of the standing orders. Accordingly, the Registrar referred the matter to the Ethics Committee by letter dated 18 November 2010.

The committee resolved to proceed to investigate the matter and, as with the first matter, provided Mr Nuttall with the opportunity to be heard through the exchange of written documents. In this instance no substantive submission was forthcoming from Mr Nuttall's solicitors apart from advice that Mr Nuttall requested that he personally appear before the House and be heard on the matter.

Criminal matters finalised—clear to proceed

On 31 March 2011 the District Court found Mr Shand guilty of arranging to pay a secret commission to Mr Nuttall.

Ethics Committee's second report

The Ethics Committee tabled its report No 114 in the House on 7 April 2011. The committee's findings were consistent with its report on the first matter: that Mr Nuttall was required to disclose the payments received at least under section 7(2)(m) or 7(2)(p).

The committee found that Mr Nuttall committed a contempt of Parliament by knowingly failing to disclose payments received in the Register of Interests on five separate occasions, within the time period prescribed in section 5(2) of Schedule 2. The committee recommended that the House impose a fine of $2,000 for each of the five separate occasions of contempt for non-disclosure of the payments received from Mr McKennariey.

Appearance before the Bar of the House

On 7 April 2011 the Leader of the House moved a motion that on 12 May 2011

at midday Mr Nuttall be provided with 45 minutes in which to respond to the charges from the Bar of the House. The resolution was agreed.

Mr Nuttall addressed the House for 37 minutes before being discharged from the order of the House.

The House then adjourned and resumed after lunch to debate the motion that he be found guilty of the 41 counts of contempt and be fined $2,000 per offence—a total of $82,000. The House agreed the motion and ordered that the fine be paid within 12 months.

The day of reckoning

Research indicated that there were only two occasions in Queensland's 150 years of parliamentary tradition where persons had made an address before the Bar of the House.

In 1989 former Supreme Court Justice Angelo Vasta and in 1956 the Commissioner for Lands, Vivian Rogers Crieghton, appeared to address the House in relation to recommendations for them to be removed from office. However, the attendance of a prisoner of the Crown was unprecedented and raised a number of novel procedural and logistical issues.

Procedural issues

Standing order 274(3) provides for the basic procedure that would be followed on Mr Nuttall's attendance:

> "(3) If at the date and time appointed the person charged attends according to the order, the Speaker shall inform them of the charge of contempt, and they shall be heard in their defence, either personally or by counsel, after which the House may adjudge them to be guilty of the charge of contempt or direct that they be discharged."

In Queensland standing orders also provide that where statute, standing orders, sessional orders or practice of the House do not provide for a matter, the Speaker, in determining the correct procedure, may make reference to the rules, forms and practices of other Parliaments operating under the Westminster system.

Given the lack of precedent in Queensland, the precedents for bringing prisoners before the Bar to be dealt with for contempt in other jurisdictions, particularly the House of Commons in the United Kingdom and the Commonwealth Parliament, were consulted.

Prisoner brought to the Bar, the position of the mace and consequences

Traditionally, the Sergeant-at-Arms, under the direction of the Speaker, is required to escort the persons to the Bar of the House. May's *Parliamentary Practice* sets out the procedure whereby a prisoner is brought to the Bar of the House of Commons:

> "When a witness is in the custody of the Sergeant-at-Arms or is brought from any prison in custody, it is usual, but not constant, practice for the Sergeant to stand with the mace at the Bar. When the mace is on the Sergeant's shoulder, the Speaker has the sole management; and no member may speak, or even suggest questions to the chair ..."[4]

House of Representatives Practice also indicates in the famous contempt case Fitzpatrick and Browne in 1955 that each of the two accused were accompanied by the Serjeant.

Hatsell's[5] historical accounts of prisoners being brought before the Bar of the House of Commons (17th and 18th centuries) provide further background to the placement of the mace. Hatsell's accounts refer to prisoners being in custody of the Sergeant standing by the prisoner both with and without the mace.

Hatsell cites numerous cases that:

> "... all seem to prove, that whenever any person, already a prisoner, whether in custody of the Sergeant, or in any other prison, is brought to the Bar as a witness, or to attend the hearing of any cause, he must be brought in by the Serjeant, and the Serjeant must stand by him at the Bar, with the mace, during the time he continues there."[6]

Hatsell distinguishes between delinquents (such as those appearing on charges of comtempt) and witnesses, and persons to be censured or examined. Hatsell states that in the case of a culprit, having disobeyed the order of the House, "the Serjeant must stand by him with the mace; and during that time no person can speak but the Speaker."[7]

Hatsell,[8] cited in Lack,[9] describes four placements of the mace and consequence for the House of Commons, as follows—

1. when the mace lies upon the Table, it is a House;
2. when under, it is a committee;
3. when the mace is out of the House, no business can be done;
4. when from the Table and upon the Sergeant's shoulder, the Speaker alone manages.

Accordingly, Mr Speaker concluded that the appropriate procedure to be follow in an instance where a prisoner is in the custody of the Sergeant-at-Arms is for the Sergeant-at-Arms to be in possession of the mace whilst the prisoner

4 20th edition, p 745.
5 Hatsell, *Precedents of Proceedings in the House of Commons*.
6 Note 3.
7 Note 3.
8 Note 3.
9 *Three Decades of Queensland Political History*, 1929–60, p 739.

is in his custody addressing the House. In consequence, the Speaker alone is in control of the House and no member may speak or raise any point of order.

Rules regarding the address

Mr Speaker also concluded that a person, such as Mr Nuttall, appearing at the Bar of the House on a charge of contempt is not a witness *per se*, but a person being heard in their defence. A person being heard in their defence is not able to be cross-examined by members.

Therefore any member who sought to speak would have been out of order. In addition, no member was allowed to pass to or receive from him any documents or other items or physically to touch him.

Mr Speaker further ruled that, while he would ensure that Mr Nuttall was able to present his address, he would ensure that Mr Nuttall's address was relevant, members' rights were protected and the privileges of the House were not abused. Mr Nuttall was permitted to address only the charges levelled against him, including the issue of penalty should he be found to have committed a contempt.

Logistical issues

There were a number of issues to be planned with respect to security and media management on the day.

The Parliamentary Service worked with Queensland Corrective Services and the Queensland Police on the logistical arrangements of bringing a prisoner to the parliamentary precinct.

The Corrective Services Escort Team transported the prisoner to the Parliament House, when he was transferred into the custody of the Sergeant-at-Arms. When the Sergeant escorted the prisoner to the Bar the escort team formed a cordon across the nearby corridors.

The location of Mr Nuttall's arrival was kept secret from the media until five minutes before the arrival; only one still photographer and cameraman were permitted to capture the arrival.

Mr Speaker approved supplementary media access conditions after consultation with the Parliamentary Media Gallery to ensure that decorum was maintained while capturing proceedings in the chamber.

Reflections on the institution of Parliament in Queensland

While the actions of Mr Nuttall did not reflect well on him and politicians in general, the contempt proceedings served to restore some faith in the institution of Parliament and its ability to regulate the conduct of its members.

There was commentary in the local media that suggested that it was enough that Mr Nuttall had been dealt with by the courts and that it was inappropriate

for Parliament to seek to punish him further.

However, the investigation and report by the Ethics Committee and the subsequent proceedings and orders of the House were symbolically important in reinforcing the standards expected of members of Parliament. As the Hon Mackenzie noted in his advice to the Ethics Committee, a sanction imposed for the purpose of maintaining professional standards is not "punishment" in the relevant sense but serves rather to "keep public life clean".

While the road from referral of the matter of privilege to the Ethics Committee to the final address to and resolution by the House was clearly long and somewhat tortuous, it demonstrated thorough and fair process, appropriate consideration and deference to proceedings before the courts and House.

The appearance of the prisoner before the House on 12 May 2011 was a sombre and uncomfortable occasion for all members present. But the approach to media management, and the judgement and sensitivity of then Speaker Mickel in allowing Mr Nuttall an opportunity to be heard while keeping his address relevant to the charges, served to promote the dignity of the House and the institution itself.

Postscript

On 17 May 2012, following the general election and the opening of the 54th Parliament, the Clerk informed the Assembly that the fine remained unpaid. Correspondence from Mr Nuttall advised that he was unable to pay the fine imposed due to various court proceedings regarding sale assets and significant outstanding legal debts. Mr Nuttall requested that the Parliament reconsider his submission made during his appearance at the Bar of the House in May 2011 to take into account the punishment already imposed upon him—namely his imprisonment and forfeiture of assets.

On 7 June 2012 Speaker Simpson advised the House—

> "I have considered this matter, including advice from senior counsel and the Clerk, and decided to treat the failure to pay the fines as a matter of privilege and refer the matter to the Ethics Committee. I will be requesting the Ethics Committee to investigate Mr Nuttall's exact financial situation, so that the Legislative Assembly is aware of all relevant information before considering the options available."

The Ethics Committee found that proceedings pursuant to the Criminal Proceeds Confiscation Act 2002 had led to the sale of certain property owned by Mr Nuttall. The sale proceeds exceeded court orders and costs against Mr Nuttall and the balance was paid to the Public Trustee as the manager of his estate. The Public Trustee advised the committee that a small interim payment to all creditors could now be made. Further, once Mr Nuttall's remaining assets were liquidated and received by the Public Trustee there should be sufficient

funds to pay all of his debts, including the fine to the Parliament.

Based on the information before it, the committee was satisfied there were proper processes in place, with the Public Trustee exercising its lawful authority to ensure that the order of the Assembly on 12 May 2011 will be complied with as soon as practicable. Accordingly, the committee resolved it was not necessary to determine whether Mr Nuttall wilfully disobeyed an order of the House by the failure to pay a fine, giving rise to a contempt.

The committee recommended that the Clerk formally advise the House upon the receipt of any payment from the Public Trustee. To date, one payment of $16,000 has been received. The Clerk notified the House of this on 30 October 2012.

The saga, now more than six years old, continues.

SELECT COMMITTEES IN THE HOUSE OF LORDS

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Introduction

This article will begin by providing an historical overview of the development of select committees in the House of Lords. It will then detail current select committee activity[1] and explore how developments in the Commons and proposed reforms of the Upper House may influence their future operation.

Committees that deal with public matters can be categorised as either "investigative" committees (a select or joint committee established to consider matters of public policy—either permanent or ad hoc) or "legislative scrutiny" committees (considering draft, primary or secondary legislation, including private members' bills—as a standing, public bill, select or joint committee). Each type of committee is composed of a limited number of members of the House and should be distinguished from a committee of the whole House (which takes place in the chamber) or a Grand Committee (which usually takes place in the Moses Room); both can involve any or all members of the House if they choose to participate in the proceedings and the vast majority of public bills are considered in this manner. Different types of legislative committee have periodically been used either to save time on the floor of the House or to allow more detailed examination of bills.

Early select committee activity in the Lords

Towards the end of the 19th, and for most of the first half of the 20th, century the House regularly established select committees to consider public bills and general matters. The desirability of introducing standing committees had been discussed as early as 1848,[2] but it was not until 1889 that two standing committees were established: one to consider bills relating to law, courts of justice and legal procedure; and one to consider all other "general" bills. The referral of bills to either of these committees was optional and would precede rather than replace consideration by a committee of the whole House. However, due to a perception that the committees were overstepping their original purpose by introducing substantive amendments, from 1891 only one committee was appointed and its powers were curtailed. From then on, the number of bills referred to the

[1] For a fuller account by the same author see House of Lords Library Note, *Select Committees in the House of Lords* (LLN 2012/031, 24 August 2012).

[2] See PA Bromhead, *The House of Lords and Contemporary Politics 1911–1957* (1958), p 114.

committee varied considerably and the length of meetings and amendments made were reduced substantially. During their operation, the House's tradition of equal rights for all peers led to resentment in some quarters that power was being taken away from the floor of the House. The committee concept was still in its infancy and the House was yet to experience real pressure on the time available to deal with business. As a result, by 1909 the system had fallen into abeyance and in 1910 the "experiment" was formally brought to an end.

Thereafter, the possibility of re-establishing standing committees was occasionally revisited by the House.[3] Furthermore, during the first half of the 20th century, until 1939, numerous select committees were established to consider matters of public policy on (sometimes quixotic) subjects, including Transubstantiation and agriculture damage caused by rabbits. During the same period approximately 40 select committees were also established to consider public bills. They mostly concerned private members' bills and, though evidence was occasionally taken, the reports produced were usually very short, regardless of the number of amendments made to the bill in question. However, the desire of peers to participate in the scrutiny and amendment of bills during all their stages limited the use of committees for legislative scrutiny; a tendency that continues to this day. Indeed, neither type of committee was appointed between 1940 and 1971.

Renewed activity after the aborted 1968 white paper proposals

In 1968 the Wilson government published a white paper which included substantive proposals to reform the House of Lords. While the white paper's recommendations regarding the Lords' composition and powers were thwarted in the Commons, it led to a revival of select committees in the Lords. This was fuelled in part by the arrival of a significant number of life peers following the Life Peerages Act 1958, which was considered to have delivered a wider array of expertise and a more professional approach to the work of the House. It began with the establishment of the Select Committee on Sport and Leisure in 1971, the first select committee to consider matters of public policy since 1939. Such "ad hoc" committees—which cease to exist once they have performed the function for which they were appointed (usually the production of a report)—continue to be appointed to examine topical issues.

Public bill committees—select committees that examine a bill clause by clause and propose amendments, acting as the committee stage of a bill but without taking evidence—also began to be used periodically, but usually only for

[3] See "An early experiment with standing committees in the House of Lords", by R L Borthwick, *Parliamentary Affairs* (1971, 25(1)), pp 80–86.

private members' bills, and technical and non-controversial government bills. A 1987 working group report noted that peers were divided as to the merits of such committees: some considered that they saved time on the floor of the House and produced better-quality bills; others thought that the composition of the committees would always be unrepresentative and result in delays in the passage of bills.[4] Public bill committees have since fallen into abeyance, with the greater use of Grand Committees having largely superseded them as a means to consider legislation in detail off the floor of the House.

As has already been noted, select committees were also regularly established to consider public bills in the early 20th century. After a break of over 30 years, select committees again began to be established for this purpose following the 1968 white paper. From that point bills were committed to a select committee if it was considered that they required detailed investigation or when the hearing of evidence on the bill was considered necessary. Such committees then decided whether or not a bill should proceed, and reported to the House accordingly. Government-sponsored public bills are rarely committed to select committees for consideration, but attempts to so refer controversial government bills (or parts thereof) will occasionally be made, sometimes for tactical purposes. Select committees can also be appointed to conduct pre-legislative scrutiny of draft bills published by the government, although joint committees (which are considered later) more commonly conduct such work.

Later reforms—actual and proposed

In 1977 the House's Practice and Procedure Committee recommended establishing a new structure of seven or eight standing committees, to reduce legislative congestion and improve scrutiny by the House.[5] Each committee would have been responsible for particular policy areas, and would consider all relevant bills and delegated legislation. The recommendation found little support when debated and, although an experiment was agreed to, the House decided instead to appoint a Science and Technology Committee.

Following concerns about pressures on the committee resources of the House, the Select Committee on the Committee Work of the House (hereafter the "Jellicoe committee", named after its chairman) was established in 1991 to conduct the first comprehensive review of their use. It reported in 1992[6] and put forward proposals for a "more balanced and structured committee system",

[4] *Report by the Group on the Working of the House* (1987–88, HL Paper 9), p 9.

[5] Select Committee of the House of Lords on Practice and Procedure, *First Report* (1976–77, HL Paper 141).

[6] Select Committee on the Committee Work of the House ("the Jellicoe committee"), *Report* (1991–92, HL Paper 35).

including a recommendation that ad hoc committees should become a regular part of the House's work, with at least one being established in each session. For the first time, it articulated the principle that Lords select committees should generally seek to complement rather than duplicate the work of those in the Commons. It rejected the standing committee structure proposed by the Practice and Procedure Committee in 1977, although it recommended that limited experiments should be conducted with the use of public bill committees, special public bill committees and a committee to scrutinise proposals in legislation to delegate powers. The latter committee was established in 1992 as the Select Committee on the Scrutiny of Delegated Powers, and still operates today as the Select Committee on Delegated Powers and Regulatory Reform. Its function is one that only the Lords performs; there is no equivalent committee in the House of Commons.

Following an experiment during the 1993–94 session, the House adopted a special public bill committee procedure in 1994. Since then the procedure has been used, from time to time, to consider technical and non-controversial bills proposed by the Law Commission.[7] They operate in the same way as public bill committees but are empowered to take written and oral evidence on the bill within 28 days of their appointment, before scrutinising the bill clause by clause in the usual manner and making amendments. At the end of this process a copy of the amended bill, rather than a report, is produced for the House's consideration.

Liaison Committee

The Jellicoe committee also recommended that a Liaison Committee be established to allocate resources between select committees; keep the House's committee work under review; consider requests from peers for the appointment of new permanent and ad hoc committees; ensure the effective coordination of committee work with the Commons (so as to avoid duplication); and consider the availability of members to serve on committees.

The committee was established in November 1992. It is composed of all party leaders, the Chairman of Committees and four backbenchers, and usually meets up to three times a year. Prior to its formation, the means by which ad hoc select committees were established varied considerably. Decisions were made on the initiative of the government, as a result of debates in the House or within existing select committees. Though the process has been regularised with the establishment of the Liaison Committee, select committees can still be

[7] The Law Commission is a statutory independent body tasked with keeping the law under review and recommending reform where it is needed.

established on the initiative of the House, although this happens rarely.[8]

Permanent select committees

Following the UK's entry into the then European Economic Community in early 1973, the Lords' first permanent (or sessional) select committee was established on the European Communities in May 1974. The committee, which continues to exist as the Select Committee on the European Union, is the largest of the permanent Lords select committees. It is responsible for scrutinising EU legislation and policies. Its work is supported by six sub-committees, which involve more than 80 peers. Members of the sub-committees are either co-opted or are members of the parent select committee. Following the abolition of the Commons Science and Technology Committee in 1979 in the wake of the establishment of the departmental select committee system, the Lords established a committee of the same name in 1980.[9]

After almost two decades the number of permanent select committees began to increase steadily. The impetus was the removal of the majority of hereditary peers in 1999 which, as with the introduction of life peers from 1958, had a significant impact on how the House conducted its business, including its committee work. This began with the appointment by the Blair government in January 1999 of a Royal Commission, chaired by Lord Wakeham, to consider House of Lords reform (the "Wakeham Commission"). Reporting a year later, it was primarily concerned with the powers, functions and constitution of a reformed House, but also declared that "specialist committee work should continue to be an important function of the reformed chamber".[10] As with the 1968 white paper, although the Commission's major recommendations did not find favour, its recommendations on committees—namely for two further permanent select committees to be appointed to examine economic affairs and the constitution—were more durable.

As previously noted, the Select Committee on Delegated Powers and Regulatory Reform was established in 1992. Following the creation of the Select Committees on Economic Affairs and the Constitution in 2001, the Merits of Statutory Instruments Committee was established in 2004 to consider the policy

[8] In 2001, the Select Committee on Stem Cell Research was established without recourse to the Liaison Committee. Similarly, the House agreed a motion asking the Liaison Committee to consider establishing a Select Committee on Chinook ZD 576 but, despite that committee's express view that it was not appropriate to establish a committee to undertake a quasi-judicial function, the House still chose to appoint this committee in the same year.

[9] The House of Commons re-established their Select Committee on Science and Technology in 1992.

[10] Royal Commission on the Reform of the House of Lords, *A House for the Future*, January 2000, Cm 4534.

aspects of all statutory instruments; it is now known as the Select Committee on Secondary Legislation Scrutiny. A Select Committee on Communications began being appointed on a session-by-session basis in 2007, having originated from an ad hoc committee on the BBC Charter, and became permanent in 2013.

These permanent committees are referred to as "sessional" because their terms of reference remain in force during prorogation and they are automatically reappointed at the beginning of each new session within a Parliament. This is in contrast to ad hoc select committees, which cease to exist once they have reported; and non-sessional committees, as was the Communications Committee prior to 2013, which must be specifically reappointed by the House.

Joint committees

Joint committees of both Houses are formally composed of separate select committees appointed by each House which join together. However, once appointed they operate as a single committee, making decisions jointly with a single chairman drawn from one of the Houses. Joint committees generally follow Lords procedure, unless they agree otherwise. Joint committees may be appointed to conduct investigative or scrutiny work, to consider specific public policy matters (such as parliamentary privilege or Lords reform), public bills or draft bills. Joint committee reports are made to both Houses.

Joint committees on public bills used to be appointed fairly regularly early in the 20th century, though none have been appointed since 1959. On the other hand, joint committees on government-published draft bills, which are appointed ad hoc, have become increasingly common since 1997.[11] Their deliberations, including on any evidence received, frequently result in substantial changes being made to a bill when it is introduced. In 2003 the government stated that they would "proceed on the presumption that bills will be published in draft for pre-legislative scrutiny unless there is good reason otherwise", but this has not proved to be the case, with the number of draft bills being produced ranging from two to four each session since this date—a small proportion of the total number of bills considered in each session.

The current permanent joint committees include the Joint Committee on Consolidation etc. Bills, which has, since its formation in 1894, considered the form (rather than the merits) of bills that consolidate the law; the Joint Committee on Statutory Instruments, which was established in 1972 to consider technical and legal aspects of statutory instruments; the Joint Committee on

[11] Draft bills may also be considered by a Commons departmental select committee or a Lords select committee.

Human Rights, which was established in 2001 to consider matters relating to human rights in the UK; and the Joint Committee on the National Security Strategy, which was established in 2010 to consider the government's National Security Strategy. A Joint Committee on Tax Law Rewrite Bills was appointed between 2000 and 2010, to consider whether bills that rewrote the law on taxation to make it clearer and easier to use preserved its substance. It was not reappointed once the government's programme of tax law rewriting was completed. Proposals for a joint European committee have been made from time to time, but have not been actively pursued by either House.[12]

Appointment, membership, powers and style

The Liaison Committee normally makes recommendations for the appointment of new committees. Committees are formally appointed by the House on a motion which sets out the committee's orders of reference, including its remit, powers and the names of its members (including the chairman). Apart from permanent committees and their sub-committees, other committees cease to exist at prorogation; and all committees cease to exist on the dissolution of Parliament. The membership of a committee is cross-party but there is no formal rule, unlike in the Commons, about the political balance of committee membership, although in practice balance is maintained by the party whips acting through the Usual Channels. In order to ensure a regular turnover, a "rotation rule" operates in relation to the membership of most committees, which limits membership to a four-session term. All committees have automatic powers to send for papers or persons.[13]

Committees are free to choose which subjects they conduct inquiries into, provided that they fall within the scope of their orders of reference. Committees may be given the power to appoint a specialist adviser to support their inquiries and to travel ("adjourn from place to place") in order to receive evidence. The resulting reports reflect the decision of the majority, usually being arrived at

[12] See European Union Committee, *Review of Scrutiny of European Legislation* (1st report, 2002–03, HL Paper 15); Modernisation of the House of Commons Committee, *Scrutiny of European Matters in the House of Commons: Government Memorandum from the Leader of the House of Commons* (2003–04, HC 508); Procedure Committee, *Second Report* (2003–04, HL Paper 99); and Modernisation of the House of Commons Committee, *Scrutiny of European Business* (2nd report, 2004–05, HC 465).

[13] These automatic powers were conferred on all select and joint committees in the Lords only from the beginning of session 2009–10, already being established practice for Commons committees. See Procedure Committee, *First Report* (2008–09, HL Paper 39). Select committee powers, including their ability to compel the attendance of witnesses, was considered by a recent green paper on *Parliamentary Privilege* (April 2012, Cm 8318), which was scrutinised by a joint committee.

by consensus; unlike in Commons committees, divisions are rare. The reports will be made to the House and time will usually be found on the floor of the House or in Grand Committee for those reports made for debate.[14] As most of a report's recommendations will be directed at the government, the government have undertaken to provide a written response to all reports within two months of publication, after which any debates—usually on a motion to take note—will take place. Unlike Commons departmental select committees, Lords select committees tend to conduct more thematic and in-depth investigations, which often cut across departmental boundaries.

Leader's Group on Working Practices & review of select committee activity

Within a year of the 2010 general election more than 100 new peers entered the Lords, which led to concerns about increased physical and procedural strain on the House. Some new peers felt there were limited opportunities to contribute to the business of the House, whether through committees or in the chamber. There was a desire to make better use of peers' expertise.

Responding to these views, the then Leader of the House, Lord Strathclyde, appointed a group on 27 July 2010 "to consider the working practices of the House and the operation of self-regulation; and to make recommendations". The Leader's Group was chaired by Lord Goodlad and reported on 26 April 2011.[15] During the Group's deliberations, Lord Adonis, writing in *The House Magazine*, expressed frustration with the House's existing approach to committee work:

> "... the current House performs its functions haphazardly at best, not least because it makes such poor use of its members. I know of no institution which possesses so much talent, and makes so little use of it … Vast areas of public policy are entirely absent. There is not a single report on any of the public services—nothing on education, health, law and order. There is also nothing on energy, transport or infrastructure; nothing on defence; nothing on immigration; nothing on welfare … I'm told that the reason why the Lords has so few policy committees is that successive leaders of the Lords resisted the idea on the grounds that the Lords would be duplicating the Commons. This is a very odd argument. The whole *raison d'etre* of the Lords is that it is a second chamber which supplements and improves the work of the Commons. If it is worried about duplication, there is no point in its existence."[16]

The Group's deliberations were influenced by a number of significant changes

[14] Committees can make reports either "for information" or "for debate". The former is generally reserved for short, uncontroversial reports.

[15] Leader's Group on Working Practices, *("Goodlad") Report* (2010–12, HL Paper 136).

[16] Lord Adonis, "Function before Form", *The House Magazine*, 25 October 2010.

to Commons select committees following recommendations by the Select Committee on the Reform of the House of Commons, chaired by Dr Tony Wright MP ("the Wright reforms").[17] These changes, which took effect from the beginning of the 2010–12 session, included the election of select committee chairs by a secret ballot of the whole House, the election of committee members by party groups and the appointment of a Backbench Business Committee to schedule the use of backbench time in the House.

Just under a year later, the Goodlad report included several recommendations on the committee functions of the House. Some of the Group's recommendations, including the establishment of a backbench business committee and the election of select committee chairs, echoed reforms in the Commons but failed to attract support from the Leader of the House. Similarly, its proposals for a legislative standards committee and an increased reliance on revamped public bill committees received a cool response: such procedures were considered to detract from the principle that all members could contribute to the scrutiny of a bill at all stages. The government also considered that such procedures could cause delays in the passage of legislation, with Lord Strathclyde noting that they called "into question the basic constitutional principle that a Government with a majority in the House of Commons can expect to have their programme considered by Parliament".[18]

However, Lord Strathclyde endorsed the Group's proposals for the establishment of two additional sessional select committees—albeit in the form of ad hoc rather than permanent committees, with a stipulation that their creation should not lead to any increased expenditure on select committee activities—and the creation of a post-legislative scrutiny committee.

On the long-standing principle, as established by the Jellicoe committee, that Lords select committees should complement rather than duplicate the work of Commons select committees, the Goodlad report stated that there was a:

> "… clear public interest in making best use of the expertise of the House's members. Moreover, the requirement that there should be "no major overlap" with the Commons does not stand up to examination. In many respects—not least in the scrutiny of legislation—there is extensive overlap between the two Houses. Such overlap is inevitable in any bicameral legislature. There is also marked overlap in committee work—not only do both Houses have European committees, but there are also two science and technology committees.
>
> The essential point is not that the two Houses should not overlap, but that they should work in a complementary fashion, the elected chamber providing

[17] *Rebuilding the House* (2008–09, HC 1117).
[18] HL Debates, 27 June 2011, col 1551.

> the primary means of holding the executive, particularly ministers and senior officials, to account, while the revising chamber brings to bear the expertise and experience of its members, its less partisan nature, and the time that its members, without constituencies to attend to or re-election to worry about, can devote to analysing government policy and action. Co-ordination is of course vital—the real danger of overlap is that if committees of the two Houses reach different conclusions on the same subjects, the Government has an opportunity to pick and choose, to play off one committee against another. In reality, however, this has rarely happened, even though the two Houses have for many years both had committees operating in the two areas mentioned above."[19]

While the Jellicoe committee concluded that the low number of peers available made impossible any significant increase in select committee activity, the Group considered that this was no longer a restraining factor due to the present size of the House, instead observing that the lack of select committee vacancies posed difficulties due to the number of active peers now seeking such opportunities.

In March 2012 the Liaison Committee, in the light of the recommendations of the Goodlad report, reviewed existing committee activity and published a report recommending the creation of new committees, as well as an additional unit of committee activity—the marginal cost of which it estimated to be £225,000. These recommendations were contingent, owing to resource constraints, on reductions being made to other committee work.[20] The report recommended the appointment of two new ad hoc committees to report by the end of the 2012–13 session: on public service provision in the light of demographic change; and on small and medium-sized enterprises exporting goods and services. It also recommended the appointment of an ad hoc post-legislative scrutiny committee to examine the Children and Adoption Act 2006 and the Adoption and Children Act 2002. The House debated the report and approved its recommendations on 26 March 2012.[21] The reduction of the existing committees (by reducing the number of European Union sub-committees by one) and establishment of the new committees took effect from the beginning on the 2012–13 session. The Goodlad report's recommendations concerning the election of select committee chairmen were not considered by the Procedure Committee.

In March 2013 the Liaison Committee reviewed the work of the ad hoc committees and, concluding that they had been a success, recommended the

19 *Op. cit.*, paragraphs 226 and 227.

20 Liaison Committee, *Review of select committee activity and proposals for new committee activity* (2010–12, HL Paper 279).

21 HL Debates, 26 March 2012, col 1158.

appointment of an additional unit of committee activity—therefore departing from its earlier, cost neutral, approach to the appointment of new committees.[22] It went on to recommend the establishment of four ad hoc committee units at the beginning of the 2013–14 session: one to consider the use of soft power in promoting the UK's interests abroad; one to first consider the strategic issues for regeneration and sporting legacy from the Olympic and Paralympic Games early in the session, and then to consider the consequences of the use of personal service companies for tax collection later in the session (two ad hoc committees, with different memberships and chairmen, appointed one after the other to undertake short inquiries within one session, thus in effect comprising one unit of activity); and two ad hoc post-legislative scrutiny committees to examine the Mental Capacity Act 2005 and the Inquiries Act 2005.

House of Lords reform?

The appointment of a fully or predominantly elected Upper House would be likely to have significant consequences for the membership, style and scope of its current committees. The role of committees in a reformed Upper House is rarely mentioned during the ongoing debate about reform, which in any event now appears to be on indefinite hold following the withdrawal of the coalition government's reform bill in the summer of 2012. If reform does eventually come to pass, it will be for the Upper House, however constituted, to decide how best to conduct its committee work in order to continue to have an effective and visible role in public policy and legislative scrutiny.

Before the government's reform bill was introduced to Parliament, a joint committee was established to conduct pre-legislative scrutiny of the draft bill. While many contentious matters dominated its deliberations, the role of committees was touched upon. It concluded that the fact that approximately 170 members were involved in the House's committee work in 2010–12 meant that the 300-strong House proposed in the draft bill would be too small; it proposed instead a House of 450 members.[23]

Developments in the Commons

The implementation of the Wright reforms from the beginning of the 2010–12 session neatly preceded a period of greater profile and robustness from Commons select committees. During the phone-hacking episode, Rupert Murdoch and his son James were issued with a summons to attend after initial

[22] Liaison Committee, *Review of select committee activity and proposals for new committee activity* (2012–13, HL Paper 135).

[23] Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill* (2010–12, HL Paper 284, HC 1313), paragraph 114.

prevarications; in the event they appeared before the committee without the practical effect of the power being explored.[24] In November 2011 the Public Accounts Committee placed a senior government tax lawyer on oath during a particularly fractious oral evidence session.

While these events ensured that select committees continued to enjoy a high public profile, they led to discussion about their effectiveness and powers, as well as their future operation. These themes were considered in greater detail, during the same period, by two separate studies published by the Constitution Unit and the Constitution Society. All of this activity then inspired, in part, future deliberations by both Houses as to the effectiveness, resources and powers of select committees.

Constitution Unit study

The Constitution Unit study, funded by the Nuffield Foundation, was the first large-scale cross-committee analysis of the policy impact of select committees in the House of Commons. It involved staff from University College London's Constitution Unit and parliamentary select committees collaborating on qualitative and qualitative analysis, and was published in June 2011.[25] Among other things it found that:

- Committees are highly prolific, and are producing increasing numbers of reports.
- Committee recommendations call for a wide variety of actions by government: 20% relate to flagship policies; 40% call for a small policy change or continuation of existing policy; and the remainder call for larger changes.
- The government accept around 40% of recommendations, with a similar proportion going on to be implemented. Calls for small policy change are more likely to be accepted and implemented, but around a third of recommendations calling for significant policy changes succeed.
- Committees demonstrate seven additional types of influence: contributing to wider debate; drawing together evidence; placing a spotlight on issues and changing ministerial priorities; brokering (improving transparency within and between departments); accountability; exposure; and generating

[24] During the oral evidence session a protestor hit Rupert Murdoch in the face with a paper plate covered with shaving foam.

[25] Russell, Meg, and Benton, Meghan, UCL Constitution Unit, *Selective Influence: The Policy Influence of Select Committees in the House of Commons*, June 2011. The author participated in this study. See also Russell, Meg, and Benton, Meghan, "Assessing the Impact of Parliamentary Oversight Committees: the Select Committees in the British House of Commons", *Parliamentary Affairs* (2012), pp 1–26.

fear.

- Committees are most influential when they are strategic, timely or persistent.
- They could do more to follow up on previous inquiries and monitor the progress of their recommendations. Media attention is also a double-edged sword. Public embarrassment is a key form of influence, but committees can sometimes veer towards "headline chasing".

Constitution Society study

The study by the Constitution Society was published in June 2012. It found that the powers of select committees in both Houses lacked clarity, and may not be coercive either in practice or in theory.[26] The authors suggested that this meant that there were no effective means to compel witnesses to appear before select committees or for them to obtain information or documents that witnesses were reluctant to disclose; there was no power in practice to punish contempt; and witnesses were not necessarily protected by parliamentary privilege. The report then considered the merits of conferring coercive powers on select committees through legislation:

> "In the context of select committees, whose powers and practices may be subject to change, there is a strong case for ensuring clarity and certainty by more specific rules rather than through reliance on informal and often uncertain past practice or development of any system of constitutional conventions (which currently do not exist) in relation to select committees."

However, it cautioned that the conferral of such powers could prove to be a "hostage to fortune", by increasing the prospect of clashes with the courts regarding the compatibility of committee hearings with witnesses' fundamental rights, which could result in judicial interference with parliamentary proceedings.

The authors considered that there was significant ambiguity about the sources of select committee powers in the House of Lords. In contrast to Commons select committees—where powers are principally located in a codified form in the standing orders—the source in the Lords appeared to consist of an amalgam of standing orders, the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, and in the individual motions adopted by the Lords creating particular select committees. They considered that the introduction of "a more consistent framework for the articulation of the relevant powers of House of Lords select committees" would be useful. With respect to the powers of joint committees, they considered that the standing orders of both Houses failed to make clear that powers could be exercised only where

[26] Gordon QC, Robert, and Street, Amy, The Constitution Society, *Select Committees and Coercive Powers—Clarity or Confusion?*, June 2012.

jointly conferred by both Houses.

Parliamentary Commission on Banking Standards

Following accusations that the inter-bank lending rate (LIBOR) had been manipulated by Barclays, in 2012 the government proposed the establishment of a joint committee to examine banking culture. The disagreement that surrounded its conception demonstrated the political exigencies that accompany the appointment of joint committees. The opposition Labour party considered that such an important and technical matter could not be properly scrutinised by a parliamentary committee and initially pressed for a full judicial inquiry, which the government opposed—perhaps mindful of the cost and length of the Leveson Inquiry into media ethics that was ongoing at the time. Compromise was eventually reached with the appointment of a joint committee—the Parliamentary Commission on Banking Standards—in July 2012. Its name reflected its procedural novelty, with a number of significant deviations from normal committee practice: the commission had power to appoint counsel to question any witnesses called, and could appoint its own sub-committees with a quorum of only one (which it established as 11 "panels", some of which featured single members taking evidence alone).

While the ability to appoint counsel could be interpreted as a tacit admission that the select committee interrogations of the Murdochs struggled to expose any obvious wrongdoing, it also brought to the fore the issue identified by the Constitution Society as to whether legal rights—namely the right to a fair trial under the European Convention on Human Rights—would be engaged in a more quasi-judicial setting.[27] Indeed, during the Parliamentary Commission's conception, a paper by Sir Robert Rogers, which was produced for the Commons Liaison Committee's inquiry into select committees (discussed below), expressed scepticism about the merits of committees taking evidence on oath, as well as highlighting the difficulties associated with admonishing, fining and imprisoning those found to be in contempt of the House.[28]

The Parliamentary Commission published five comprehensive, and sometimes high-profile, reports, between December 2012 and June 2013. One of the reports, which concerned the failure of HBOS, led the bank's former chief executive, James Crosby, to request that the Honours Forfeiture Committee annul his knighthood—a request that was agreed.

[27] Article 6 of the European Convention on Human Rights provides a right to a fair trial. The Constitution Society study considers the degree to which Convention rights apply to proceedings in Parliament.

[28] Rogers, Robert, *Powers of Select Committees: Paper by the Clerk of the House* (SCP36), 9 July 2012.

Green paper and Joint Committee on Parliamentary Privilege

Following the above cases, as well as issues relating to the use of parliamentary privilege to identify individuals subject to injunctions on the floor of both Houses, the government published a green paper in April 2012, which considered the case for codifying parliamentary privilege.[29] The green paper's chapter on select committee powers noted that the government were not aware of any instance when an individual had failed to comply with a summons to appear or a request to produce documents, which suggested it was not a problem in practice. Nevertheless, it mooted two possible future approaches: legislating to give the two Houses enforceable powers by codifying their existing powers, possibly including a clear power for the Commons to fine non-members; or creating a criminal offence of contempt of Parliament, which would result in Parliament's powers being enforced in the courts (thus eroding parliamentary privilege). Before codifying their powers—to reprimand, fine or imprison—the government suggested that the two Houses would need to review their procedures for punishing non-members to ensure that sufficient safeguards were in place to ensure that individuals received a fair hearing.

A Joint Committee on Parliamentary Privilege was appointed by both Houses to examine the green paper.[30] It began its deliberations in January 2013 and published its report on 3 July 2013.[31] In general terms, it considered that the case for codifying parliamentary privilege had not been made. With respect to select committee powers, it recommended that the two Houses should set out clearly the powers they reserve the right to exercise, what is expected of witnesses, and the means by which they will consider allegations of contempt, including procedural safeguards to ensure that witnesses are treated fairly. It was considered preferable for these arrangements to be set out in standing orders, as was customary for Commons select committees.

Commons Liaison Committee report

In the wake of the Constitution Unit report, as well as a journal article by

[29] HM Government, *Green Paper on Parliamentary Privilege* (Cm 8318, April 2012).

[30] A former Joint Committee on Parliamentary Privilege reported in 1999 and called for a comprehensive parliamentary privilege bill to be introduced.

[31] Joint Committee on Parliamentary Privilege, *Parliamentary Privilege* (2013–14, HL Paper 30, HC 100).

the Hansard Society,[32] the Commons Liaison Committee[33] considered the effectiveness, resources and powers of Commons select committees in a report published in November 2012.[34] While it was broadly content with the operation of Commons committees following the Wright reforms, it recommended, among other things, that the relationship between government and select committees be reviewed, with the aim of producing joint guidelines for departments and committees that recognised ministerial accountability, the proper role of the civil service and the legitimate wish of Parliament for more effective accountability.

Regarding the—at that stage anticipated—deliberations of the Joint Committee on Parliamentary Privilege, it was not persuaded that the disadvantages of codifying parliamentary privilege would outweigh the advantages, including the enforceability of committee powers through the courts, remarking that "MPs would have to be displaced by lawyers trained to conduct impartial cross-examinations. Select committees are not courts of law. Their effectiveness rests upon the direct involvement of their members and upon their ability to act swiftly and informally". They concluded that the House of Commons should set out a clear, realistic statement of its powers—and perhaps also its responsibilities—in a resolution of the House, while setting out in more detail in standing orders how those powers are to be exercised.

Conclusions

It remains to be seen whether any tangible developments will result from the Parliamentary Commission on Banking Standards and the Joint Committee on Parliamentary Privilege, but there is certainly potential for profound changes in how select committees in both Houses operate in the future. One trajectory would see committees developing in a quasi-judicial manner, by assuming constitutional powers more akin to congressional committees; another would involve committees deciding to reassert their primary constitutional role of holding the government to account and scrutinising matters of public policy.

As select committees in the House of Commons have become increasingly strident over the last 30 years, select committees in the Upper House continue to proceed more cautiously, mindful of the Commons departmental committees'

[32] Brazier, Alex, and Fox, Ruth, "Reviewing Select Committee Tasks and Modes of Operation", *Parliamentary Affairs* (2011) 64(2), pp 354–69.

[33] This committee operates differently from its Lords equivalent. Composed of all Commons select committee chairs, it considers general matters relating to the work of select committees, advises the House of Commons Commission on select committees, chooses select committee reports for debate in the House and hears evidence from the Prime Minister on matters of public policy.

[34] Liaison Committee, *Select committee effectiveness, resources and powers* (2nd report, 2012–13, HC 697).

primary duty to call to the government of the day to account and to examine the "expenditure, administration and policy" of government departments. This has resulted, to a degree, in the Lords adopting a self-denying ordinance with respect to its select committee activity, which has seen it specialise in work that is more thematic and focused on public policy. This approach sometimes frustrates the desire of peers to apply their expertise in examining topical political matters. Regular representations are made to the Lords Liaison Committee, for example, for the establishment of a sessional foreign or international affairs committee. These have been rejected because of the potential duplication of the work of the Commons Foreign Affairs Committee, despite proponents asserting that any such committee would have a cross-departmental remit, in keeping with the traditional orientation of Lords investigative committees. Instead in recent sessions time-limited ad hoc committees have been appointed for particular international affairs topics.

Failing substantial reform of the House of Lords in the short term, this institutional reticence is likely to remain the norm with respect to select committee work in the Upper House. In the meantime, and in the light of the Commons-centric debate about select committee powers and effectiveness, a more thorough assessment of the rationale of select committees in the House of Lords may be necessary.

PETITIONING PARLIAMENT

MARGARET MCKINNON
Clerk of Public Petitions, House of Commons, 2012–13

Parliamentary petitions have existed almost as long as Parliament itself. The first petition which the House of Commons Journal records was in 1571 and concerned a "supplication for the Merchants of Dantsike touching Coney-Skins". Collection SC8 at the National Archives betters this by quite some way with a Parliamentary petition from 1189:

> "A copy of a charter of Richard I granting to Bishop Puiset the manor and wapentake of Sadberge with the service of various tenants of knight fees in exchange for several knight fees of the bishop in Lincolnshire."

These documents look very different but they were both presented to Parliament and both make requests of it. Almost 900 years later Parliament hears petitions which, though admittedly different in style and content, are not unrecognisable from these early records. Whilst social structures and parliamentary procedures may change, the desire of the populous to appeal to authority remains constant.

The 1189 petition is classed as parliamentary. It is however very difficult to ascribe petitions to a particular Parliament. From at least the end of 13th century files of petitions were kept in departments of central government or in Parliament. In the early 14th century 17,000 of these records were transferred to the Tower of London and, since then, many of the files have been lost or broken up. In 1804 Sir William Illingworth produced a report for the Royal Commission on the Public Records entitled "An Account of the Parliamentary Petitions in the Tower". His survey ranged from 1279–1477 and was effectively a tally on petitions presented to Parliament during this time.

During the reign of Edward I the King's subjects began regularly to submit petitions to sessions of Parliament. Medieval petitions were to the king, asking for things he could give, or making complaints. Grants of land, property and privilege were popular requests.

In a petition to one of Edward's early parliaments the "Poor people of London" state:

> "the poor people surrendered to Gregory ... the sum of money of 30 marks and 6s. and 8d ... rotten wine, the which three tuns of wine sold ... double what the things were worth ... [and requests] ... the king and his council that this thing might be inquired into by some loyal man ... and that the poor people might be paid their debt. Gregory has allowance for all their debts and has paid nothing to the poor."

Petitions also asked for pardons such as the one from Richard Basset requesting "the king's peace as he by mischance killed Wylyton in defence of his own life".

Paul Brand argues that this regular presentation of petitions was "part of a deliberate policy on the king's part to make the crown more responsive to the requests and complaints of the king's subjects and more accessible to them".[1]

Petitions were in either Latin or French, predominately the latter, as were responses which came from the king, his council or the chancery.

Almost all petitions at this time were addressed to the king or the king and his council and the verb most often used by petitioners was "prays". These early petitions also included phrases such as "for love of God" and "for God and for alms". Petitions were written in a very particular form which suggests that a small number of clerks did the drafting on behalf of petitioners, which is still the practice today. Unlike modern procedure there does not appear to have been any requirement for petitioners to authenticate a petition, though the majority of petitions came from a named individual.

The procedure for petitions was to set down a specific day by which petitioners had to submit their petition to "receivers". A major change occurred in 1290 when the preliminary sorting of petitions by receivers sifted those to go before the king and those to go to government departments. Prior to this departmental heads had made this decision. Petitions were presented in Parliament and there is some evidence to suggest that petitioners, on occasion, may have presented it themselves. It is also possible that responses were given orally as well as in writing.

Even in these fledgling years parliamentary petitions were not of great concern to the king and his council. Parliamentary arrangements on petitions were designed so that "the king and his council can attend to the great business of his realm and his overseas lands without being charged with other matters".[2] Nevertheless David Judge stresses the importance of these early petitions, which paved the way for the legislative process. In 1327 the first petition that clearly came from the Commons effectively created the first public bill, demonstrating that "it was through medieval petitioning that there emerged the procedure of legislation".[3]

As Parliament grew more independent the procedures for handling petitions developed. In April 1571 a committee was appointed "for Motions of Griefs and Petitions ... to meet in the Temple Church, on Monday next, at Two of the

1 Brand, P, *Petitions and Parliament in the Reign of Edward I*, Parliamentary History (2008), 3:1, p 16.

2 *Ibid.*, p 38.

3 Judge, D, *Public Petitions and the House of Commons*, Parliamentary Affairs (1978), vol. 4, p 392.

Clock in the Afternoon."[4] Parliament continued to grow in independence and the right to petition was expressed in two resolutions in 1669:

> "That it is the inherent right of every Commoner of England to prepare and present petitions to the House of Commons in case of grievance and the House of Commons to receive the same. That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how far they are fit and unfit to be received."[5]

This right was confirmed in the Bill of Rights of 1689, which stated: "That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal."

During the 17th century petitions began to shift from being genuine grievances to be addressed by Parliament to being statements of political intent. Rules on the content of petitions were strict and breaking them had serious consequences. In 1701 Thomas Colepeper, Esq., was found guilty of promoting a petition which the Commons considered "scandalous, villainous and groundless" and imprisoned in Newgate.[6] Petitions received in the 1800s were far more critical of Parliament or the government. Petitions which were considered to contain "language disrespectful to the Houses of Parliament" were debated and the House decided whether they should lie upon the table or be rejected. A century before the same petition could have earned the authors time in prison; today they would not be cleared by the Clerk of Petitions as being in order.

Prior to the late 18th century petitions to the House were still predominately on private rather than political matters. Over the next 20 years petitions became more political and thus more dangerous to the ruling party. In 1795 Pitt announced government proposals which would repress petitioning, not by banning presentation itself, but by placing stringent rules on public meetings.[7]

In the 1820s these repressive measures began to be replaced by moderate reform. The middle classes began to support the call for reform, with Perterloo and the repressive "six Acts" acting as catalysts for political change. Public meetings and petitioning became more common and hundreds of petitions were brought to Parliament each year. By 1830 the House did little except debate petitions. A select committee was set up to consider ways of dealing with the increasing number of petitions. They recommended regular committees of the

[4] CJ, volume 1, 1547–1629, 7 April 1571.

[5] *Erskine May: Parliamentary Practice* (24th edition), p 483.

[6] Priestley, S, *Public Petitions in the House of Commons*, House magazine (1979), p 10.

[7] County meetings could be called by specific individuals such as sheriff or mayor and meetings of over 50 persons had to give five days' notice in a newspaper or letter to the Clerk of the Peace.

whole House to receive them and a petitions committee to organise and report on them. By 1833 the presentation of petitions at the start of business seriously impeded debate on legislation. At the height of the Chartist movement came the National Petitions of 1839, 1842 and 1848. Flooding the House with petitions became a political strategy; in 1843 alone 33,898 petitions were brought to the House.

The pressure on legislative time became too great, and a number of procedural changes were introduced to restrict the time taken on public petitions. In 1842 the standing orders were changed so that the presentation of petitions could not be followed by debate. Judge considered that the "potency of petitions as a radical parliamentary tactic led to the "gagging" rules ... and subsequently the decline of petitions as a parliamentary stratagem".[8]

By the 1970s the rules on petitions were such that, while the right of the public to petition Parliament was retained, the House gave almost no consideration to petitions. This led to a 1972–73 Procedure Committee inquiry into the functions of the Committee on Public Petitions on the grounds that the procedures on petitions were meaningless and deceptive to the public. In 1974 the Committee of Public Petitions was dissolved and the procedure for presenting petitions came to "have modest aims, which works well for those with modest expectations of it".[9]

On 4 August 2011 the Government's e-petitions website went live, offering what the page describes as "an easy, personal way for you to influence government and Parliament in the UK". The system is not parliamentary, but e-petitions can be debated in Westminster Hall or even the chamber. A sponsoring member can bring a petition to the Backbench Business Committee for consideration for debate. The Backbench Business Committee will consider whether relevant criteria have been met, including 100,000 signatures, and whether there has been, or will be, another opportunity to debate the matter.

So far there have been a handful of debates on matters such as the West Coast Mainline franchise decision. The Government recently responded to a committee report stating: "there is a case for some form of petitions committee, which could provide support for petitioners, help the House determine which should be debated and help facilitate the provision of responses by Government, where appropriate."[10]

In 2013 paper petitions are presented immediately before the adjournment

8 Judge, p 394.

9 Priestley, p 4.

10 House of Commons Political and Constitutional Reform Committee, *Revisiting Rebuilding the House: the impact of the Wright reforms: Government Response to the Committee's Third Report of Session 2013–14* (Third Special Report, 2013–14, HC 910).

debate, meaning that few members are in the House when they are read. All petitions receive a Government response but these are rarely, if ever, more than a statement of current Government policy. Members use petitions to generate interest in a campaign. In 2012, 68 petitions were presented on "tax on static caravans". This was part of a campaign headed by Graham Allen MP which included a debate in the House. In the end an amendment was made to the Finance Bill which greatly reduced the amount of tax originally proposed.

Today the House receives about 150 paper petitions a session; subjects range from national policy decisions to local issues like the closure of post offices. The evolution of petitions has transformed them from the bread and butter of parliamentary debate to a two-minute slot at the end of the day. Undoubtedly petitions are less powerful today than they were. Yet the e-petitions site and the prospect of a petitions committee may mean a revival of the popularity and value of petitions as a political tool.

GAS PLANTS, A MINORITY GOVERNMENT AND A CASE OF PRIVILEGE

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ABSTRACT

Those that experience a minority government can be said to live in interesting times. Those that have experienced the current minority government at the Ontario Legislative Assembly have lived through very interesting times.

It started with a Liberal government that won its third term but held on to power with a one-seat minority. The Premier immediately announced the election was a mandate to govern as if with a "major minority" and ruled out negotiating any deals with the other two parties.[1]

At the same time, a simmering scandal about the cancellation and relocation of two gas-fired electricity generating plants in Liberal-held ridings where strong local opposition had outweighed the business case decisions made for the siting of the plants was exploited by an invigorated opposition in the House who had the means and opportunity to flex their strength.

The opposition vigorously pursued the "gas plant scandal" in the House and in several committees. Questions about the decisions to locate and then cancel the plants and the cost to taxpayers, along with general attacks on the entire energy policy of the government, eventually led to a committee of the House formally requesting documents from the Minister of Energy. When he declined to produce them, it led to a point of privilege where the Speaker found a *prima facie* case of privilege. Shortly after the matter was referred to a committee, the House was unexpectedly prorogued and the Premier announced his resignation. During the prorogation, the Minister of Energy resigned his cabinet position and his seat in the House.

The initial production of all documents relating to the request by the committee was followed by the production of even more documents, followed by a point of privilege on whether various ministers deliberately misled the House. The minister's estimate of costs relating to cancellation and relocation of the gas plants of approximately $220 million was followed by reports by the Auditor General of Ontario estimating the costs closer to $950 million. There was even a point of privilege questioning whether the Speaker had been

[1] CBC News Online: "Ontario's re-elected Premier touts 'Major Minority'", posted 7 October 2011.

intimidated or threatened by staff in the Premier's office in relation to his finding a *prima facie* case of privilege.

The government has held onto power for more than two years into its four year mandate. The *prima facie* finding of privilege survived prorogation and was once again referred to a committee; at the time of writing the committee considering the case of privilege is still deliberating.

The following is an attempt to provide some background to the situation out of which the case of privilege arose, the Speaker's ruling and the consideration of it by a committee of the House.

A CASE OF PRIVILEGE

Committee's right to request the production of papers from government

In 2012–13 the Ontario Legislative Assembly experienced a complex case of privilege that deals with the balance between a committee's right to request documents from a minister and the minister's obligation to protect the public interest in matters of commercial sensitivity, confidential negotiations and legal matters of solicitor–client privilege. The ruling by the Speaker reinforced the undoubted right of a committee to order the production of persons, papers and things, but it also incorporated a novel approach to attempt to find a compromise between the competing interests of the committee and the minister in order to find a resolution.

The point of privilege related to a request for the production of papers made by a standing committee of the legislature to a minister, which the minister initially declined. The Speaker found a *prima facie* case of privilege and allowed a motion that the matter be referred to a standing committee of the legislature for its review.

The case was carried over from the first to the second session of this Parliament and as of February 2014 the committee had not completed its consideration.

Green energy

At the start of the 21st century the province of Ontario was facing increasing demand for power that was outstripping the supply provided by aging generation, transmission and distribution systems of electricity in the province.

When the current Liberal government was first elected in 2003, they began to fulfil an election promise to eliminate coal-burning plants for the production of electricity in the province by 2007. The province intended to reduce the enormous costs to the province of healthcare, lost production to sick days, premature death and the environmental degradation that could be attributable to burning coal. With the promise to get out of coal, which provided about 25%

of power generation in the province, the government needed to increase the supply of electricity and invest in transmission and distribution infrastructure.

In 2009 the Green Energy and Green Economy Act was passed with the stated goals of expanding the initiative to eliminate the use of coal in power generation and making the province North America's green energy leader. The Act would foster the growth of renewable energy projects such as solar and wind power.

The commitment to phase out coal-fired generation with an expected increase in the demand for electricity meant there would be a projected supply shortfall in the province. The timetable for the elimination of coal was pushed back to 2009 and then to 2014, at which time the Minister of Energy promised that coal would not be used for generating electricity in the province.

As one of several processes for procuring new electricity from clean sources, the Ministry of Energy issued requests for proposals for natural gas-fired facilities which pollute less and have lower capital costs than coal-fired power plants.

In 2008 the Ontario Power Authority, a government agency with responsibility for contracting energy sources, announced that a 900-megawatt generating facility powered by gas would be contracted for a location in Oakville, in the Greater Toronto area.

The announcement attracted strong local resistance. Opposition to the plant grew and became organised and vocal. The local Liberal Member of Parliament supported those opposed to the site, in opposition to his own government. In October 2010 the Minister of Energy announced that construction of the plant in Oakville would not proceed.

In the meantime, in 2005, a contract had been awarded to a company called Eastern Power to construct a gas-fired facility to be located in the Greater Toronto Area in Mississauga. From 2005 to 2008 various groups—including the City of Mississauga, regional Medical Officers of Health and citizens' groups opposed to the siting of a gas power plant in Mississauga—blocked the granting of environmental approvals and building permits to the company.
The company appealed the local planning decisions to the Ontario Municipal Board, which eventually approved the building of the plant at the Mississauga site. By March 2010 the company had obtained the building permits and by May 2011 had secured financing for construction. Construction began in June 2011, to the surprise of local citizens groups who thought the project had been stopped. Opposition started anew and intensified as a general election campaign got underway. The successful blocking of the Oakville plant the previous year gave encouragement to the local citizens' groups.

A minority government

Ontario has fixed election dates. A general election was scheduled for October 2011. During the election campaign all three parties promised to cancel the Mississauga plant. In September 2011 the Liberal party announced that if they won the election construction of the Mississauga plant would be halted and the plant would be relocated.

In October 2011 the Liberals were returned to power for a third term, albeit with a minority. In October the Minister of Energy requested that the Ontario Power Authority negotiate with Eastern Power to cancel construction. Construction was stopped in November 2011.

The Liberals won 53 out of 107 seats; the Progressive Conservatives won 37; and the New Democratic Party won 17. The Government therefore remained in power with 53 seats to the opposition 54 seats. The Premier announced he would govern with a "major minority" and ruled out negotiating any deals with the other two parties.

As Parliament resumed, the opposition made much political hay out of the so-called Liberal "seat-saver" programme to cancel the gas plants. The Mississauga area contains five constituencies and Oakville is the neighbour to the immediate west. All those ridings were held by Liberals and continued to be held by Liberals after the election.

At the start of the Parliament, the Speaker elected was a member of the Liberal party, reducing the government's numbers to 52. The three parties held protracted discussions around, amongst other things, membership of committees and the distribution of committee chairs. The Liberals felt they should have a majority membership in committees since they formed the government. The opposition parties felt they should have a majority since together they had more seats. Discussions were complicated by the distribution of committee chairs, which are allocated in proportion to the numbers of seats held by each party in the House, since a non-voting chair would reduce that party's vote count on the committee.

Privilege

During consideration by the Standing Committee on Estimates of the estimates of the Ministry of Energy in May 2012, numerous questions were asked regarding the rationale for, and cost of, cancelling the two natural gas-powered electricity generating stations in Oakville and Mississauga. The opposition contended the decisions were made for political purposes, particularly the cancellation of the Mississauga plant, which had been an issue of contention during the election in 2011.

The minister stated that the Oakville decision had been made due to the drop in demand for power generation in the Greater Toronto Area, mostly due to the

effects of the global recession of 2008. He stated that the Mississauga decision had been the result of local opposition in the run-up to the 2011 election.

During the committee's meetings the minister declined to discuss certain issues, particularly the costs of the cancellations. He said that negotiations were still taking place with the private companies involved and, because of the sensitivity of negotiations and impending litigation, he was obliged to protect the interests of the people of Ontario.

On 16 May 2012 the committee adopted a motion to direct the Minister of Energy, the Ministry of Energy and the Ontario Power Authority to produce, within two weeks, all correspondence, in any form, that occurred between 1 September 2010 and 31 December 2011 and which related to the cancellation of the Oakville power plant as well as all correspondence, in any form, that occurred between 1 August 2011 and 31 December 2011 and which related to the cancellation of the Mississauga power plant.

On 30 May 2012 the minister and the chief executive officer of the Ontario Power Authority replied by separate but similar letters to the committee that, although they respected the authority of the committee and its interest in the issues, the information requested was of a confidential, privileged and highly commercially sensitive nature. They asserted that disclosure of the files would have a negative impact on the resolution of the cases and it would not be in the best interests of the public to disclose information that could prejudice ongoing negotiations and litigation.

In the face of this denial of access to the information, the committee began considering whether to report to the House the minister's refusal to comply with the committee's order.

By 11 July 2012 the minister delivered documents to the committee relating to the Mississauga plant. In the letter from the minister to the chair of the committee, he stated that an agreement on the relocation had been reached between the Ontario Power Authority and the company contracted to build the plant. He reported that the total cost of the relocation would be approximately $180 million and included a settlement agreement to resolve outstanding civil proceedings. Since the relocation agreement had been made, he was now free to file the requested documents with the committee; however, he advised that the documents provided did not include records that were subject to solicitor–client privilege.

The committee continued to meet during the summer recess and proceeded with a motion to report to the House that the minister had not complied with the request by the committee. The report was adopted and included recommendations that the minister be compelled to provide all the documents requested by the committee and that the minister be held in contempt if he refused to do so.

On 27 August 2012, the first day of the fall sitting, the committee presented to the House its report on the request of documents and moved the adoption of its recommendations. The same day, the member for Cambridge, who was also a member of the Standing Committee on Estimates, rose on a point of privilege regarding the matter.

Ruling

On 13 September 2012 Speaker Dave Levac ruled that he was satisfied that a *prima facie* case of privilege had been established. The Speaker made five points to support his decision based on established parliamentary practice and precedent; at the end of his ruling the Speaker added an additional requirement as a means of finding resolution to the matter.

The five points in the ruling were:

- Parliamentary practice and standing order 110(b) effectively empowers committees to order the production of documents.
- Non-compliance with a production order made by either a committee or a House can, in a proper case, constitute a matter of privilege.
- The right to order production of documents is fundamental to and necessary for the proper functioning of the Assembly. Any denial of this right compromises the accountability, scrutiny and financial functions of Parliament.
- A minister should not deny the production of requested documents based on legal and other considerations. A ruling made by Canadian House of Commons Speaker Peter Milliken in April 2010 stated, "Procedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of government documents, even those related to national security."
- It is not unusual in many parliamentary jurisdictions for the House and its committees to accommodate or respect security, legal and public policy considerations. Reasonable excuses for non-production of documents can be accepted. However, authorities indicate that a decision to be selective with respect to production is a decision for the House or a committee to make. It is not for the minister to decide whether it is proper for documents to be produced.

After outlining that there was a *prima facie* case of privilege, the Speaker approvingly cited a precedent established in the Canadian House of Commons that had particular bearing in this situation. A ruling on 27 April 2010 by Speaker Milliken dealt with the request of a committee for information from the Canadian government regarding the treatment of Afghan detainees during the war in Afghanistan. In that ruling, Speaker Milliken recognised the competing

interests of the right of parliamentary committees to oversee government actions and the obligation of the government to protect interests of national security. Speaker Milliken found a *prima facie* case of privilege but gave House Leaders, ministers and party critics two weeks to find a way to resolve the impasse before he would allow the House to proceed with the privilege matter.

In a similar manner, Speaker Levac, although finding a *prima facie* case of privilege, also asked leave of the House to set the matter aside for five sessional days before he would ask the member to move a motion for the House to deal with the question. He asked the three House Leaders during that time to find a path to satisfy the request of the committee. If such a solution was not forthcoming, he would return with an appropriate statement and at that time ask the member for Cambridge to move a motion.

The Speaker noted that the Government House Leader had submitted earlier that the minister had been constrained by the categorical request for all documents, without reference or recognition of the sensitive and confidential nature of the documents and the damage to the public that could result from release of such documents. The House Leader further stated that the government would "… abide by the will of the legislature …" if the House or committee explicitly requested documents that are highly commercially sensitive, for which solicitor–client privilege is claimed or which are subject to litigation privilege.

The Speaker felt hopeful that frank communication would allow the matter to be settled. He cited a passage from Speaker Milliken's 27 April 2010 ruling:

> "It seems to me that the issue before us is this: is it possible to put into place a mechanism by which these documents could be made available to the House without compromising the security and confidentiality of the information they contain? In other words, is it possible for the two sides, working together in the best interest of the Canadians they serve, to devise a means where both their concerns are met?"

Speaker Levac imposed a deadline of the end of 24 September 2012 by which he hoped both sides could find a compromise.

On 24 September 2012 the Government House Leader rose in the House on a point of order to inform the House that, pursuant to the motion passed by the estimates committee on 16 May 2012 and the Speaker's ruling on 13 September 2012, officials from the Ministry of Energy and the Ontario Power Authority would be delivering all records responsive to the motion of 16 May 2012 to the office of the Clerk of the Assembly and to the office of the Clerk of the Standing Committee on Estimates. A compromise had not been reached and it was evident to the minister that only complete disclosure would satisfy the other House Leaders. The delivery comprised 11 boxes containing approximately 36,000 documents.

During Question Period that day the Minister of Energy stated that an agreement had been reached on the relocation of the Oakville plant to a location in eastern Ontario. The cancellation would involve $40 million of unrecoverable costs.

On 25 September 2012 the Speaker delivered a statement in which he referred to his ruling of 13 September and to the delivery of documents the previous day. Although Letters of Transmittal from the Minister of Energy and the Ontario Power Authority indicated that what was tabled comprised all documents in response to the 16 May request, it was apparent that, not having received any communication to the contrary from the three House Leaders, there would be outstanding concerns about the initial refusal to produce the documents and the time it took to do so. The Speaker stated that, although receipt of the documents could indicate that the matter was resolved, it remained for the House to decide if that was so. Since a *prima facie* case of privilege was established, the House must still determine if a breach of privilege had occurred and what was to be done about it.

The Speaker turned to the member for Cambridge, who moved a motion that would direct the Minister of Energy and the Ontario Power Authority to table immediately all remaining documents ordered by the Standing Committee on Estimates on 16 May 2012; that the matter of the Speaker's finding of a *prima facie* case of privilege with respect to the production of documents be referred to the Standing Committee on Finance and Economic Affairs; and that the committee report back its findings and recommendations no later than 19 November 2012.

Debate arose immediately on the motion and took precedence over all regular business for that day, the next two sessional days and most of a fourth day. On the fourth sessional day of debate on the motion, on 1 October 2012, the member from Cambridge moved closure. The closure motion carried and the question was put on the motion. The vote was deferred and the motion was carried on division the following day: 2 October 2012. The matter of privilege was accordingly referred to the Standing Committee on Finance and Economic Affairs.

On 12 October 2012 six more boxes were delivered, containing approximately 20,000 documents.

On 15 October 2012, in light of the production of these additional documents, a point of privilege was raised to address whether the Minister of Energy deliberately misled the House when he stated to the House on 24 September, and several times after, that all documents responsive to the committee motion and order of the House had been delivered, when this was clearly not the case.

The Speaker reserved his decision on the matter.

Prorogation

Later on 15 October 2012 the Premier announced he was stepping down as Premier of the province. Effective at 6.30 pm on 15 October, the House was prorogued without the committee having a chance to meet.

During the prorogation, the Minister of Energy resigned his office and his seat in the House. The governing Liberal party held a leadership convention in January 2013 and chose a new leader, who became Premier of the province.

Auditor General of Ontario special report—Mississauga gas plant

In September 2012 the Standing Committee on Public Accounts adopted a motion requesting that the Auditor General of Ontario examine the contract between the Ontario Power Authority and Greenfield Corporation/Eastern Power regarding the cancelled Mississauga gas plant, focusing on the costs to taxpayers. The special report by the Auditor General was tabled in the House on 15 April 2013.

The Auditor General estimated that the cost to the public of the decision to cancel and relocate the Mississauga gas plant would be $275 million. Of this, $190 million would be paid by taxpayers and the remainder by electricity ratepayers.

The report also found that, amongst other things, the circumstances surrounding the decision to cancel the plant and the need quickly to halt construction weakened the negotiating position of the Ontario Power Authority, which likely resulted in higher costs.

Auditor General of Ontario special report—Oakville gas plant

In February 2013 the new Premier of the province requested that the Office of the Auditor General of Ontario review the costs associated with the cancellation of the Oakville electricity-generating gas plant. The special report by the Auditor General was tabled in the House on 8 October 2013.

The Auditor General estimated the decision to cancel and relocate the Oakville power plant could cost the public $675 million. Of this, $40 million would be paid by taxpayers and the remaining $635 million by electricity ratepayers.

The report was critical of the role of the Premier's office in decisions involving the awarding of the contract in Oakville and its termination that impacted on the cost to the public.

Continuation in new session

On 19 February 2013 the House returned with a Throne Speech at the beginning of the second session of the Parliament. On 20 February 2013 the Speaker allowed the original point of privilege which had died in committee

on prorogation to be raised, and reaffirmed that a *prima facie* case of privilege existed.

Although consideration of a matter of privilege in a committee of the Ontario legislature had never before been interrupted by prorogation, and it was rare in other jurisdictions, a similar instance had occurred in the Canadian House of Commons in 2004.

Speaker Levac found that, although the work of the committee had been left unfinished by prorogation, the committee was entitled to conduct its review on the matter and to make its report to the House. He confirmed his previous ruling that a *bona fide* case of privilege existed and he permitted the member who initially raised that matter to move a motion to refer it again to a committee.

The member for Cambridge moved that the House direct the Minister of Energy and the Ontario Power Authority to table immediately all remaining documents related to the Oakville and Mississauga gas plants ordered by the Standing Committee on Estimates on 16 May 2012; that the matter of the Speaker's finding of a *prima facie* case of privilege be referred to the Standing Committee on Justice Policy; and that the committee report to the House its findings and recommendations within 90 calendar days. If the committee determined that more time was required, it could issue an interim report at the 90-day mark and then take such reasonable time as it considered necessary to complete its final report.

After a short debate, the motion carried and the matter was again referred to a standing committee for consideration. In the Standing Committee on Justice Policy, as in the Standing Committee on Finance and Economic Affairs, opposition members hold a majority of votes.

Ongoing consideration

On 20 February 2013 the point of privilege originally raised on 15 October 2012 concerning the second delivery of documents and the alleged misleading of the House was renewed. The Speaker had not ruled on the point at the time it was raised because the House was prorogued that same day. The Speaker permitted the member to raise the point of privilege again.

On 5 March 2013 the Speaker ruled on the matter. He found that the criteria to establish a deliberate misleading of the House had not been met. When statements were made to the House that all documents responsive to the motion were tabled, they were believed to be true at the time based on attestations by senior public servants. There was no deliberate attempt to mislead. When alerted to the fact that certain documents may have been missed in the original search that might be relevant, the statements made to the House were tempered by the knowledge of potentially additional submissions. When it was clear that more documents were uncovered, statements were made in the House by the

Minister of Energy and the Government House Leader to correct their records at the earliest opportunity. Therefore, a *prima facie* case of privilege was not established.

Also on 5 March 2013, on motion by the Government House Leader, the mandate of the Standing Committee on Justice Policy was expanded. The committee, in addition to reviewing the *prima facie* case of privilege regarding the production of documents, was also authorised to consider and report its observations and recommendations on the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

The Standing Committee on Justice Policy dealt exclusively with these issues this session. It has the authority to meet at the call of the chair and has continued to meet during all constituency weeks and the summer 2013 recess. As of January 2014 it has held 49 meetings. It has called 78 witnesses, including the former and current Premiers, the former and current Secretaries of the Cabinet and former and current Ministers of Energy.

During proceedings, evidence of additional documents came to light. Correspondence using code names such as Project Vapour, Project Vapour Lock, Banana and Fruit Salad were used so that the initial search for documents in response to the committee request had potentially overlooked files.

The committee has passed 36 motions to call for the delivery of more documents. To date, 221 boxes of documents have been filed with the committee; more are likely to arrive.

Former staff members in the Premier's office and minister's office indicated that emails had been deleted when they left office which would not have been included in the search for all relevant documents. This prompted additional searches of back-up servers and the intervention of the Information and Privacy Commissioner who investigated and reported on the apparent violation of the Archives and Recordkeeping Act and the records retention schedule established for ministers' offices.

Some correspondence revealed in the search of staff emails indicated that certain staff members in the Premier's office had been displeased with the Speaker finding a *prima facie* case of privilege and had apparently discussed putting pressure on the Speaker to alter his decision. The Official Opposition House Leader wrote to the Speaker stating his intention to raise a point of privilege on the apparent attempt to influence or intimidate the Speaker.

On 9 September 2013 the Speaker ruled on the point. He observed that the emails in question were dated eight days after his finding of a *prima facie* case of privilege, and that he could categorically state that there was never at any time any attempt to influence, persuade or intimidate the Speaker in respect to his findings. He therefore ruled against the point.

Confidentiality of documents

Motions requesting documents have consistently specified that all documents were to be produced.

Confidential documents have been included in the numerous deliveries of documents and, on motions passed in committee, the following options have been chosen to deal with the receipt of different sets of confidential documents:

(a) Declare the documents to be open exhibits of the committee and make them public.

(b) Return confidential documents to the sender and ensure the documents do not form part of the committee's public record.

(c) Return confidential documents to the sender and request that:

- all personal information be redacted by the responder;
- all commercially sensitive material which is not related to the gas plants be redacted by the responder; and
- the redacted documents be resubmitted to the committee, with the intent that the resubmitted documents form part of the committee's public record.

(d) Invite a representative from the organisation to meet the sub-committee *in camera* so they can explain why they are requesting the documents remain confidential.

(e) Declare that the confidential documents received not form part of the committee's public record; however, the clerk retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the clerk of the committee shall return the confidential documents to the sender.

Conclusion

The committee made an interim report to the House on 27 May 2013 which was a summary of witnesses and the testimony given. It would appear that the focus in committee has shifted to reviewing all aspects of the cancellation of the two gas plants, rather than the point of privilege itself. At the time of writing the committee had not completed its deliberations and had not made a final report to the House.

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Resignation of Speaker and election of new Speaker, Deputy Speaker and Second Deputy Speaker

For the second time in 11 months, and for only the fifth time, on the evening of 9 October 2012 a sitting Speaker, the Hon Peter Slipper, announced during a sitting of the House his intention to tender his resignation as Speaker to the Governor-General. Mr Slipper then left the chair and resigned as Speaker; he remained a member of the House. The Deputy Speaker, Ms Anna Burke, took the chair as Acting Speaker, and proceedings continued until 8.44 pm when the sitting was suspended until 9.16 pm. When the sitting resumed, the Clerk read the Governor-General's communication to the House: that Mr Slipper had tendered his resignation; that she had accepted it; and that she invited the House to elect a new Speaker.

The Clerk conducted the election. Two government members moved and seconded a motion for Ms Burke to take the chair as Speaker. Ms Burke stated that she accepted the nomination and, with no further nominations, Ms Burke was declared elected as Speaker and escorted to the chair. She acknowledged the honour and took the chair.

The election of the new Speaker left the position of Deputy Speaker vacant, and the Speaker conducted an election for Deputy Speaker as her first business. Two government members moved and seconded a motion nominating Mr Steven Georganas, who had been a member of the Speaker's Panel, for Deputy Speaker. Two non-government members moved and seconded a motion nominating the Hon Bruce Scott, who had been Second Deputy Speaker, for Deputy Speaker. The bells were rung, a ballot was conducted and Mr Scott was elected Deputy Speaker.

These events followed an attempt by the Leader of the Opposition to have the House remove the Speaker from office. Earlier that day, the Leader of the Opposition had asked as the first question at question time whether the Prime Minister continued to have full confidence in the Speaker. After the Prime Minister's response, the Leader of the Opposition then moved a motion, by leave, "that as provided for by section 35 of the Constitution, the Speaker be removed from office immediately". The Leader of the Opposition argued that because of certain details which had emerged recently during a court case against him, the Speaker was "no longer a fit and proper person to uphold the dignity of the parliament" and should not remain as Speaker. Debate on

the motion continued for two hours, effectively supplanting question time. The motion was defeated, following a division, and subsequent events unfolded in the chamber.

The remaining event in the sequence resulted from the election of the new Deputy Speaker, which had left the position of Second Deputy Speaker vacant. The following day, the House amended the standing orders by omitting the provision which prevented a government member from becoming Second Deputy Speaker. Later in the sitting, two government members moved and seconded a motion nominating Mr Georganas for the office, and two non-government members moved and seconded a motion nominating Dr Sharman Stone, an opposition member, for the office. The bells were rung, a ballot was conducted and Mr Georganas was elected Second Deputy Speaker.

Question time changes continue

Speaker Jenkins announced in October 2010 that he would permit the Leader of the Opposition or his delegate to ask one supplementary question each question time (within the Speaker's discretion under standing order 101(b)). This arrangement continued until Speaker Slipper announced on 7 February 2012 that, on a trial basis, he would increase the opportunities for supplementary questions to be asked, in the anticipation that this would contribute to a more spontaneous question time. The result was that supplementary questions (lasting up to 20 seconds) and answers (lasting up to 1½ minutes) would be allowed on the basis of: one supplementary question by the Leader of the Opposition or his delegate, and up to one additional supplementary question by an opposition member, including the Leader of the Opposition, each day. Up to two supplementary questions could be asked by government private members each day; and one supplementary question could be asked each week by a non-aligned member. More than one supplementary question could be asked to an original question. Opposition, government and non-aligned members have taken up these opportunities and on 22 March Mr Slipper remarked that the trial had appeared to be a success but that he would welcome comments from members.

On 8 February 2012 the Leader of the House moved a number of amendments to the standing orders and remarked that broad agreement on the proposals had been reached following his discussions with the Speaker, and discussions between the Speaker and the Manager of Opposition Business, "the cross benchers and everyone in between". These amendments included a reduction in the times allowed for questions (30 seconds, down from 45 seconds) and answers (3 minutes, down from 4 minutes). A corresponding change in the House order of business was also agreed, indicating that question time would finish at approximately 3.10 pm, rather than approximately 3.30 pm.

Revised media rules for the Commonwealth Parliament

On 28 November 2012 the Presiding Officers of the Commonwealth Parliament tabled in their respective chambers new rules for media-related activity in Parliament House and its precincts. "Media-related activity" is defined broadly to refer to the range of activities including—but not limited to—interviewing persons or seeking to elicit public comments from individuals, photography for publication in printed and online media, sound and vision recording for radio or television broadcast or web streaming, and any other digital capture of text, images or sound for public broadcast.

These revised rules are the result of a year-long consultation process by members of the Joint Committee on the Broadcasting of Parliamentary Proceedings with representatives of the Federal Parliamentary Press Gallery, senators, members and parliamentary officials.

The rules are underpinned by four guiding principles: the openness and accessibility of parliament; the facilitation of fair and accurate reporting by the media of parliamentary proceedings; respect for the privacy of members, senators, other building occupants and visitors to Parliament House; and non-interference with the operations of parliament or the ability of members, senators and other building occupants to fulfil their duties.

The rules clarify where in the building and precincts media activity is permitted, permitted with approval or not permitted. The rules have, as an appendix, a set of maps which clearly demarcate these areas.

The rules also allow images and footage of chamber proceedings to be broadcast if used fairly and accurately. However, broadcast or publication of images that have been manipulated digitally is not acceptable.

Where breaches occur, a graduated range of sanctions may be applied. Administration of the rules will be delegated to the Usher of the Black Rod and the Serjeant-at-Arms.

The rules replace an earlier set of Guidelines on Filming and Photography which had last been reviewed in 2008. The revised rules came into effect in February 2013.

Senate

Authorisation of expenditure

The High Court's decision in *Williams v The Commonwealth of Australia & Ors* [2012] HCA 23 concerned a challenge to the validity of the funding by the Commonwealth of a school's chaplaincy programme. While expenditure for the programme had been authorised through the annual appropriation Acts, it was not otherwise authorised by legislation but relied on the use of the executive power. For a variety of reasons, a majority of the court found that the scope of the executive power did not extend to authorising expenditure of

this nature and the funding agreement in question was therefore invalid. The decision was directed at a particular funding agreement for expenditure under a specific programme of grants, but it clearly had much wider implications for the funding of a broad range of other government programmes which were not supported by specific legislation. It was reported that 5–10% of government expenditure had been put in doubt by the decision and ameliorative action was therefore required.

In response the government introduced a bill to validate expenditure previously authorised only by appropriation legislation and to provide a mechanism for parliamentary approval of all such payments in the future. However, the chosen mechanism is by regulation so the bill in effect cedes to the executive the power to approve such expenditure, subject only to the disallowance power. The bill was introduced into the House of Representatives on 26 June 2012, passed the same day and introduced in the Senate the next day.

The bill—the Financial Framework Legislation Amendment Bill (No. 3) 2012—had three targets: the validation of funding for the school chaplaincy programme; the validation of other funding possibly affected by the High Court's decision; and the creation of a mechanism to authorise expenditure of a similar nature in future. It may be considered ironic that a decision that will be seen as shifting the balance between Parliament and the executive in favour of the former should be responded to by Parliament with a mechanism that involves the delegation to the executive of Parliament's fundamental functions with respect to the authorisation of appropriations. The mechanism was justified during the debate as necessary to allow the Government to enter into contracts in future. Different amendments moved by the opposition and the Australian Greens to modify the mechanism were defeated and the bill passed without amendment on 27 June, the day before the Senate rose for its winter adjournment. The passage of the bill in this form exemplifies the mischief of rushed consideration and the lack of parliamentary scrutiny.

Legislative disagreements

A feature of the unusual circumstances of minority government in the Australian House of Representatives which prevailed during 2012 was the lack of legislative disagreement between the two Houses—no doubt reflecting the need for the government to consult and negotiate with relevant parties to ensure the passage of legislation in the House.

Only one such disagreement arose in 2012, after the Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012—a bill with the distinction of having a short title longer than its long title ("A Bill for an Act to amend the Environment Protection and Biodiversity

Conservation Act 1999, and for related purposes")—was passed on 10 September 2012 with a group of amendments jointly sponsored by a group of cross-party and independent senators, to broaden the matters that the expert committee could examine. The disagreement was resolved on 10 October when amendments made by the House of Representatives in substitution for amendments made by the Senate were agreed.

"Free votes"

The Senate resolved to extended its sitting hours in September to facilitate consideration of the Marriage Amendment Bill (No. 2) 2012, a private senators' bill introduced by four backbench senators but designated as government business by order of the Senate. While government senators exercised a free vote, opposition senators did not and the bill was defeated at second reading on 20 September. The treatment of the bill extended a trend indicating that free votes now, in contrast to traditional parliamentary practice, are regarded as the gift of a party leader. An unusual feature of the debate was the President's participation. In accordance with practice, he spoke from the chair. Standing order 184(2) provides that when the President is speaking, he or she shall be heard without interruption.

Initiation of measures to impose taxation

Controversy attended the final stages of the minerals resource rent tax bills, which sought to impose additional tax on profits from the mining of iron ore and coal, when a request for an amendment to the main bill was ruled out of order. The request sought to add gold, uranium and rare earth metals to the materials taxed by the scheme, thus broadening its base and applying the tax to minerals not previously taxed. Although the main bill was not otherwise a bill imposing taxation, the addition of previously excluded minerals to the tax base turned it into a bill imposing taxation, according to the precedents of the Senate.

Under the first paragraph of section 53 of the Constitution, the Senate may not initiate an imposition of taxation. In the past, there has been inconsistent treatment of such amendments and it had been argued that they could be moved as requests under the third paragraph of section 53, which relates to increasing a "charge or burden" on the people. This view, however, leads to significant difficulties of interpretation.[1] As President Calvert advised in relation to an amendment of a similar character that had been withdrawn by its proposer

[1] See chapter 13 of *Odgers' Australian Senate Practice*, 13th edition, under "When requests are required: increase in any proposed charge or burden on the people".

when the problems were identified:

> "The better interpretation is that such amendments should not be moved in the Senate at all as they amount to initiating an imposition of taxation."[2]

This interpretation underpins current Senate practice and was referred to in the Clerk's statement required by an order of the Senate of 26 June 2000 to accompany requests for amendments to advise the Senate whether the requests are in accordance with the precedents of the Senate.

Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012

The Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 was passed during time set aside for consideration of non-controversial legislation on 22 November. The bill provided for the establishment of parliamentary commissions to investigate allegations of judicial misbehaviour and to advise the Houses before they consider resolutions praying for the removal of judges pursuant to section 72 of the Constitution. The bill had been amended by the Government in the House of Representatives to clarify several matters, as recommended by the Senate Legal and Constitutional Affairs Legislation Committee. Although the bill proposed a mechanism for consideration of such matters, it remains a question for the Houses whether to use this or some other process in any particular case.

Some earlier private members' versions of the bill would have had the effect of undermining section 16 of the Parliamentary Privileges Act 1987 by allowing cross-examination of witnesses on evidence given to parliamentary committees. The approval of such practice by Justices of the New South Wales Supreme Court in the trial of Mr Justice Murphy was the catalyst for the enactment of the Parliamentary Privileges Act 1987 (see *Odgers' Australian Senate Practice*, 13th edition, chapters 2 and 20).

Delegated legislation

The normal regime for scrutinising delegated legislation is provided for in the disallowance provisions of the Legislative Instruments Act 2003. Other Act-specific forms of scrutiny are sometimes agreed for special purposes. A number of such instruments came before the Senate during 2012.

These included two instruments designating countries as "regional processing countries" for the purpose of section 198AB of the Migration Act 1958, which provides for parliamentary approval (either by affirmative resolution of both Houses or tacitly by lack of disapproval) of instruments designating locations where offshore processing of asylum seekers attempting to reach Australia by

[2] Senate Debates, 16 September 2003, p 15275.

boat will occur. Such determinations are exempted from the normal disallowance procedures by exclusions listed in section 44 of the Legislative Instruments Act 2003.

Another instrument requiring parliamentary approval was a determination made under section 10B(1) of the Health Insurance Act 1973 in relation to the extended Medicare safety net. The requirement for such determinations to be approved by both Houses of Parliament was inserted by a Senate amendment to the Health Insurance Amendment (Extended Medicare Safety Net) Act 2009.

In each case, the necessary explanatory documentation was tabled at the time notices of the approval motions were given.

Public interest immunity claims

An order of the Senate of 13 May 2009 requires that the withholding of information from committees should occur only on the basis of some public interest immunity ground. There is no general discretion to withhold information without a statement of the public interest ground. There were signs in 2012 that the intention of the 2009 order was becoming more widely appreciated.

While reference to the order is included in every opening statement, signs of adherence to it had been hard to find in some rounds of estimates hearings. At best, public interest grounds have been implied rather than stated. Although this continues to be the case, there were stronger signs during the year of committees pressing witnesses further to elaborate on the basis of their claims to withhold information. Details of the operation of, and patchy adherence to, the mechanism contained in the resolution appear in the Senate's *Procedural Information Bulletins*, published on the Senate's webpages.

New joint statutory committee

The Parliamentary Joint Committee on Human Rights was established on 13 March 2012, when the Senate agreed to a resolution from the House of Representatives, passed on 1 March 2012.

The committee is established by the Human Rights (Parliamentary Scrutiny) Act 2011. Section 7 of the Act sets out the functions of the committee:

> "a. to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the parliament on that issue;
>
> b. to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
>
> c. to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and report to both Houses of the Parliament on that matter."

The first report of the PJCHR was tabled in August 2012.

Odgers' Australian Senate Practice

The 13th edition of *Odgers' Australian Senate Practice* was tabled by the President at the conclusion of sittings on 29 June. It is also published online in a variety of formats, including a free e-book version which is periodically updated.

Financial independence of parliaments

The President tabled a communiqué on 15 August 2012 issued by Australian presiding officers attending the 43rd Conference of Australasian and South West Pacific Presiding Officers and Clerks, which called for greater financial independence for parliaments to preserve their ability to hold the executive to account.

Senators' Interests Committee report

The Senators' Interests Committee presented its report on a code of conduct for senators on 29 November 2012. The consideration of such a code and an office of ethics adviser or integrity commissioner had been a feature of the agreements on parliamentary reform at the beginning of the Parliament. The committee, in a carefully balanced report, was not convinced that an aspirational, principles-based code would necessarily improve perceptions of parliamentarians and their behaviour, but it made a number of useful suggestions about the structure of a possible code should the Senate decide to adopt one.

New South Wales Legislative Council and Legislative Assembly (joint entry)

Parliamentary privilege and members' interest disclosure returns

In 2012 issues arose as to whether privilege attaches to members' interest disclosure returns under the NSW Parliament's interest disclosure regime.

In 2012 the Independent Commission Against Corruption (ICAC) in NSW conducted a public inquiry into matters connected with mining exploration licences. The inquiries related to three investigations (Operations Jasper, Acacia and Indus). The matters being investigated in Operation Acacia were specifically referred to the ICAC by the Parliament in November 2011. As part of these inquiries, in 2012 the ICAC sought from the Clerk of the Legislative Council by notice under section 22 of the ICAC Act various interest disclosure returns prepared by members of the Legislative Council pursuant to the Parliament's interest disclosure regime. The regime operates by regulation rather than by resolution of the House/Houses, as in some jurisdictions.

Copies of the returns were made available to officers of the ICAC by the Clerk's office on several occasions. On each occasion, the officers were cautioned

that privilege may attach to the returns. The officers agreed to advise the Clerk if the ICAC proposed to use the returns for the purposes of any proceedings.

On 10 October 2012 the ICAC advised the Clerk that information in the members' returns would be "referred to" in the brief of evidence being prepared by the ICAC for the investigations. Public hearings for each were due to commence on 1 November 2012. This necessitated urgent investigation as to whether the Register of Disclosures by Members of the Legislative Council attracts the protection of absolute privilege as a "proceeding in Parliament" within the meaning of Article 9 of the Bill of Rights 1689.

In his advice on the matter, the Clerk noted that under the Constitution Act 1902 the Parliament has a role in enforcing the interest disclosure regime. Section 14A(2) of that Act provides for the expulsion of members who wilfully contravene the pecuniary interest regulation. However, it is not clear whether Parliament, in passing section 14A(2), intended to cover the field and so oust the jurisdiction of the courts. Various other judicial and parliamentary authorities gave no clear basis for concluding one way or the other whether the returns were protected by privilege.

Given the lack of a definitive answer on the matter, the Clerk decided to seek the advice of the Crown Solicitor. In his advice, the Crown Solicitor also found it hard to come to a definitive answer, arguing that there are "competing arguments" which are "relatively finely balanced" as to whether the Register of Disclosures by Members of the Legislative Council was protected by parliamentary privilege. Ultimately, however, he was inclined to support the view that the Register forms part of the "proceedings in Parliament". He further indicated that it is the responsibility of the President of the Legislative Council to seek to uphold the privileges of the House.

Following careful, but expedited, consideration of the matter, it was determined that a legislative response was most appropriate. The matter was raised with the Premier by the President, and the next week (the last sitting week before the commencement of the ICAC hearings) the Government introduced the Independent Commission Against Corruption Amendment (Register of Disclosures by Members) Bill 2012. The bill was passed by both Houses with the support of all political parties. The Act provided that the ICAC may use members' interest disclosure returns under the NSW Parliament's interest disclosure regime for the purpose of any investigation or finding/recommendation, and that for such a purpose Parliament is taken to have waived any privilege that may apply to the register. The "carve out" of privilege was restricted to the ICAC only; based on the Crown Solicitor's advice, it must be assumed that privilege attaches to members' returns for all other purposes.

This approach was adopted based on a number of considerations. As a general principle, it is well established that privilege exists to protect members

of parliament raising matters in the public interest. It is not for the protection of members who may have engaged in corrupt conduct in breach of the law.

While Parliament is always reluctant to restrict the privileges of members, in this instance it was considered that there was no sound policy reason why privilege should attach to members' interest returns. Indeed, clarification in legislation that privilege does not apply to particular uses such as ICAC investigations could be seen as enhancing accountability of members and thereby public confidence in the Parliament. Moreover, legislation clarifying that the ICAC could undertake fact finding using members' returns would not prevent the Parliament from undertaking its own inquiries into possible breaches of the interest disclosure regime. The power of the Houses of Parliament to declare a member's seat vacant for contravention of the interest disclosure regime remains the sole responsibility of the Houses.

Further electoral funding and disclosure law reform

In recent years a raft of significant changes have been made to the electoral funding and disclosure system in New South Wales. In 2008 changes were implemented to:

- require biannual disclosures of political donations and election expenditure, including membership fees and affiliation fees paid by trade unions;
- impose an obligation to disclose the details of all political donations of or above $1,000;
- require the disclosure of details of membership or affiliation fees of or above $1,000.

Further changes followed. In 2009 donations from property developers were prohibited. In 2010 caps were placed on political donations, with donations limited to $5,000 to a registered party or group, and $2,000 to non-registered parties, elected members and third parties. Donations from the tobacco industry and the liquor and gaming industries were banned. Caps were also placed on election expenditure by parties in the lead up to elections: an overcall is applied at the rate of $111,200 multiplied by the number of Legislative Assembly seats contested by a party at the election; as is a separate cap of $55,600 per electorate (these caps apply to the 2015 election).

Further changes occurred in 2012. In late 2011 and early 2012, the Parliament considered the Election Funding, Expenditure and Disclosures Amendment Bill. This bill incorporated two further reforms. First, it proposed a restriction on political donations to individuals on the electoral roll only. Donations from corporations, unions and other entities would be prohibited. Second, it proposed that expenditure by an organisation affiliated to a political party, such as a union or peak industry group, would be treated as expenditure by that party for the purposes of the caps on election expenditure.

Given the controversial nature of some proposals in the bill, it was referred to a Select Committee of the Legislative Council for inquiry and report. The committee reported in February 2012. There was no consensus from the committee, with Labor opposition members lodging dissenting statements. On the resumption of debate on the bill, the Labor opposition strongly opposed the bill, describing it as an undemocratic piece of legislation which disadvantages the Labor party by restricting the rights of unions which are affiliated to the Labor party to campaign at elections. Nevertheless, the bill passed the Parliament with minimal amendments, and was assented to in February 2012.

Restoration of oaths of allegiance

The Constitution Amendment (Restoration of Oaths of Allegiance) Act 2012 (NSW) received assent on 5 June 2012.

The Act (which was a private member's bill received from the Legislative Council and taken up by the Government in the Legislative Assembly) amends the Constitution Act 1902 to give members of the Legislative Council, the Legislative Assembly or the Executive Council the option of taking or making an oath or affirmation of allegiance to Her Majesty Queen Elizabeth II, Her heirs and successors, as an alternative to the pledge of loyalty to Australia and the people of New South Wales.

A further consequence of the Constitution Amendment (Restoration of Oaths of Allegiance) Act 2012 was to insert subsection (4B) into section 12 of the Constitution Act 1902:

> **"12 No Member to sit or vote until pledge of loyalty or oath of allegiance taken**
>
> ...
>
> (4B) It is not necessary for a Member who has taken or made an oath or affirmation of allegiance to take or make that oath or affirmation again after any demise of the Crown, including by or on abdication."

This means that it is no longer necessary to re-swear members upon the demise of the sovereign, as was the case in February 1954. This prevents the potentially anomalous situation upon the demise of the Sovereign of having to re-swear those members who took the oath of allegiance as opposed to those members that made a pledge of loyalty to Australia and the people of New South Wales following their election to the House.

New South Wales Legislative Assembly

Review of the 2011 election

On 11 December 2012 the Joint Standing Committee on Electoral Matters reported on its inquiry into the administration of the 2011 NSW election and related matters. The committee's report included recommendations for

legislative changes to require that voters provide proof of identity at the time of casting their vote; and to provide for penalties against those providers of premises to the NSW Electoral Commission for the purposes of polling who interfere with the display of compliant electoral material.

Administrative funding for minor parties

On 15 November 2012 the Joint Standing Committee on Electoral Matters reported on its inquiry into administrative funding for minor parties.

The committee's report found that the amount of funding available under the Administration Fund was insufficient to enable parties, particularly minor parties, to comply with electoral funding laws and administer the party; and recommended that a new funding formula be established.

New "sin bin" provision

On 4 April 2012 the Legislative Assembly adopted, as a sessional order, standing order 249A, which enables the Speaker to direct a member who is disruptive to leave the chamber for up to three hours. The direction is not open to debate or dissent and members must comply with such directions without complaint. SO 249A provides an alternative to SO 249, which allows the Speaker to direct the removal of a member until the adjournment of that sitting. Further, SO 249A does not require a member removed from the chamber to leave the precincts. It also provides the Speaker with the discretion to determine the length of time the member is to be excluded from the House—for up to three hours, or until the conclusion of a particular proceeding (for instance, the conclusion of a reply concluding the debate to enable the member to vote on any ensuing question).

Following its introduction in April, the new standing order was relied upon more often than SO 249 by the chair, notably as a mechanism to remove members on more than three calls from the chamber during question time and to allow those members to return and participate in the business of the House following question time. The previous order prevented members from participating in any further proceedings of the House if they were removed during question time.

Following the introduction of SO 249A, SO 249 was used by the Speaker on only four occasions, with the members for Canterbury, Keira, Maroubra and Macquarie Fields being removed for the remainder of the relevant sittings.[3] In comparison, SO 249A was used to remove a member for a period of up to three hours on 31 occasions during 2012.

[3] See Votes and Proceedings (VP) 8/5/2012, 816; VP 29/5/2012, 974; VP 21/6/2012, 1125; VP 11/9/2012, 1244.

Community Recognition Notices

On 21 February 2012 the Legislative Assembly created a new category of General Business Notices of Motions to be adopted formally by the House without amendment or debate. The procedure, known as General Business (Community Recognition Notices), allowed for motions of a "congratulatory nature" or those that "would recognise important contributions or achievements by people in the community" to be listed in the Business Paper separately from other General Business Notices of Motions.

At a designated time each sitting week in the Routine of Business, the Community Recognition Notices would be dealt with in globo. In addition, the procedure allowed the Speaker to identify which General Business Notices of Motions on the Business Paper at that time in February 2012 could be dealt with as a Community Recognition Notice. The procedure also allowed for Community Recognition Notices to be electronically lodged with the Assembly's Table Office and listed in the Business Paper rather than given in the House. In effect, these notices were dealt with formally by the House in globo. The provision for formal business (for both Government and general business) had previously been removed from the daily routine.

Adoption of new sessional orders

On 14 February 2012 new sessional orders were adopted by the House in relation to: the routine of business; bells; restrictions on quorum calls; adjournment of the House; maximum time limits for debate and speeches; matters of privilege or contempt suddenly arising; placing or disposal of business; programme for general business days; general business; re-ordering of general business; debate on general business notice of motions; private members' statements; motions accorded priority; matters of public importance; discussion on petitions signed by 10,000 or more persons; written questions; notices of motions; giving more than one notice; restrictions on divisions; introduction of bills; and committee reports—tabling in the House and debate.

New South Wales Legislative Council

Inquiry into notices of motion

On 5 March 2012 the President referred to the Legislative Council Procedure Committee an inquiry into the procedures for the giving, moving and publication of notices of motions, with particular reference to the need for additional rules regarding the nature and content of notices, whether the length or number of notices given by a member should be limited, the nature of motions that result in a letter of congratulations or condolence from the President, mechanisms for enhancing accessibility to the work of members, and alternative mechanisms for members to raise matters of a community and constituency nature.

The reference arose from concerns in relation to the number and length of notices of motion in the House, and their growing tendency to contain argument and debating points, together with facts and details that are impossible to verify. There was also a tendency for motions to relate to matters of a community or constituency nature, rather than of state significance.

The committee tabled its report on 21 June 2012. The report provided an analysis of present practice in the Legislative Council and in other jurisdictions. However, the committee did not make any recommendations for reform as it was unable to reach a consensus on the matter.

Privileges Committee: right of reply

The right of reply procedure was adopted by the New South Wales Legislative Council in a resolution of continuing effect in November 1997, based on the model adopted in the Australian Senate. It was incorporated into the current standing orders in May 2004.

In February 2012 the House referred to the Privileges Committee an inquiry into the operation of the right of reply process over the past 15 years, with particular reference to the possible introduction of an appropriate time limit on requests for a right of reply. The inquiry was prompted by the receipt of a request for a right of reply to statements made in the House over 15 years ago. In its report, the committee noted that over the past 15 years it has received 35 right of reply requests, with 33 subsequently forming the basis of reports to the House. All but one of the committee's reports had then been adopted by the House. In general, the committee concluded that the right of reply procedure was working well. In relation to time limits on receipt of right of reply requests, the committee considered that it would be reasonable to expect that requests for a right of reply should be received within 12 months of the relevant comments being made in the House, unless the applicant can show exceptional circumstances to explain the delay. The committee has since implemented this time limit as a matter of practice without seeking any change to the relevant standing orders of the House.

Queensland Legislative Assembly

Dissolution of Parliament and election results

In January 2012 the Premier announced that the state election would be held on 24 March and that she would ask the Governor to dissolve the parliament on 19 February. (Queensland elections must be held every three years but there are no fixed terms.)

The March election resulted in a change of government, with the Liberal National Party (LNP) winning an unprecedented 78 of the 89 seats. Having led the LNP from outside Parliament since March 2011, Mr Campbell Newman,

the former Lord Mayor of Brisbane, was elected to a seat and became Premier. Not since 1860 has a person become Queensland Premier having not previously served in the state Parliament.

The Australian Labor Party's (ALP) 51 seats in the 53rd Parliament were reduced to seven seats. Katter's Australia Party (KAP) ran state candidates for the first time and two were successful. Two long-sitting independents were re-elected.

Former Premier Bligh held her seat but resigned shortly after the election. The resulting by-election was held in late April and the ALP retained the seat.

New member induction

Since 2001 the Parliament has provided an induction programme for newly elected members to provide them with advice and training on various aspects of being a member of Parliament. An induction programme was held over four days in April and May for the 51 new members who were elected in 2012. Throughout the course of the programme members were briefed on all parliamentary service areas. The programme also featured a "services expo" where members could attend and ask specific questions of key service areas and receive detailed information about the services provided. Due to the volume of new members this approach was very successful.

The new members were surveyed after the programme and an overwhelming majority provided positive feedback about the programme's effectiveness and execution.

Opening of Parliament

The opening of the 54th Parliament saw a return to a two-day opening programme rather than the compressed one-day programme that had been adopted for the last two Parliaments.

All members were sworn in on 15 May 2012, with the parliament officially opened by the Governor the following day. For the first time since 2001, a 19-gun artillery salute was fired outside the parliamentary precinct at the conclusion of the Governor's opening speech. Over 700 people attended the opening.

Queensland's first female Speaker

Following the swearing in of members, MPs elected Queensland's first female Speaker of the Assembly, Hon Fiona Simpson MP. Madam Speaker was formally presented to the Governor on 16 May 2012.

Composition of the Legislative Assembly

During the last sitting week of 2012 three members resigned from the Liberal

National Party. One member joined the Katter's Australian Party with the other two members sitting as independents. At the end of 2012 the Assembly comprised 75 government and 14 non-government members:
Liberal National Party: 75
Australian Labor Party: 7
Katter's Australian Party: 3
Independents: 4
TOTAL: 89

Budget estimates

In another break with tradition, the Budget was not introduced until September 2012, with estimates hearings conducted in early October. In a statement to the media, the Premier advised that the decision to delay the budget was required to "give ministers time to look for savings and to allow the government to consider the Queensland Commission of Audit interim report tabled in June 2012".

Suspension of media access to the chamber

On 21 June 2012 the debate of the Civil Partnerships and Other Legislation Amendment Bill sparked widespread public interest. The public gallery was full on the night of the debate, with the Deputy Speaker issuing warnings to the public gallery to listen in silence. Following a number of disturbances in the gallery the Deputy Speaker ordered it to be cleared.

In contravention of long-established guidelines for broadcasting debates, the television media filmed the gallery disruption and subsequently replayed the footage in news bulletins. Madam Speaker subsequently banned the media from the floor of the Parliament for nine sitting days on the grounds that the broadcasts had "demonstrated disregard for the standing orders and policies" and "could reasonably be expected to contribute to future public safety issues".

On 13 September 2012 a further breach of the media access conditions occurred as network cameras captured close-up footage of papers on a member's desk in the chamber. The footage was provided to another outlet, after which it was broadcast. Given the breach, the network cameras were again suspended from the chamber.

Legislation

Parliament of Queensland and Other Acts Amendment Bill 2012

This was the first bill introduced and passed by the new Parliament—all on the same day. The objectives of the bill were to:

- Set formulae to determine the size of the membership of the portfolio committees. The election result dictated that the number of members and the balance between government and non-government members on

each portfolio committee needed to change. In accordance with the new legislative formula, committees now comprise eight members (previously six): six government and two non-government.
- Change the membership of the Committee of the Legislative Assembly (CLA). In 2011 the Parliament vested the management of the Parliamentary Service with the CLA and Clerk. The Speaker was not included. The legislation has now been amended to make the Speaker a member and chair of the CLA. However, the Speaker has a deliberative vote only when a question relates to the budget and personal staffing of the Speaker's office or a matter affecting the Legislative Assembly chamber, such as capital works or matters relating to the standing orders of the parliament. The Speaker has no casting vote.
- Additional salary for certain positions. Additional salary is payable to the positions of Manager of Government Business, Chief Government Whip and Senior Government Whip above the annual base salary of a member of the Queensland Legislative Assembly.

Criminal Law (False Evidence Before Parliament) Amendment Bill

Until 2006 it was an offence under section 57 of the Criminal Code knowingly to give a false answer to any lawful and relevant question put to a person in the course of an examination before the Legislative Assembly or a committee of the Legislative Assembly. This provision was repealed following events in 2005. In short, a complaint was made that a minister had given false answers to questions at a parliamentary budget estimates committee hearing. At the time, the alleged conduct of the minister could amount to both a contempt of parliament and an offence against section 57. However, the "double jeopardy" provision in section 47(2) of the Parliament of Queensland Act 2001 ensured that the person is not liable to be punished twice for the same conduct. Ultimately, the matter was dealt with by parliament being recalled to consider the matter as a contempt, the minister resigned from the ministry and section 57 of the Criminal Code was later repealed.

The 2012 bill introduced by the Attorney General on 19 June 2012 sought to reinstate section 57 to the Criminal Code. Such action had been pursued by the former opposition on two occasions in previous Parliaments[4] and was an LNP pre-election commitment.

In its report on the bill the Legal Affairs and Community Safety Committee noted:

[4] Criminal Code (Truth in Parliament) Amendment Bill 2008 and Criminal Code (Honesty and Integrity in Parliament) Amendment Bill 2009. Both bills failed the second reading.

> "The amendments expressly reflect the intention that the parliamentary privilege of freedom of speech and debate is abrogated to the extent required by the offence, and clarify that the offence applies to members of Parliament as well as non-members. The Legislative Assembly will retain the right to decide whether particular conduct should be dealt with as contempt of Parliament or whether it should be prosecuted under the new offence."

During consideration in detail the Attorney General moved amendments to reinstate other sections of the Code that had been repealed in 2006 (i.e. section 56 (disturbing the legislature) and section 58 (witness refusing to attend or give evidence before parliament or parliamentary committee)).

In a submission to the committee the Clerk of the Parliament referred to the removal of these sections as "collateral damage" in the efforts to remove section 57. The Clerk submitted that:

> "Currently, there is a less than satisfactory situation whereby it is an offence to create a disturbance when Parliament is not sitting pursuant to section 56A of the Criminal Code but not an offence to create a disturbance when the Parliament is sitting. It is usually the case, and recent disturbances would seem to confirm, that persons seek to promote a grievance or issue when Parliament is sitting, particularly when a ill is being debated."

The committee recommendation to reinstate the repealed sections 56 and 58 of the Criminal Code was accepted by the Government. The amended bill was passed on 2 August 2012 and came into operation on 14 August 2012.

Parliament of Queensland (Registered Political Parties) Amendment Bill

The Parliament of Queensland Act 2001 (the Act) provides for an additional salary entitlement for the leader of a recognised political party other than the Leader of the Opposition. Prior to amendment by this bill a recognised political party in the Parliament was determined one of two ways in accordance with section 112(3) of the Act:

1. The registered party (registered under the Electoral Act 1992) has at least 10% of the total number of members of the Legislative Assembly (rounded up). This translates to nine members based on the current Assembly of 89 members.
2. The registered party has at least three members of the Legislative Assembly and the party has received at least 10% of the primary vote at the most recent general election.

On 24 November 2012 a member announced that he had resigned from the LNP and joined the KAP. The House was formally advised on 28 November that the KAP now had three members sitting in the House. This meant the KAP was now a recognised political party in accordance with section 112(3) of the Act.

On the morning of 29 November, the last sitting day of the year, the House was advised that the member was now the parliamentary Leader of the KAP.

Later that day (just after 7 pm) the Parliament of Queensland (Registered Political Parties) Amendment Bill was introduced by the Deputy Premier. The purpose of the bill was to amend the definition of recognised political party to clarify that the minimum of three members of the Assembly required for recognised party status must have been members of the registered political party at the most recent election at which they were elected. The Deputy Premier explained:

> "It is generally accepted by those of us who were here in the parliament … that a minimum of three members would have had to have been elected at a general election, even though the wording of the current Act is somewhat ambiguous. This bill is to clarify the meaning of the Act and to ensure that its reading accords with the generally accepted intent … It is important that the Act be clarified now to make it clear that it refers to members elected under the party's banner at the last election, rather than those changing party allegiances in an opportunistic way to form a recognised political party."

A division on the motion to declare the bill urgent to pass all stages at that day's sitting was called but no count recorded as there were fewer than five members on the side of the Noes. The opposition spoke in support of the bill. A further division was called on the second reading, but again no vote was recorded.

By 7.34 pm the House had passed the bill. The commencement clause specified the Act is taken to have commenced on 29 November 2012. This was the last item of business conducted in 2012.

South Australia House of Assembly

On 29 February 2012 the Premier (Hon J W Weatherill) on notice moved a motion to adopt new sessional orders allowing the Speaker to direct a disorderly member to leave the chamber for up to an hour and placing a four-minute time limit on the answers to questions without notice. According to the standing orders, any debate on the suspension of standing orders is limited to 10 minutes on each side. While there was some discussion that the notice was a substantive motion and as such not limited to 10 minutes for each side, this issue was not pursued. The opposition opposed the motion, citing the role of the Speaker in Australian parliaments retaining partisan allegiance compared to the Westminster parliament. The motion was ultimately passed: 26 ayes to 17 noes.

The text of the new sessional orders is:

> "That Standing Orders be and remain so far suspended so as to provide that—
>
> **Direction to Leave the Chamber**
>
> 1. The Speaker may direct a disorderly Member to leave the Chamber for up

to one hour. The direction shall not be open to debate or dissent, and if the Member does not leave the Chamber immediately, the Speaker may name the Member in accordance with Standing Order 138.

2. A Member who has been directed to leave the Chamber under this Sessional Order is excluded from the House and its galleries for up to one hour. However, the Member may enter the Chamber during the ringing of the bells for the purpose of forming a quorum, an absolute majority or voting in a division. Once the Speaker or Chairman of Committees has declared the presence of a quorum or the business for which an absolute majority was required has concluded or the result of the division has been declared, the Member must immediately withdraw from the Chamber for the remainder of the period of exclusion.

Time Limit for Answers to Questions without Notice

During the period for asking Questions without Notice an answer to a question must not exceed four minutes. The Speaker has discretion to extend the time for a Minister's answer if the answer is interrupted."

The clerks now run a stop clock at the Table, in view of the Speaker, timing answers. The clock is paused for points of order, extended interjections and the like.

The direction to leave the chamber was used regularly by the previous Speaker, most often during question time. The current Speaker of the House of Assembly, however, has not utilised the provision as often.

Victoria Legislative Council

The right of a parliamentary committee to consider evidence after its final report has been tabled

On 19 April 2012 the President of Victoria's Legislative Council made a statement about correspondence he had received concerning the Council's Legal and Social Issues References Committee. The committee had resolved to recall a witness to provide further evidence on its inquiry into organ donation. It had done so after its final report had been tabled in the previous sitting week as there were perceived inconsistencies in the witness's evidence.

One item of correspondence received by the President had queried the committee's authority to examine further the witness after it had tabled its report, given that under the standing orders this committee did not have the power to self-reference. The President stated that this was a grey area, and that he would refer the matter for consideration by the Procedure Committee. He also stated that he did not have the power to instruct the committee on the matter, as only the House could direct a committee to desist from taking further action; nevertheless, he indicated that he would provide guidance.

The President stated that the tabling of a report did not preclude a standing

committee from investigating a matter arising from the evidence it received which it considered might undermine the integrity of the committee or the parliamentary system. This principle was supported by a recent committee inquiry and resolution of the Australian Senate (the standing orders governing the Council's standing committees having been based largely on Senate procedures). The President advised that it was crucial to the work of committees that the evidence provided by witnesses was accurate and honest and, in his view, it was important that committees were able to investigate possible misleading evidence or other interferences in order to protect Parliament's integrity.

The Leader of the Government then raised a point of order, arguing that the committee was seeking to defy a resolution of the House by presenting its final report by the reporting date specified in the referral motion yet insisting on continuing its evidence gathering after this date. The President reiterated that it was not within his powers to direct the actions of committees, and noted that the issue of recalling the witness was not a matter related to the substantive inquiry, but one that had arisen separately and was of concern to some committee members. The committee would not then be reopening the entire investigation, but solely seeking to clarify concerns about the evidence in question. In the case of the Senate committee, the President noted that the inconsistencies in evidence given had not become apparent until 12 months after the committee had reported, yet it had been permitted to re-examine that evidence.

In the following sitting week the Leader of the Government moved a motion to refer to the Procedure Committee for consideration the issue of the standing committees' capacity to continue investigations into a matter after the reporting date. The motion also sought to ensure that, until the Procedure Committee had reported on the matter, all standing committees would be required to complete their investigations by the specified reporting date, in effect blocking the ability of the Legal and Social Issues References Committee to take further evidence on the inquiry into organ donation. Immediately after the reference was moved, several members raised points of order querying the repercussions of the motion.

The President ruled that in his opinion the passing of this motion would not preclude standing committees from continuing to undertake related administrative work, such as approving minutes or finalising accounts; however it might stop a committee from performing tasks such as sending out correspondence or issuing press releases related to an inquiry. He also confirmed that he believed the House still had the power to extend committee reporting dates, and that the motion did not preclude the House from doing this.

The chair of the committee then raised a point of order, asking the President whether the proposed motion, if agreed, would prevent the Legal and Social

Issues References Committee from finalising its current investigation. The President stated that it was his understanding that that would be the case, and after confirmation from the Leader of the Government that this was part of the intent of the motion, he confirmed that there was no reason that the House could not vote on the motion.

The Leader of the Australian Greens also raised a point of order, in which he stated that, if the motion was agreed, a person who after the reporting date of a committee felt they had been misrepresented would have no recourse to rectify the situation. The President agreed that such a person seeking further action from a standing committee after a reporting date would have no recourse to the House to resolve the situation. He stated that he could not rule the motion out of order on that basis, but members should keep that in mind whilst debating the motion.

Debate on the motion proceeded, with numerous members detailing the powers of the standing committees and the powers of the House to limit them. The committee chair moved an amendment to the motion proposing that the Legal and Social Issues References Committee be exempt from the requirement to wait until the Procedure Committee reported its findings to the House. The amendment was defeated after a division of 18 ayes to 18 noes, despite the President (a member of the governing party) using his deliberative vote to cross the floor to join the non-government parties. The original motion was then agreed in its original form.

By the end of the year under review, the Procedure Committee had not reported back to the House.

CANADA

House of Commons

Bill C–38

On 11 June 2012 the Speaker ruled on a point of order raised on 5 June 2012 regarding the form of Bill C–38: *An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*. It had been contended that the bill was not properly an omnibus bill because: it lacked a central theme; it failed to provide a link between certain items in the bill and the budget itself; and it omitted changes that were purported to be included in it by representatives of the Government. In response, the Government House Leader had indicated that Bill C–38 had as its unifying theme the implementation of the budget. The Speaker ruled that Bill C–38 contained all the required elements and was therefore in proper form. He noted that until the House adopts specific rules relating to omnibus bills, the chair's role is very limited and the Speaker should remain on the sidelines as debate proceeds and the House resolves the issue.

Also on 11 June 2012 the House proceeded with 155 recorded divisions on motions in amendment at that stage, after 871 motions in amendment had been submitted. The recorded divisions lasted almost 24 hours, starting during the night of 13 June to 14 June 2012.

On 18 June 2012 the Speaker ruled on the point of order raised on 12 June 2012 concerning an allocation of hours in the motion by the Government House Leader to allocate time at report stage and third reading of Bill C–38. The Speaker explained that the normal sitting hours for the House leave 23.5 hours for the consideration of Government orders in a typical week and that that number, divided by the number of days in the week, yields approximately five hours per day. The Speaker explained that this was more than the number of hours allocated for the consideration at report stage and third reading of Bill C–38. Accordingly, he ruled that the motion was in order, as it respected the terms of standing order 78(3).

Bill C–45

Bill C–45—*A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*—introduced on 17 October 2012, also brought a series of events of interest.

The bill contained over 415 pages and sought to amend more than 25 existing statutes, in addition to consequential amendments to other Acts. On 19 October 2012 the House agreed by unanimous consent to remove provisions dealing with members' pensions from the bill and to create from them Bill C–46: *An Act to amend the Members of Parliament Retiring Allowances Act*. The motion also provided that Bill C–46 be adopted by the House at all stages without debate. It received royal assent on 1 November 2012.

During the second reading debate of Bill C–45 on 24–30 October 2012 there were 12 unsuccessful attempts to split the bill. On 30 October the bill was read a second time and referred to the Standing Committee on Finance.

On 31 October 2012 the Standing Committee on Finance adopted a motion to invite 10 standing committees to consider the subject matter of certain provisions of the bill in relation to their respective mandates. The committee also decided that, if the committee had not completed the clause-by-clause consideration by 11.59 pm on Wednesday 21 November 2012, the chair would put, forthwith and successively, without further debate or amendment, each and every question necessary to dispose of clause-by-clause consideration of the bill, and order the chair to report the bill to the House on or before Thursday 22 November 2012.

From 21 to 23 November 2012 the Standing Committee on Finance proceeded to the clause-by-clause consideration of Bill C–45, including nearly 3,700 recorded divisions. The meeting lasted from 3.36 pm on Wednesday

21 November 2012 to 7.43 pm on Friday 23 November 2012, with few suspensions. On 26 November 2012 the bill was reported back to the House without amendment.

Debate at report stage on the bill started on 29 November 2012. In total, notices were given of 5,865 admissible report stage motions and 667 motions were selected for debate by the Speaker. Notice of time allocation to deal with C–45 at report and third reading was adopted on Monday 3 December 2012. The House divided during more than six consecutive hours on Tuesday 4 December, dealing with 46 recorded divisions to conclude report stage. Third reading of the bill was passed on the following day.

Strategic and operating review

On 12 March 2012 the Board of Internal Economy approved a savings and reduction strategy that will see spending for the House of Commons decrease by $30.3 million, or 6.9% of the overall budget. These reductions will be phased in gradually and fully implemented by 2014–15. The spending decrease of $30.3 million is divided as follows:

- members and House officers: a reduction of $13.5 million;
- committees, parliamentary associations and parliamentary exchanges: a reduction of $3.8 million;
- House administration: a reduction of $13 million.

Alberta Legislative Assembly

Bill 7, Election Accountability Amendment Act, 2012

Bill 7 amended the Election Act, the Election Finances and Contributions Disclosure Act, the Senatorial Selection Act and the Local Authorities Election Act. The amendments were intended to make the Alberta electoral system more democratic, enhance accountability, and update and improve how provincial and municipal elections are held.

Bill 7 amended several pieces of legislation concerning elections and election financing. Input with respect to potential improvement to the election laws was sought from the Chief Electoral Officer, who is an independent officer of the legislature; many of the amendments included in the bill resulted from that input. Key amendments included authorising the Chief Electoral Officer to use income tax forms filed annually by Albertans to conduct the enumeration of voters, a change which allows for the compilation of more accurate voter lists and which has resulted in significant savings in other provincial jurisdictions that employ this method of enumeration. The Chief Electoral Officer was authorised to establish and post guidelines regarding election advertising, including rules with respect to the use of automated telephone calls or "robocalls" by political parties. The threshold for disclosing financial contributions to provincial political parties

was lowered and a requirement to disclose financial contributions to leadership contests was established. During Committee of the Whole consideration of Bill 7, 23 amendments were moved by members of opposition caucuses, none of which were agreed, and one government amendment was moved to the clauses related to local authorities' elections, which was agreed. Bill 7 was given royal assent on 10 December 2012.

British Columbia Legislative Assembly

Black Rod

The Legislature of British Columbia unveiled its Black Rod on 14 February 2012 to commemorate the Diamond Jubilee of Her Majesty Queen Elizabeth II, Queen of Canada.

Carved in British Columbia, the shaft of the Black Rod is made of seven types of wood, taken from trees indigenous to British Columbia and painted black. The mid-section of the shaft features a Tsimshian carving made of jade, the province's official gemstone. At the base of the Black Rod are three rings, each inscribed with a Latin motto. The first ring was attached by the Right Honourable Baroness D'Souza, Lord Speaker of the House of Lords; the second was attached by the Honourable Noël A. Kinsella, Speaker of the Senate of Canada; and the bottom ring was attached by the Honourable Bill Barisoff, Speaker of the Legislative Assembly of British Columbia.

At the unveiling ceremony, three items were added to the Black Rod: the bottom ring, a time capsule to be opened in 60 years, and a gold sovereign dated 1871 (the year that BC joined confederation), which was a gift to British Columbia from Her Majesty Queen Elizabeth II to mark her Diamond Jubilee.

The Rod is designed to be used on formal occasions when the vice-regal representative is present in the legislature. The use of the Black Rod revives the tradition of the Crown's representative seeking permission to enter the elected House. Access is granted after the Sergeant-at-Arms knocks on the door of the legislative chamber.

Government apology for Japanese-Canadian internment

On 7 May 2012 the Assembly unanimously passed a resolution apologising for events during the Second World War when 21,000 Japanese Canadians were incarcerated in internment camps in the interior of BC. This action was taken under the authority of the federal War Measures Act, which gave the government the power to seize the property of Japanese Canadian citizens.

7 May also marked the 70th anniversary of the internment. The mover of the resolution was Minister of State for Intergovernmental Relations, Naomi Yamamoto, who was elected as BC's first MLA of Japanese descent in 2009.

Committee of Supply

Since 1993 the Legislative Assembly has adopted a sessional order to authorise the House to divide the Committee of Supply into two sections that sit concurrently for the purpose of considering supply: section "A" to sit in the Douglas Fir Committee Room, and section "B" to sit in the chamber.

On 15 May 2012 the House, for the first time, adopted a sessional order, on division, authorising the creation of section "C" for Committee of Supply, allowing three Houses to sit concurrently using an additional committee room, the Birch Room.

The enabling motion empowered section "A" to consider bills. During debate on the motion, the Government House Leader explained that allowing for bills to be debated outside the main chamber would make better use of the time remaining in the spring sitting. The Opposition House Leader was critical of the motion, saying it restricted opportunities for public scrutiny of bills, and he called on the government to prolong the spring sitting by two weeks. The adoption of the motion enabled committee stage debate of Bill 54—*Provincial Sales Tax Act*, a substantial bill which comprised 255 sections—to take place in section A while the House considered other bills as well as Ministry Estimates, and section C met as the Committee of Supply.

Section C sat for six days between 16 May and 31 May.

Financial management practices

On 26 July 2012 the Office of the Auditor General released its report entitled *Audit of the Legislative Assembly Financial Records*. The audit covered the trial balances of the Assembly for the fiscal years 2009, 2010 and 2011; highlighted areas for improvement, including stronger internal controls and financial processes; and recommended that the Assembly make publicly available audited financial statements.

In response, the all-party Legislative Assembly Management Committee (LAMC) announced that future meetings of the committee, starting with its meeting on 28 August, would be open and recorded by Hansard and would be held *in camera* only when needed.

In order to assist the Assembly with developing a plan to address the audit findings and with improving its financial and administrative practices, two senior financial accountants were retained by the Clerk of the House, Craig James. An operational and management review was initiated, resulting in various organisational changes, including the creation of an Executive Financial Officer position and development of an internal audit function.

On 31 October LAMC for the first time published detailed information on members' travel-related expenses on the Assembly website, covering the six-month period from April to September 2012. Reportable items include capital

city allowances, in-constituency travel allowances, general travel costs, and accompanying person and Speaker-approved travel expenses.

LAMC established a Finance and Audit Committee, comprised of the Speaker, the two caucus chairs and the Clerk, to examine and make recommendations to the Legislative Assembly Management Committee on financial management and audit-related matters.

New Lieutenant Governor

The Honourable Judith Guichon was sworn in as British Columbia's 29th Lieutenant Governor in a ceremony held at the Legislative Assembly on 2 November 2012.

A former ranch owner-operator in the Nicola Valley, Mrs Guichon served a two-year term as the president of the British Columbia Cattlemen's Association, which represents the interests of the province's beef cattle producers.

She succeeded the Honourable Steven Point, who was appointed in 2007. Mr Point served as Chief of the Skowkale First Nation from 1975 to 1999, as Tribal Chair of the Stó:lõ Nation from 1994 to 1999, and was appointed as a provincial court judge in 1999.

Québec National Assembly

Ruling from the chair following the merger of Action démocratique du Québec with Coalition avenir Québec

Upon the resumption of parliamentary proceedings on 14 February 2012, the composition of the National Assembly had undergone several changes since the adjournment in December. All four members of the Action démocratique du Québec (ADQ) had announced that they would henceforth be sitting under the banner of Coalition avenir Québec (CAQ), a newly formed political party. The two independent members who had left the ADQ caucus in 2009, as well as three members hailing from the Parti Québécois caucus, also joined the CAQ.

As at 14 February, the composition of the National Assembly was: 64 members of the Québec Liberal Party, 44 members of the Parti Québécois, nine members sitting under the CAQ banner, one under the Québec Solidaire banner and one under the Option Nationale banner. Three independent members did not belong to any parliamentary group. In addition, there was one vacant seat. The President gave a ruling on the status of the newly affiliated members of the Coalition avenir Québec, who had asked to be recognised as a parliamentary group.

The status of parliamentary group had been granted to the ADQ through a special order that temporarily amended the rules on the recognition of a party as a parliamentary group for the duration of the legislature. The criteria of 12 or more members returned to the Assembly by the same political party or

20% of the popular vote in the most recent general election had been replaced by that of five members or 11% of the popular vote. While the chair noted that under electoral law the new political party was officially recognised by the Québec Chief Electoral Officer, it specified in its ruling that the recognition of a political party as a parliamentary group did not stem from the application of the Election Act but from the National Assembly's rules of procedure. Indeed, the interpretation of common law provisions falls within the exclusive authority of the courts, while at the parliamentary level provisions concerning rules of procedure are interpreted exclusively by the chair of the Assembly, in accordance with the privilege to regulate its internal affairs without outside interference.

In its ruling, the chair also stated that it could not alone interpret the special order that recognised the ADQ as a parliamentary group so as to determine that the new party should be granted all of the rights stemming from this recognition. The chair further recalled that it could not reinterpret a clear rule of procedure, to modify its true scope, since changes to the rules of procedure are for the Assembly and not the chair. Hence the special order clearly gave an exceptional definition of what constitutes a parliamentary group for the exclusive benefit of Action démocratique du Québec.

Since there were no longer any members sitting under the banner of the political party that had been recognised as a parliamentary group, the chair noted that the special order in question had lapsed. It therefore could not apply to the new political party. The chair then stated that the criteria used to define a parliamentary group in the standing orders—12 members returned by the same political party or 20% of the popular vote in the most recent general election—were again the only ones in force. Since the members affiliated with the Coalition did not constitute a parliamentary group in the light of those criteria, the chair ruled that they would sit as independent members.

Nonetheless, as the chair's purpose was not to deny the political affiliation of the independent members, it indicated that the latter would henceforth be identified as representing this party in *Hansard* as well as on the channel of the Assembly and on the website. It specified, however, that this status would in no way confer special rights upon them.

Lastly, as he had done at the resumption of proceedings in September 2011, the President gave a ruling on the conduct of oral questions and answers and the distribution of measures and speaking times to take into account the changes in the composition of the Assembly. The chair confirmed that the random draw procedure that had been piloted to distribute the various measures among the independent members was maintained, with certain specifications on the terms and conditions regarding the exchange or transfer of rights amongst themselves.

Summoning of a minister in parliamentary committee

Under Business Standing in the Name of Members in Opposition on 21 November 2012, a member of the Official Opposition moved the following motion:

> "That the National Assembly instruct the Committee on Transportation and the Environment to shed light on the events of last 24 October concerning the action taken by the Minister of Sustainable Development, Environment, Wildlife and Parks with regard to the independent public body known as the Bureau d'audiences publiques sur "environnement (BAPE);
>
> That, for this purpose, the Committee hear the Minister of Sustainable Development, Environment, Wildlife and Parks as soon as possible, as well as any person it shall deem necessary to summon without compromising the independence of the BAPE; …
>
> Lastly, that this motion become an order of the Assembly."

The Government House Leader challenged the admissibility of the motion on the grounds that the order would amount to attacking the member's conduct as well as to not taking him at his word, while, as a minister, the member had already answered questions on this matter, particularly during Oral Question Period.

The motion was declared in order. The chair recalled that the Assembly has the power to hear ministers on matters falling within their area of responsibility. One of the prerogatives of the legislative power is to oversee the executive branch and its management of the acts of government. This power of supervision is embodied in section 4 of the Act respecting the National Assembly and may be carried out in various ways, both at the Assembly and in parliamentary committees.

The standing orders also provide for the Assembly's referral of any matter to a committee for its examination as well as the procedure whereby a parliamentary committee may summon a minister to appear before it. The Assembly may thus instruct a committee to hear a minister on a specific matter.

Furthermore, the British parliamentary system is characterised by the principle of ministerial responsibility; under this principle the government must make certain that it has the confidence of the House at all times. Ministers are therefore responsible for their acts before the House which, accordingly, has the power to demand accountability from them.

However, the powers held by the Assembly must be reconciled with the prohibition on impugning a member's conduct other than by a motion and the rule that no member shall refuse to take another member at his word. As the chair had shown, these principles are not in contradiction.

Indeed, under standing order 315, a motion is required to impugn the conduct of a member of Parliament acting in that capacity. This is a fundamental rule

that is justified by the fact that a member cannot use his constitutional privilege of freedom of speech at the Assembly to impugn the conduct of a colleague. However, questioning a minister about actions he has taken in this capacity is not prohibited. On the contrary, ministers are accountable when carrying out their governmental activities. The chair then stressed the importance of not confusing the prohibition on impugning the conduct of a member of the Assembly acting in this capacity and the accountability of ministers with regard to their ministerial duties.

The rule that a member cannot refuse to take another member at his word must be observed by parliamentarians in order to prevent them from constantly claiming that other members are not telling the truth. However, the fact that a minister gives a statement or answers a question on a matter does not prevent members from questioning him again on this or from further examining the matter. To arrive at a different conclusion would undermine the Assembly's fundamental role as controller of government action.

Changes in the Act respecting the conditions of employment and the pension plan of the Members of the National Assembly

On 29 November 2012 the National Assembly adopted Bill 11, *An Act to amend the Act respecting the National Assembly and the Act respecting the conditions of employment and the pension plan of the Members of the National Assembly*. This Act aimed to make permanent certain temporary rules that had been adopted during the 39th legislature to grant an indemnity to the member occupying the position of House Leader of an opposition party other than the Official Opposition. Prior to that, an opposition group other than the Official Opposition was only allowed indemnities for the positions of leader and whip.

Oath taken by the President of the National Assembly

The first session of the 40th legislature opened on 30 October 2012 with the election of the President and vice-presidents. Mr Jacques Chagnon, Member for Westmount–Saint-Louis, was re-elected President by acclamation. He is a member of the Official Opposition. On the occasion of his election, the President took an oath to reaffirm his commitment to the Assembly, the members and the citizens while highlighting the values inherent to this position. This type of oath is unprecedented in Québec.

Matter submitted to the Assembly by the chair

On 15 November 2012 the Chief Government Whip asked the President to give a ruling on the presence of the Canadian flag in the Legislative Council chamber. Specifically, the Chief Government Whip asked the President to remove the flag of Canada from that chamber at all times when parliamentary

proceedings were underway. The following day, the Chief Opposition Whip urged the President to keep the Canadian flag in the chamber.

On 21 November the President gave a ruling in which he recalled that during the 1980s and 1990s the absence of the Canadian flag beside the President's chair in the National Assembly chamber was raised on a few occasions. Each time, the National Assembly was required to settle the matter when motions were moved thereon. Though the matter submitted to the chair this time did not concern the National Assembly chamber but the Legislative Council chamber, it was nonetheless of the same nature. As with the aforementioned precedents, the chair ruled that it was the parliamentarians themselves who would decide on the advisability of removing the Canadian flag from the chamber when parliamentary proceedings were held.

In pursuance of standing order 41, the President decided to submit the matter concerning the removal of the Canadian flag to the Assembly and granted a delay before members were to vote on it. On 4 December 2012 the Assembly voted against the removal of the flag by 65 to 53. This was the first time that a President had had recourse to this standing order since the adoption of the current standing orders in 1984.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Review of MMP electoral system

The Electoral Commission conducted a review of the mixed-member proportional (MMP) voting system, following the referendum in November 2011 that decided the system should be retained. The Commission reported in October 2012 after extensive public consultation, and made a number of recommendations for changes to the voting system. These recommendations included: reducing the threshold for representation from 5% to 4% of the party vote; abolishing the one-electorate seat threshold for the allocation of list seats (meaning a small party winning a single electorate seat would not have any other members unless it crossed the party-vote threshold); and abolishing the "overhang", so that the House would have a maximum of 120 members even if the number of electorate seats won by a small party exceeded the number of seats that party would be entitled to from its proportion of the party vote.

In May 2013 the National Party-led Government announced that it would not implement the Electoral Commission's recommendations. Hon Judith Collins, Minister of Justice, stated that the level of political consensus required for electoral reform had not been reached. On 14 November 2013 a bill was introduced by an opposition member seeking to implement the Commission's recommended amendments to the thresholds for representation.

Proposed members' bills now online

Members' bills (that is, bills on matters of public policy proposed by members who are not ministers) are selected by ballot whenever places become available on the order paper. In the past a copy of each proposed bill had to be submitted each time a ballot took place. As a result of changes to the standing orders, since the beginning of 2012 members have been able to lodge their proposed bills at any time. All proposed bills that comply with the requirements of the standing orders are accepted and published in full as a consultation draft on the Parliament website. This means that members may publicise their proposed bills without them first needing to be selected in a ballot. The limit of one proposed bill per member remains.

These new arrangements have resulted in a large increase in the number of proposed members' bills submitted for the ballot—as many as 70 bills have been submitted and available for the ballot at any one time. In previous terms of Parliament between 30 and 45 members' bills would be expected for a ballot. Members have enjoyed the ability to promote their legislative proposals in this way. The new procedure also addressed a problem that had emerged whereby members, on winning the ballot, had postponed the House's consideration of their bills while taking steps to promote them through social networking websites and other electronic means. Now that members are able to publicise their bills before they win the ballot, once a bill has been introduced the member in charge cannot postpone it without broad agreement.

Arrangements made for deaf member

The last general election, at the end of 2011, resulted in the election of the first profoundly deaf member of the New Zealand Parliament. The member (Mojo Mathers) can lip-read but is provided with extra support, principally in the form of electronic note-takers in the House and at select committee meetings, to ensure she can fully participate in parliamentary activities. An individualised feed of Parliament TV to her seat in the House streams close-up shots of speakers to facilitate lip-reading. When the member takes a call in debate, an LED light at her seat is used to indicate when her speaking time is nearing an end.

The select committee of which the member has permanent membership allows note-takers to be present during proceedings that are not open to the public, and gives access to written proceedings to assist in preparation for meetings. The committee has also agreed to seating arrangements that facilitate lip-reading.

Ms Mathers' election has raised broader concerns about the accessibility of the New Zealand Parliament and its proceedings to prospective MPs and members of the wider public with disabilities. Work is proceeding towards

the implementation of live captioning of Parliament TV during the next parliamentary term.

PAKISTAN

Senate

The Senate revised the Rules of Procedure and Conduct of Business in the Senate in 2012. Significant changes in practice may be categorised as:

- *Suo moto* powers may be given to a committee.
- A committee may be approached through a public petition.
- A committee may be given the powers of a civil court to enforce the attendance of any person and to compel the production of documents.

UNITED KINGDOM

House of Commons

Length of session

In May the 2010–12 session came to an end. At 295 days the session was the longest for the United Kingdom Parliament. The longest session of the English Parliament lasted for 683 days from 3 November 1640. The length of the 2010–12 session was due to the Government's decision to move the opening of a new session to May to bring it into line with the expected date of general elections under the Fixed-term Parliaments Act 2011.

Sitting days

On 11 July the House returned to the topic of the time of day at which it should sit. 20 years ago there were only two sitting patterns: 2.30 to 10.30 p.m. on Mondays to Thursdays and 9.30 a.m. to 3 p.m. on Fridays. The pattern of Monday to Thursday sittings had remained pretty much unaltered since the end of the Second World War. In the early 1990s the House introduced Wednesday morning sittings to compensate for the loss of some Friday sittings and some all-night sittings. These morning sittings were abolished when parallel sittings in Westminster Hall began in 1999. Since 2000 there has been pressure for "family friendly" or "modern" sitting hours, which led to a number of sitting patterns being considered, tried, adjusted and rejected.

The Procedure Committee spent nearly two years on an inquiry into sitting hours and the parliamentary calendar. In June 2012 the committee concluded its inquiry and proposed that the House should be given the opportunity to decide whether to sit earlier on certain days. It put forward its preference for no change to sitting hours on Monday, Tuesday and Wednesday, and slightly earlier sitting hours on Thursday. The committee emphasised that there was no consensus and the House would need to resolve whether there should be further changes. The House was presented with a series of motions that provided the

mechanism to reach a decision. For Mondays, Tuesdays and Wednesdays the House considered first a "no change" motion followed by a second motion offering an alternative earlier sitting time. For Thursdays the Procedure Committee offered only a change of time, indicating their preference. Each of the motions offering a change was accompanied by a complex schedule of the detailed changes to the standing orders required to give effect to the change. Following the debate the House decided to make no change to sitting hours on Mondays and Wednesdays, but brought them forward to 11.30 a.m. until 7.30 p.m. on Tuesdays (from 2.30–10.30 p.m.) and to 9.30 a.m. until 5.30 p.m. on Thursdays (from 10.30 a.m.–6.30 p.m.).

On the parliamentary calendar, the committee did not propose any reduction in the number of sitting hours in a year and broadly endorsed the existing pattern of sittings over the course of the year, although recommending that the House should have the opportunity to vote on whether to continue to sit in September from 2013 onwards. In the event a motion endorsing September sittings passed without a vote.

E-petitions

In a report published in January 2012 the committee welcomed the e-petitions site introduced by the Government, but recognised that practical problems in the arrangements for debates on e-petitions with over 100,000 signatures needed to be addressed. In order to do so, the committee's report recommended that an extra sitting in Westminster Hall, between 4.30 and 7.30 p.m. on a Monday, should be created for debates on e-petitions. The sitting would take place only if the Backbench Business Committee had scheduled a debate on an e-petition. The committee proposed that this change should be introduced as an experiment and reviewed after a year. The recommendation was accepted by the House and implemented; the Procedure Committee reviewed it in April 2013, following which the procedure was extended until the end of the Parliament, pending a wider review—which has yet to begin—of the way in which the House deals with petitions.

COMPARATIVE STUDY: SCHEDULING OF BUSINESS IN THE CHAMBER

This year's comparative study asked, "Who in your chamber or parliament is responsible for scheduling business in the House/chamber? Is there a committee or equivalent body responsible for organising business? If so, what type of business does it organise (e.g. Government business, including legislation; backbenchers' business; private business, etc.)? Is the organisation of some business left to the whips/usual channels or another person or body?"

AUSTRALIA

House of Representatives

Within the framework of the order of business set out in the standing orders (see standing orders 34 and 192), the responsibility for the scheduling of business in the chamber and the Federation Chamber (second debating chamber) of the Australian House of Representatives rests with the Government and the Selection Committee.

The Government determines the agenda for government business through the Leader of the House, who is empowered by the standing orders to arrange the order of government notices and orders of the day on the *Notice Paper* as he or she thinks fit. The Leader of the House is assisted in this task by the Parliamentary Liaison Officer, an employee of the Department of Prime Minister and Cabinet, who acts as a conduit between the Government and House Table Office staff responsible for the production of the *Notice Paper,* the *Daily Program* and other procedural chamber documents essential to the operation of the House.

The programme for committee and delegation business and private members' business during specified periods on sitting Mondays is determined by the Selection Committee. This committee comprises party whips and backbench members and is chaired by the Speaker. The committee is guided in its functions by requirements in the standing orders and a set of general principles adopted by the House. The committee determines the items to be considered and their order of consideration, and allots times for debate on each item and for each member speaking. The committee's determinations are reported to the House and published in the *Notice Paper.*

Informal lists of members proposing to speak during debates on government bills and other debates in the House and Federation Chamber, such as members' statements, adjournment debates and the grievance debate, are produced by the party whips. Copies are provided to the chair, Clerk and Deputy Clerk.

Senate

The Government schedules business, including legislation, which has been initiated by the executive and categorised as Government Business. General Business is business in the name of individual senators. It is listed on the notice paper in the order in which the notice is received or the debate is adjourned. The standing orders set out what type of business is listed as Business of the Senate. It is not dependent on who initiates the action in the chamber and includes orders of the day relating to the presentation of a committee report, references to committees and disallowance motions. These are listed on the notice paper in the same manner as General Business. An alternative order for consideration requires a motion to be agreed by the Senate. The motion is usually to give precedence to a certain item.

There is no parliamentary committee to determine the order of business. The whips from each party and their staff, as well as a staff member from the department of the Senate, meet each sitting day and the programme is discussed. This includes discussion on the government's programme for legislation, as well as other business. The "whips meeting" also discusses the timing of business. Business of the Senate has precedence over Government Business, except at set times.

The whips also run a "roster" to determine which party has the right to list business for consideration at General Business. This includes the consideration of private senators' bills for 2 hours and 20 minutes each sitting week.

New South Wales Legislative Assembly

Government Business

The Legislative Assembly does not have a committee responsible for scheduling the business of the House.

Under standing order 102 a minister, in effect the Leader of the House on behalf of the governing party or parties, may arrange Government Business in any order. This is communicated to all members through the Daily Program, which is published and distributed on the morning of each sitting day.

Standing order 97 (the Routine of Business) provides for Government Business to be on Tuesdays (4–7 pm), Wednesdays (approx. 10.10 am – 1.15 pm, 4–6.30 pm, approx. 7.30–9.45 pm) and Thursdays (approx. 3.45–4.30 pm).

General Business

General Business is dealt with in the chronological order in which it was given notice of, unless otherwise decided by the House.

Standing order 97 (the Routine of Business) provides for General Business on Thursdays with Notices of Motions for Bills (approx. 10–10.30 am), of the

Day for Bills (approx. 10.30–11.30 am) and debate of Notices of Motions or Orders of the Day (not being bills) (approx. 11.30 am – 1.00 pm).

This routine can be altered with the consent of the House or following a suspension of standing orders.

Each sitting day (SO 100), following Question Time, at the placing or disposal of business, members may postpone or withdraw notices standing in their name. Orders of the Day may also be postponed or a motion moved to discharge them.

The programme for General Business to be considered on Thursday is established on the previous Wednesday in order to give members notice of the business that will be before the House the next day (SO 101).

Establishing the programme of General Business was previously conducted in the House at the placing or disposal of business. It is now a written exercise. Members advise the clerk in writing by 12 noon if they wish an item of general business standing in their name to be postponed.

In addition to the option provided to members to postpone General Business items for a later day, members are also provided with an opportunity on a Wednesday for any two members to seek to re-order items of General Business standing in their name (SO 106).

The two categories of business which may be re-ordered are (1) General Business Orders of the Day (for bills) and (2) General Business Notices of Motions. Any two members can make a statement (for up to three minutes) on the motion for re-ordering, with replies to those statements being permitted from one other member (for up to three minutes).

Only one item of business can be re-ordered in each category; if the first motion is agreed the second is not put. The procedure cannot be used to re-order a Notice of Motion for a Bill. These are taken in the order in which they have been given. SO 141(2) also provides the Speaker with discretion to postpone any notice of motion if the member responsible is absent from the chamber at the time the notice is called on.

New South Wales Legislative Council

Almost all sitting weeks in the New South Wales Legislative Council comprise three sitting days of which:

- the first is allocated to the consideration of government business, excepting two hours allocated to debate on committee reports and a motion for take note of the annual budget estimates;
- the second is allocated to the consideration of government business only;
- the third is allocated to the consideration of general business (private members' business) until 3 pm, after which time government business may be considered but rarely is.

This allocation has been resolved by the House by way of sessional order.

Scheduling of government business

The Government Whip and ministers in the Legislative Council, or their senior staff on their behalf, are primarily responsible for the scheduling of individual items of business and the progress of government bills between the two Houses. This process primarily occurs informally behind the scenes in consultation with the opposition and Crossbench; however the Government Whip's office emails a list of business for consideration to office holders and procedure staff before the House sits each day. The list is a guide only and is often subject to change.

General business

In recent years the operation and scheduling of private members' business in the Legislative Council has been the subject of three committee inquiries by a Joint Select Committee on Parliamentary Procedure[1] and the Council's Procedure Committee.[2] Matters canvassed in these reports were discussed in the last edition of *The Table*, and will be referred to below.

Under standing orders 182 to 189, the House considers items of private members' business in a sequence established by a draw conducted by the Clerk at the beginning of the session and from time to time as items are disposed of. On private members' day it is expected that the order of business considered will follow this sequence, referred to as "items in the order of precedence".

Both the Joint Select Committee on Parliamentary Procedure and the Procedure Committee identified a number of operational difficulties experienced under the draw system, one of which was that, due to a lack of flexibility in allowing members to bring forward topical matters, members routinely suspend standing and sessional orders to bring on items "outside the order of precedence", often interrupting government business or other items of business. The lack of a majority in the NSW Upper House perhaps enables this procedure to be used more frequently than in other Houses with a clear government majority. While the House adopted a series of procedural amendments to help alleviate the problem following the recommendations of the Procedure Committee, members still routinely suspend standing orders to alter the scheduling of general business. On some general business days the entire day is devoted to items bought on by suspension of standing orders.

[1] Report of Joint Select Committee on Parliamentary Procedure, *Reforms to Parliamentary Processes and Procedures*, October 2010.

[2] Report No. 5 of Procedure Committee, *Report relating to private members' business and the sitting pattern*, June 2011; Report No. 6 of Procedure Committee, *Report relating to private members' business, the sitting pattern, Question Time and petitions*, November 2011.

Although the Procedure Committee considered options for creating a selection or business committee to determine the schedule of general business, and recognised certain benefits that such a process might provide, the committee ultimately determined to continue with the current arrangement. It is expected that the current mix of items listed for consideration by way of the private members' draw under the standing orders, together with items brought on for consideration by suspension, will continue.

As a means of expediting the consideration and disposal of less controversial items for which there is unanimous support, SO 44 provides a mechanism for the consideration of private members' items as formal business, without debate. (The SO also requires that items be considered without amendment; however over time the practice has developed for members to move the amendment of items considered as formal business with the leave of the House.) Under a sessional order adopted following the recommendations of the Procedure Committee in the inquiries noted above, members notify the Clerk of items they would like to be called over as formal business on the previous sitting day. This list is emailed to members that evening for their consideration, before the items are called the following morning. Under the SO, members can object to an item being considered as formal business. If no objection is taken, in almost all cases the item is then put and agreed to. Formal business has become the principal means by which items of private members' business are disposed of.

Northern Territory Legislative Assembly

Scheduling of business in the chamber is at the discretion of the Government (Leader of Government Business) except in the case of General Business, the order of which is decided by the opposition and independent members. No committee is responsible for organising business.

Queensland Legislative Assembly

Who in your chamber or parliament is responsible for scheduling business in the House/chamber?

The Leader of the House.

Is there a committee or equivalent body responsible for organising business?

The Committee of the Legislative Assembly is indirectly involved in organising business.

If so, what type of business does it organise (e.g. Government business, including legislation; backbenchers' business; private business, etc.)?

Standing order 135A provides that the Committee of the Legislative Assembly

shall:

(a) monitor and review the business of the Legislative Assembly to aim for the effective and efficient discharge of business;

(b) monitor and review the operation of committees, particularly the referral of bills to committees, and where appropriate vary the time for committees to report on bills or vary the committee responsible for a bill.

In practice, the primary role played by the committee is to vary the time for committees to report on bills, per (b) above. Otherwise, the Committee of the Legislative Assembly is not directly involved in organising business.

Is the organisation of some business left to the whips/usual channels or another person or body?

Yes. The whips coordinate the speaking lists for debate of bills, motions and other matters.

South Australia House of Assembly

The Leader of Government Business (currently the Minister for Health and Ageing) is responsible for organising the weekly programme for the House. The whips offices liaise with each other once the programme has been released to organise speakers etc. On each sitting day the government and opposition whips are responsible for ordering the business as they see fit, depending on availability of ministers etc.

Tasmania House of Assembly

The Leader of the House and the Parliamentary Liaison Officer work with the opposition and the third party officially recognised in the House and seek advice from the Clerk's Office as necessary for scheduling government business, both legislation and motions.

The time allocated for opposition business and for the third party in the House is managed by each of the parties and the Clerk's Office advise accordingly. The Government Whip is responsible for calling on matters in government backbenchers private members' time. All meetings are informal and are conducted as necessary.

All other business is conducted in accordance with the standing orders.

Victoria Legislative Council

The majority of business transacted in the Legislative Council is scheduled by the Leader of the Government in the House, in consultation with party colleagues. Government business takes precedence over all other business on Tuesdays and Thursdays; all business conducted on these days is determined

by the Government. The governing party's whip has a role in organising this, operating within the broad parameters set by the party leader.

On Wednesdays non-government business has precedence over all other business. This means that the business to be debated, and its order, is organised largely by the Leader of the Opposition in the Council in consultation and cooperation with the Leader of the Australian Greens, a minor party which has three members in the Legislative Council. Ultimately, however, the Council's business is determined by the House.

There is no committee that makes prior arrangements regarding the House's business; such matters are left to the party leaders, party rooms or informal channels.

Western Australia Legislative Council

The Leader of the Government in the House is responsible for scheduling the business of the House.

CANADA

House of Commons

Government Orders occupies most of the sitting day; the choice of which items will be debated under this heading is made exclusively by the Government. It is usually announced on Thursday, after oral questions, when the Government House Leader proceeds to outline for the House what business the Government intends to bring forward during Government Orders. This practice is commonly known as 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. The Government is not bound by anything said in the Weekly Business Statement.

Items of business classed as Government Orders include:

- Business of Supply;
- Ways and Means Proceedings;
- Government Bills (Commons);
- Government Bills (Senate);
- Government Business.

Although the Government does not select the subject matter of the motion debated on an allotted or opposition day under the Business of Supply, it designates the day on which the item will be taken up.

When debate on any motion considered during Routine Proceedings is adjourned or interrupted (either by the normal adjournment of the sitting on Mondays, for statements by members on Tuesdays and Thursdays, or for private members' business on Wednesdays and Fridays), the order for resumption of

the debate is transferred to Government Orders, with the exception of debate on a concurrence motion. The motion will be considered again only under Government Orders in such sequence as the Government determines.

The chair has consistently ruled that only the Government should introduce any motion pertaining to the arrangement of House business and that the motion may be considered under "motions", during Routine Proceedings, or under Government Orders, depending on where the minister giving notice has decided to place it.

Examples of motions moved under this heading include those to:

- manage the proceedings and business of the House or its committees;
- change the order of business of the House;
- arrange the times or days of sitting of the House.

Finally, items of private members' business are debated according to their position in the order of precedence on the order paper, and only one item is usually considered during each private members' business hour. Exchanges between members whose names appear in the order of precedence are allowed under certain conditions. The item to be taken up on a given day is announced at the end of the notice paper for that day.

Alberta Legislative Assembly

The Government, through the Government House Leader, sets the government business to be considered in the Assembly. On Monday afternoons private members' business is conducted. This includes private members' public bills (PMPB), motions other than government motions (MOTGM), written questions (WQ) and motions for returns (MR). WQs and MRs are put on notice on the order paper and considered in the order in which they appear. Private members wishing to introduce PMPBs or move MOTGMs enter their names in annual draws to determine the sequence in which the bills and motions will be considered by the Assembly.

British Columbia Legislative Assembly

Who in your chamber or parliament is responsible for scheduling business in the House/chamber?

The Government House Leader is responsible for coordinating the day-to-day business of the House. Usually a senior Cabinet minister, he or she will work to steer the government's business through the House, introducing all motions relating to the business of the House. The Government House Leader will often negotiate with the Opposition House Leader regarding the scheduling of business.

The Routine Business of the Legislative Assembly of British Columbia is ordered in accordance with standing order 25. This standing order also specifies

the order of business under Orders of the Day, which follows Routine Business.

Government business has precedence every day except Monday mornings, which is reserved for Private Members' Time. In addition, standing orders permit the government to determine the sequence of government orders. With the consent of the Speaker, urgent government business may be given priority on a Monday morning (under standing order 27(3)). To date, this standing order has never been invoked.

The Government and Opposition House Leaders hold informal discussions about the scheduling of House business, in particular about time allocation. The results of these discussions are governed by standing order 81.1, which stipulates that a Minister of the Crown (traditionally the Government House Leader) must state in the House whether or not there is agreement "to allot a specified number of days or hours" to the proceedings at one or more stages of any public bill. Whether or not there is agreement, the minister may then propose a motion without notice outlining the terms of the time allocation; the motion is decided without debate or amendment.

Is the organisation of some business left to the whips/usual channels or another person or body?

The scheduling of some business is left to the Speaker or the whips. Monday morning is considered Private Members' Time when four private members may make a statement. Under standing order 25A(2), the order in which these statements are called is determined by lot by the Speaker, before appearing on the Orders of the Day.

The scheduling of Members' Statements, on the other hand, is coordinated by the whips. The standing orders state that six private members are permitted a two-minute statement each day; members wanting to make a two-minute statement must advise their whip 24 hours before the day of the statement. The standing orders further stipulate that the party whips must confer to determine the names of the six members who will be recognised and advise the Speaker by noon of the day in question who has been selected and the topic of the statement (standing order 25B).

Is there a committee or equivalent body responsible for organising business? If so, what type of business does it organise (e.g. Government business, including legislation; backbenchers' business; private business, etc.)?

In summary, the Government House Leader is responsible for scheduling the day-to-day business of the House, although the scheduling of some business is determined by standing orders, the Speaker or the whips. There is no committee or equivalent body responsible for organising business.

Manitoba Legislative Assembly

There is no committee or equivalent body responsible for organising business.

The agenda for any particular day is set by the Government House Leader, possibly after consultation with the Opposition House Leader(s).

Part of the role of the Government House Leader is to negotiate and ensure the agenda of the government passes. This includes scheduling the stages of government bills. Scheduling of private members' business is not done by the Government House Leader. It tends to be done by the Opposition House Leader in conjunction with the Government House Leader on behalf of the Government caucus, as it is the time to consider items submitted by private members and not executive members.

Northwest Territories Legislative Assembly

The Northwest Territories operates a consensus style of government. All business in the chamber is scheduled by the Office of the Clerk, working with the executive.

Prince Edward Island Legislative Assembly

The house leaders are responsible for scheduling business in the legislative chamber. There is no committee or equivalent body responsible for organising business.

Québec National Assembly

The organisation of proceedings is provided for in standing orders 51 to 54. In accordance with these provisions, every meeting of the Assembly comprises two parts: Routine Proceedings and Orders of the Day.

Every sitting commences with Routine Proceedings. This consists of 11 items of business taken up one after the other. The President customarily reads out all items of business under Routine Proceedings, though there may not be business to discuss under each item. There is a set sequence for Routine Proceedings.

In the same manner as Routine Proceedings, the Orders of the Day are carried out in a framework set by standing orders. Nonetheless, the Government has significant control over the order in which such debates are held. The Government House Leader indicates to the chair the item of business on the order paper that will be called for debate. The Government's power is limited by standing order 54, which establishes the sequence in which the Orders of the Day must be taken:

(1) Business Having Precedence;
(2) Urgent Debates;
(3) Debates on Reports from Committees;

(4) Other Business Standing on the Order Paper;
(5) Business Standing in the Name of Members in Opposition.

Other Business Standing on the Order Paper, which is taken at the discretion of the Government House Leader, makes up most of the business during Orders of the Day. This includes stages of bills, examination of supplementary estimates in committee of the whole, motions placed on the order paper and notices by the Government. In other words, the Government House Leader almost exclusively decides on what business will be taken up during Orders of the Day, notwithstanding a debate that must be held under another item of business (1, 2, 3 and 5), as indicated by the chair.

Items under Business Having Precedence are listed in standing order 87. They have priority over all other business, save for an exceptional procedure introduced by the Government House Leader under standing orders 182 to 184.2 (the debate on the motion for an exceptional procedure as well as any substantive debate on the matter have priority over Business Having Precedence). Business Having Precedence is taken up according to a set sequence.

Urgent Debates are provided for in standing orders 88 to 93. Any member may ask the President for an urgent debate. On any sitting day leave may be asked for not more than two such debates; only one debate may be held after the President has authorised it in accordance with the criteria specified in the standing orders and jurisprudence. This debate has priority over any other matter that is not Business Having Precedence.

Debates on Reports from Committees are provided for in standing orders 94 and 95. The committee reports in question are those containing recommendations but which do not relate to bills or financial commitments or which result from deliberative meetings. Immediately after they have been tabled, they are placed on the order paper and considered within 15 days of being laid on the Table, subject to Business Standing in the Name of Members in Opposition. The Government House Leader indicates the report to be discussed. The Government House Leader may bring up a committee report for debate at any time during the Orders of the Day within the 15-day period following the tabling of the report. Once this time has elapsed the debate has precedence over all other business that may be brought before the Assembly by the Government House Leader.

Business Standing in the Name of Members in Opposition is taken on Wednesdays from 3 to 5 p.m. Though the debate usually concludes after one sitting, the standing orders provide that it may last up to two consecutive sittings (except a motion concerning a stage of a bill, which may continue beyond two sittings). There is no Business Standing in the Name of Members in Opposition during the two weeks of extended hours of meeting that mark the end of each

spring and fall sessional period.

Yukon Legislative Assembly

The scheduling of business in the Yukon Legislative Assembly is largely determined by standing orders.

Standing order 13 stipulates that government business has precedence on Monday, Tuesday and Thursday. Private members' business has precedence on Wednesday. Standing order 14(1) stipulates that opposition private members' business has precedence on the first Wednesday of a session on which private members' business is considered, and on every second Wednesday thereafter. Standing order 14(2) provides that government private members' business has precedence on other Wednesdays.

Standing order 12(2) stipulates that "When government business has precedence, that business may be called in such sequence as the government chooses." The established practice is for the government and opposition house leaders to meet at 9.45 a.m. on each day that the House is in session. At that time the government house leader will inform the opposition house leaders of the government business to be taken that day.

The process for identifying business for days on which private members' business has precedence is different. On the sitting day before a Wednesday on which private members' business has precedence, house leaders (government or opposition, depending on whose business has precedence that week) will rise in the House, after the Oral Question Period and before Orders of the Day, to identify the business to be taken up during Orders of the Day on Wednesday. This process is described in standing orders 14.2(3) and 14.2(7).

INDIA

Lok Sabha

The Business Advisory Committee of Lok Sabha is chaired by the Speaker, Lok Sabha.

The Business Advisory Committee, among other functions, allots time for government bills and other business to be transacted by the House. The recommendations made by the committee on procedural matters regulate the business of the House in an effective way.

The Government determines the order of its business in the House. However, when sufficient time is not available during a session for disposal of business, that business is placed before the Business Advisory Committee for allocation of time. The committee may recommend priority to an item of business, suggest the time at which it may be taken, or recommend postponement of the item.

Private members' business is usually taken on Fridays. In some cases, on the recommendation of the Government and as decided by the Business Advisory

Committee, the same business is postponed, relocated or cancelled.

No business is left to the whips or another person or body.

Uttar Pradesh Legislative Assembly

The Business Advisory Committee of the Legislative Assembly is responsible for scheduling business in the chamber.

JAMAICA

House of Representatives

The Minister of Science, Technology, Energy and Mining and Leader of the House is responsible for organising the business of the House; this is done in consultation with the Leader of Opposition Business. In the absence of the Leader of the House the Parliamentary Whip and Deputy Leader assumes that responsibility.

STATES OF JERSEY

The States of Jersey operates with 51 independent members; there is currently no political party structure in Jersey. As a result there are no party whips who can be involved in arranging business.

The proposed arrangement of business for every States meeting is initially planned by the Greffier of the States (clerk to the Assembly) in conjunction with the proposers of the matters being brought forward for debate. No priority is given to ministerial business over matters presented by private members. This initial scheduling is simply designed to ensure that there is not more business listed than can reasonably be expected to be dealt with during the time allocated for the sitting (normally three days per sitting). If agreement cannot be reached informally by the Greffier with the proposers on a draft schedule of business for future sittings, reference is made to the chairman of the Privileges and Procedures Committee, who adjudicates on any outstanding issues.

The draft list of business for the next and subsequent sittings is shown on the order paper for every sitting. At the conclusion of the sitting, just before the Assembly adjourns, the chairman of the Privileges and Procedures Committee proposes the draft list. At this stage any member can propose that a matter is deferred or brought forward. If required the Assembly votes on any such request so that at the conclusion of the sitting the list of business for future sittings is formally approved.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Who in your chamber or parliament is responsible for scheduling business in the House/chamber?

The Government may at its discretion rearrange the order of government

business (including government bills and notices of motion, and financial scrutiny debates) on the order paper. All other business (such as question time, members' bills, private bills, local bills, debates on reports of the Privileges Committee and general debates) takes place in a strict order as set by standing orders, except as determined by the Business Committee (see below).

Is there a committee or equivalent body responsible for organising business? If so, what type of business does it organise (e.g. Government business, including legislation; backbenchers' business; private business, etc.)?

The House has given broad powers to the Business Committee to organise its business. Every party is entitled to be represented at each meeting of the Business Committee, which is chaired by the Speaker. Decisions are made on the basis of unanimity or "near-unanimity"—agreement given on behalf of the overwhelming majority of members of Parliament, as judged by the Speaker (who must be satisfied that decisions do not discriminate against or oppress minority parties).

The Business Committee can arrange any business, including government bills and members' bills. There is an expectation that parties will constructively negotiate about the House's business, and the committee has tools to encourage such engagement. For example, the committee has powers to schedule or streamline debates, adjust speaking times or permit extended sitting hours. Much business is arranged or foreshadowed through these means, but if the Business Committee does not make a determination (for example, if negotiations break down) the arrangement of business defaults to the situation (described above) where the Government may prioritise its business and other items are arranged under standing orders.

Is the organisation of some business left to the whips/usual channels or another person or body?

Whips are usually present at Business Committee meetings. They frequently negotiate before or after the committee meets and over the course of each sitting week. They communicate in particular about the allocation of speaking slots and about business that arises without notice, such as motions or amendments proposed by members who are not ministers. The arrangement of some financial scrutiny debates is assigned to the Business Committee but has been further devolved to the whips. The Speaker has limited ability to require the House to deal with some business, such as urgent questions, urgent debates or business that must be taken prior to a deadline under the standing orders or a statute (this latter form of intervention is very rare).

PAKISTAN

Senate

The Ministry of Parliamentary Affairs organises government business. Private members' business (i.e. privilege motions, adjournment motions, motions under rule 218 and resolutions) is organised by the Senate secretariat. There is also a Business Advisory Committee headed by the Chairman of the Senate, which examines and puts the business of the Senate in order.

ST. VINCENT AND THE GRENADINES HOUSE OF ASSEMBLY

Business is organised by the Head of Government (the Prime Minister).

UNITED KINGDOM

House of Commons

The Backbench Business Committee was established in 2010 following the report of the Committee on Reform of the House of Commons (the Wright committee) in 2009. That committee recommended that a minimum of one day a week or the equivalent should be set aside for backbench time. When the Backbench Business Committee was established the figure of 35 days in a session was included in standing orders. The extraordinary length of the 2010–12 session led to the Government increasing the number of days to 40, although calculating the extra days on a *pro rata* basis would have provided for 54 days.

In 2012 the Procedure Committee inquired into the allocation of time for backbench business and reviewed the first session's operation of the Backbench Business Committee. The Procedure Committee concluded that, given the level of demand for backbench time, there should be no reduction in the time available. The Procedure Committee noted that there was no overwhelming evidence that the amount of time available was insufficient; rather, the committee considered the more pertinent question to be how the time was allocated. The Procedure Committee noted that the Backbench Business Committee had been widely welcomed by MPs as a successful innovation, and made modest recommendations to increase its powers and responsibilities.

House of Lords

In the House of Lords there is no concept of "government time" or "private members' time"; in theory all members of the House have equal access to the order paper. It follows that, in theory and subject to the standing orders and other rules on the arrangement of business, any member can put down for a day of his or her choosing a motion, question or bill.

In practice, however, public business (that is, all business that is not private business) can be split into two categories: government business and non-government business.

Government business

The Government Chief Whip is responsible for the detailed arrangement of government business and the business of individual sittings. The *Companion to the Standing Orders* states, "The smooth running of the House depends largely on the whips of the main political parties. They agree the arrangement of business through the "usual channels". The usual channels consist of the leaders and whips of the three main political parties. For certain purposes the usual channels include the Convenor of the Crossbench peers."[3] No committee or equivalent body is involved in the arrangement of government business.

In practice this means that the usual channels will normally agree a broad allocation of time for most government business. For bills this normally means agreeing an estimate of the time to be taken at each stage. Such agreements by the usual channels are made in the context of the House's standing orders (which, for example, state that no two stages of a bill may be taken on the same day) and custom and practice (for example, certain minimum intervals between stages of a bill should be observed). Importantly, any agreement by the usual channels on how long a bill will take is not binding on other members of the House: it is common for more (sometimes less) time to be allocated to a bill than the usual channels first envisaged.

Non-government business

There are certain categories of non-government business over whose arrangement the government ordinarily have no control. For example, on every Monday to Thursday on which the House sits there are four oral questions, lasting 30 minutes. On one Thursday each month from the start of the session until the end of December there are two balloted debates, which may be initiated only by backbench and Crossbench members. Other Thursdays from the start of the session until the end of January are usually reserved for general debates selected by the political parties and the Crossbenchers.

The timing of other categories of non-government business is usually subject to agreement with the government (and, sometimes, the usual channels). For example, the timing of a debate on a select committee report will normally be agreed between the government and the chairman of the committee concerned. The timing of private members' bills will normally be agreed between the government and the peer in charge of the bill.[4] In practice, arrangement of these types of business usually involves the government offering a slot to the

[3] *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2013), paragraph 3.29.

[4] Though the stages of private members' bills which will involve substantive debate tend to take place at the end of a day's proceedings or on a Friday.

member concerned, who can take it or leave it. Again, no committee or other body is involved in the arrangement of such business.

Proposal for a backbench debates committee

The last edition of *The Table* contained a note on the Leader's Group on Working Practices, which reported in 2011.[5] One of that Groups' recommendations was that the House should establish a backbench business committee, which would be responsible for scheduling non-party backbench business. In 2012 the then Leader of the House said that he would not pursue the proposal. In response a group of backbenchers made a proposal to establish a backbench debates committee, which would consider applications from backbench members for certain debates.[6] This proposal was rejected by the House.[7] In return the government agreed to set more time aside for short debates on topical issues.[8]

Private business

In modern times private business (that is, private bills, personal bills, Scottish provisional order confirmation bills[9] and hybrid instruments[10]) takes up little time on the floor of the House. Private business is scheduled by the Chairman of Committees,[11] although he will usually do so after consultation with the usual channels. Private business usually takes precedence over public business, though it can be arranged at a different time if that is more convenient to all parties.

NATIONAL ASSEMBLY FOR WALES

The Business Committee is required under standing order 11.7 to comment on proposals for the organisation of government business in plenary and determine the organisation of Assembly business.

The Business Committee is chaired by the Presiding Officer and meets weekly. Every party in the Assembly is entitled to be represented on it: normal practice

5 *The Table*, volume 80 (2012), pp 105–09.

6 See Procedure Committee, *Backbench Debates* (6th report, 2012–13, HL Paper 151).

7 By 243 to 209 votes. See HL Debates, 24 April 2013, cols 1417–41.

8 Procedure Committee, 2nd report, 2013–14, HL Paper 33.

9 A method of legislating for private matters in Scotland which has been mostly unused since the creation of the Scottish Parliament.

10 Hybrid instruments are items of secondary legislation subject to affirmative resolution procedure that engage private interests in such a way that, if the instrument's provisions were in a bill, the bill would be subject to private bill procedures. Hybrid instruments are rare, but still occur (the last was in 2011).

11 The Chairman of Committees is a salaried office holder who, *inter alia*, exercises general supervision and control over private business.

is for party groups to nominate their Business Managers (chief whips) as their representative. The exception is the governing party, which is represented by the Minister for Government Business/Leader of the House rather than by the chief whip.

As set out in standing order 11.17, the aggregate of time allocated as between government and Assembly business (Assembly business being all non-government business) in plenary meetings in an Assembly year must, so far as is reasonably practicable, be in the proportion of 3:2.

Standing orders state that time must be made available for debates on the following items of business during each Assembly year:

- motions proposed on behalf of political groups who do not have an executive role (the time allocated to each political group for such motions must be as far as possible in proportion to the group's representation in the Assembly);
- motions proposed by any member who is not a member of the government;
- debates on reports laid by committees;
- short debates; and
- legislation where the member in charge of the legislation is not a member of the government.

In practice, Tuesday plenary meetings are given over to government business, as is the first 90 minutes of Wednesday meetings. The Government is responsible for its own business within the time allocated to it.

The Business Committee is responsible for the time allocated to Assembly business. There will typically be between one and three hours allocated to opposition debates every Wednesday, subject to other demands on the Assembly's time (committee reports, non-government legislation, etc.). The time available for opposition political groups is shared between them roughly proportionate to their size, using a formula agreed by the Business Committee. Individual members' debates are usually held once every half term, with the Business Committee selecting a motion from among those tabled.

The Business Statement and Announcement is published weekly after it is agreed by Business Committee; it includes business for the forthcoming three weeks. Standing orders allow for some items to be taken without notice, with the Presiding Officer's consent, including statements and procedural motions.

PRIVILEGE

AUSTRALIA

Senate

Freedom of speech and the rights of senators

A matter of privilege concerning political donations was raised in November 2011 and referred to the Senate Committee of Privileges. It generated considerable debate in the Senate while the matter was before the committee. The allegations were referred to in the Senate on several occasions and the chair cautioned senators against canvassing the issues that were before the Privileges Committee. On one occasion a senator raised a point of order urging the President of the Senate to rule such comments out of order. The President considered the matter and determined that there was no point of order. This was on the basis that there is no rule against mentioning, or even canvassing, matters that are before committees. However, the President drew senators' attention to Privilege Resolution 9, which enjoins senators to exercise their great privilege of freedom of speech responsibly, having regard to a number of matters including the damage that can be done by allegations made in Parliament and the need for senators to have regard to the rights of others. The President encouraged senators to leave the matter alone until the committee reported, in the interests of fairness to all concerned.

Raising and referring matters of privilege

Senate standing orders provide a process for senators to raise matters of privilege (that is, proposals to investigate allegations of possible contempts of the Senate) by writing to the President. The President is required to determine whether such matters are to be granted precedence in debate, with reference to two criteria, focusing on the harm (or potential harm) occasioned by the alleged conduct and the existence of alternative remedies.

One of the senators against whom allegations were made in the political donations matter sought to raise with the President additional matters of privilege in connection with three other senators. The President determined that the additional matters did not meet the criteria he was required to consider, on the basis that alternative remedies available under the procedures of the Senate had been applied in each case.

Debate on a motion of dissent to one of these determinations ranged widely. Although contributors to such debates have traditionally been given great latitude, the chair cautioned senators against canvassing the specific matters that had been referred to the Privileges Committee. In accordance with past practice, the President spoke in the debate to clarify the ruling and respond to matters that had been raised, particularly the widespread misunderstanding

of the nature and effect of a determination he is required under the standing orders to make, which is a determination going to the handling of the matter as an item of business but not to its merits (beyond ascertaining that it is not of a trivial nature unworthy of the attention of the Senate).

The Privileges Committee in its 150th report recommended a review of the process for raising and referring matters of privilege. The Procedure Committee published a background paper for the information of senators clarifying the process in its first report of 2012.

Unauthorised disclosure of committee draft report

On 20 November 2012 the President made a statement and accorded precedence to a notice of motion to refer to the Privileges Committee allegations of the unauthorised disclosure of the chair's draft report of the Select Committee on Electricity Prices, presented during the previous sitting period. Several years ago, the Senate adopted procedures to require committees to undertake their own investigations of unauthorised disclosures and to consult the Privileges Committee before raising them as matters of privilege. While the procedures continue to declare unauthorised disclosure of committee proceedings a potential contempt, they provide committees with guidance on assessing such matters before raising them as matters of privilege. In this case, while the select committee had carried out preliminary enquiries in an attempt to explain the disclosure, it ceased to exist once its final report had been presented and was therefore unable to take the next steps envisaged by the resolution. In these circumstances, there was no remedy other than the contempt jurisdiction to pursue the matter. In agreeing to refer the matter, the Senate also gave the Privileges Committee the power to access the relevant records of the select committee which were now in its custody.

Queensland Legislative Assembly

Failure to pay a fine for contempt of Parliament—update

In May 2011 the Legislative Assembly found a former member (Mr Nuttall) guilty of 41 instances of contempt and ordered that he be fined $2,000 on each count and that the sum be paid within 12 months. (The background is detailed in the 2010 and 2011 editions.)

On 17 May 2012 the Clerk advised the House that, to date, no payment had been received and tabled correspondence from the Public Trustee advising that Mr Nuttall was unable to pay the fine imposed due to various court proceedings regarding sale assets and significant outstanding legal debts. Mr Nuttall requested that the Parliament reconsider his submission made during his appearance at the Bar of the House in May 2011 to take into account the punishment already imposed upon him, namely his imprisonment and

forfeiture of assets.

On 7 June 2012, the Speaker advised the House that:

> "I have considered this matter, including advice from Senior Counsel and the Clerk, and decided to treat the failure to pay the fines as a matter of privilege and refer the matter to the Ethics Committee. I will be requesting the Ethics Committee to investigate Mr Nuttall's exact financial situation, so that the Legislative Assembly is aware of all relevant information before considering the options available."

The Ethics Committee found that proceedings pursuant to the Criminal Proceeds Confiscation Act 2002 had led to the sale of certain property owned by Mr Nuttall. The sale proceeds exceeded court orders and costs against Mr Nuttall and the balance was paid to the Public Trustee as the manager of his estate. The Public Trustee advised the committee that a small interim payment to all creditors could now be made. Once Mr Nuttall's remaining assets were liquidated and received by the Public Trustee there should be sufficient funds to pay all his debts, including the fine to the Parliament.

Based on the information before it, the committee was satisfied there were proper processes in place with the Public Trustee exercising its lawful authority to ensure that the order of the Assembly on 12 May 2011 would be complied with as soon as practicable. Accordingly, the committee resolved that it was not necessary to proceed to determine whether Mr Nuttall wilfully disobeyed an order of the House by the failure to pay a fine, giving rise to a contempt.

The committee recommended that the Clerk formally advise the House upon the receipt of any payment from the Public Trustee. One pro rata payment of $16,000 was received in 2012 and the Clerk notified the House of this on 30 October 2012. (Two further payments were received in 2013, being full and final payment from the proceeds of Mr Nuttall's assets.)

The committee's Report No.123 was tabled on 11 September 2012.

CANADA

House of Commons

Attempt to intimidate

On 6 March the Speaker ruled on a question of privilege raised by the Minister of Public Safety, Vic Toews, on 27 February concerning the cyber campaigns that followed his introduction of Bill C–30, Protecting Children from Internet Predators Act. Mr Toews raised three issues, each of which he believed to be a contempt of the House.

The first concerned the use of House resources for the so-called vikileaks30 account on Twitter, which Mr Toews claimed had been used to attack him personally, thereby degrading his reputation and obstructing him from carrying out his duties as a Member of Parliament. As Mr Bob Rae, the interim Leader of

the Liberal party, had previously risen to apologise and inform the House that it was an employee of the Liberal Research Bureau who had been responsible for the site, the Speaker considered this aspect of the question closed.

Second, Mr Toews contended that an apparent campaign to inundate his office with calls, emails and faxes hindered him and his staff from serving his constituents, and prevented constituents with legitimate needs from contacting their Member of Parliament in a timely fashion. The Speaker ruled that he could not find it a *prima facie* case of privilege as Mr Toews had not been impeded in his ability to perform his parliamentary duties.

Finally, the member argued that the videos posted on YouTube by the so-called "Anonymous" on 18, 22 and 25 February were online attacks directed at him and his family that had crossed the line into threatening behaviour and constituted a deliberate attempt to intimidate him with respect to proceedings in Parliament. The Speaker concluded that this constituted a *prima facie* question of privilege. Mr Toews then moved that the matter be referred to the Standing Committee on Procedure and House Affairs. A recorded division was requested on the motion, and the motion was agreed to unanimously. The committee held five meetings on the question of privilege and reported to the House on 2 May.

Access to the parliamentary precinct

On 15 March the Speaker ruled on a question of privilege raised on 2 March by Mr Pat Martin regarding the difficulties experienced by certain members in gaining access to the parliamentary precinct during the visit of the Prime Minister of Israel, Benjamin Netanyahu. The Speaker ruled that the implementation of security measures cannot override the right of members to unfettered access to the parliamentary precinct and accordingly found that there were sufficient grounds for a *prima facie* question of privilege. Mr Martin then moved that the question of privilege be referred to the Standing Committee on Procedure and House Affairs; the motion was agreed to unanimously. The committee held four meetings on the matter and reported to the House on 31 May.

Access to information

On 17 September the House agreed "that, having considered the nature of a request made of the Auditor General under the Access to Information Act, the House of Commons waives its privileges relating to all emails pertaining to the Auditor General appearing before a parliamentary committee from January 17 to April 17, 2012; and that the Speaker be authorized to communicate to the Auditor General this resolution."

Immediately after, the Speaker made a statement explaining that the House of Commons had been advised by the Office of the Auditor General that they had received a request for the release of email exchanges between the clerks

or officials of five standing committees and officials of the Office of Auditor General and that it had decided to release the said documents. During the adjournment and in the absence of directions from the House, the Office of the Law Clerk and Parliamentary Counsel was directed to file an application for a judicial review of the decision. Had this filing not been made on or before 10 September 2012 the documents would have been released without the express consent of the House. This would clearly have been unacceptable so actions were taken to reserve for the House its long-standing primacy in decisions of this nature. In concluding his remarks, the Speaker reminded members that this matter did not set a precedent and encouraged a thorough review of the question by the Standing Committee on Procedure and House Affairs.

Manitoba Legislative Assembly

On 26 April 2012 the Official Opposition House Leader raised a matter of privilege regarding the allocation of public gallery passes and the use of the Legislative committee rooms, which had been set up for public gallery overflow for those invited to attend the debate on the government resolution "Federal Centralization of Settlement Services" held on 19 April. The Official Opposition House Leader indicated that guests of her caucus were denied entry into the gallery and were not offered the option of using the committee room. She concluded that these actions were "an abuse of power from a political source". The Speaker ruled there was no matter of privilege as he did not find a demonstration of a specific breach of any member's privileges. He encouraged the House Leaders to meet to discuss access to the public galleries and the use of the committee rooms.

On 26 April 2012 the Official Opposition House Leader raised a matter of privilege concerning information provided by the Minister of Finance during consideration of the Finance departmental estimates in the Committee of Supply on 9 May. The Official Opposition House Leader indicated that the minister had deliberately misled the House when he acknowledged he misled the House inadvertently. The Speaker ruled there was no matter of privilege and noted that, although the Minister of Finance acknowledged that he misled the House, he characterised this as inadvertent, as opposed to deliberate. Therefore the Speaker has to accept the word of the Minister of Finance.

During oral questions on 26 April 2012 the Official Opposition House Leader raised a matter of privilege regarding the action of the Assistant Deputy Minister of Immigration and Multiculturalism issuing invitations to immigration staff to attend the debate on the government resolution "Federal Centralization of Settlement Services" on 19 April. The Official Opposition House Leader contended this was politicisation and potential intimidation of staff. She said these actions impeded the ability of members to do their jobs because they

cannot rely on the impartiality of the civil service. The Speaker ruled there was no matter of privilege and reminded all members of the commentary from Speaker Fox "that misjudgment, misadministration or maladministration on the part of a minister in the performance of ministerial duties does not come within the purview of parliamentary privilege" and government staff are not protected by parliamentary privilege. He stated that this ruling did not prevent further discussion on the matter in some other valid procedural context.

On 28 May 2012 the Official Opposition House Leader raised a matter of privilege seeking clarification as to why a matter of privilege she raised on 15 June 2011 had not been captured in the Speakers' Rulings Collection when a point of order raised on 2 June 2011 on a different subject had been included in the collection. In both cases no formal ruling from the Speaker was given. The Speaker ruled there was no matter of privilege. It was up to the Speaker to decide whether a ruling was an appropriate way of dealing with the situation. The rulings collection was an internal reference document prepared by the staff of the Clerk's Office. This document is shared with the House Leaders from both sides of the House for their assistance; it did not mean that House Leaders have the prerogative to determine how the collection was prepared or depicted. Questions of this nature should be discussed with the Speaker first rather than raised in the chamber.

INDIA

Lok Sabha

Casting aspersions on the Speaker

Sarvashri Asaduddin Owaisi, Jagdambika Pal and E.T. Mohammad Basheer, MPs, gave a notice of question of privilege about casting aspersions on and imputing motives to the decision of the Speaker, Lok Sabha, by the newspaper *The Statesman* in its editorial headlined "RIGHT TO RESIGN—Speaker's action unconstitutional" published on 24 November 2011.

The matter was referred by Speaker to the Committee of Privileges for examination and report. The committee, having considered documents and evidence, in its third report observed that even a cursory reading of the impugned article would show that not only aspersions were cast upon the Speaker of Lok Sabha, but partisan motives were also impugned to her. The committee observed that several references in the article were derogatory, damaging and questioned the impartiality of the Speaker. The committee further observed that the said editorial was neither a fair comment nor a reasonable criticism.

The committee were not convinced by the plea by the editor of *The Statesman* that since parliamentary privilege (under article 105(3) of the Constitution) has not been codified, it becomes very difficult for an editor to judge what would amount to breach of privilege or contempt of the House. The committee

put on record that in the past, the Committee of Privileges (10th Lok Sabha and 14th Lok Sabha) had twice undertaken to codify parliamentary privilege but after obtaining the opinion of eminent persons from the legislature, the legal profession, the press and academia found that it was not advisable nor feasible to codify parliamentary privilege. The committee accordingly recommended against codification.

The committee was not convinced by the plea of the editor that the Speaker's decision about accepting the resignations of members does not form part of the proceedings of the House. The committee reiterated the well-established position that "the Speaker's decision is equally binding whether given in the House or on a departmental file".

While upholding freedom of the press and its role and importance in a democratic polity, the committee observed that every freedom carries with it an obligation. The committee observed that it was primarily for the press itself to determine what are its responsibilities and obligations, vis-à-vis its freedom. The committee considered that the casting of aspersions on the Speaker in the discharge of her duties needed to be condemned; such attempts from any quarters should be thwarted in the larger interests of protecting and strengthening the parliamentary democratic system.

However, keeping in view the unconditional apology expressed by the editor and Managing Director of *The Statesman*, and his affirmation of unabiding faith in the parliamentary institution and its functionaries, the committee did not recommend any further action on the matter. It observed that he should in future refrain from such journalistic misdemeanours, exercise due restraint and be more careful while commenting on a constitutional functionary like the Speaker, Lok Sabha. The matter was treated as closed.

Alleged assault on member

Dr (Smt.) Prabha Kishor Taviad MP gave a notice of a question of privilege about an alleged assault on her on 1 May 2012 by the police authorities of District Dahod, Gujarat.

The matter was referred by the Speaker to the Committee of Privileges for examination and report. The committee in its fourth report observed that a member is not only a legislator, but also a public representative. As a public representative, a member has to perform many roles and discharge myriad functions. In the capacity as a public representative a member continues to be governed by the law of the land. Similarly, when a public representative participates in any dharna, protest or demonstration against the Government, he renders himself amenable to the law and to the jurisdiction of the law enforcement agencies.

However, in the present case, the committee was not convinced with the plea

of the police that as the member was sat on the road forcibly lifting her was inevitable. The committee, on the basis of the settled position of parliamentary privilege and past precedents, held that Dr Taviad was not performing any parliamentary duty at the time of the incident and as such her detention and the assault on her did not involve any breach of privilege or contempt of the House or of the member. Nonetheless, the treatment meted out to her by the police authorities of Dahod offended her dignity as a member and a public representative.

The committee felt that the law-enforcing authorities should exercise restraint and not display haste in sensitive situations. The committee found that the police authorities were so keen to arrest Dr Taviad that they failed to observe the basic tenets of decency in dealing with a member, and a lady. However, keeping in view the unconditional and unqualified apology tendered by the Superintendent of Police Dahod in the matter for the inadvertent hurt caused to Dr Taviad during her detention, the committee did not wish to make any recommendation against her.

However, the committee expressed its severe displeasure about the conduct of police personnel led by the Deputy Superintendent of Police, Dahod, whose over-zealous approach resulted in the humiliation of Dr Taviad. The committee recommended that appropriate action in this regard should be taken by the state government against the Deputy Superintendent of Police, Dahod. The committee deprecated the act of the police authorities in using excessive and avoidable force against Dr Taviad.

In view of the recommendations above, the committee felt that the matter should be treated as closed.

NEW ZEALAND HOUSE OF REPRESENTATIVES

In September 2011 the Supreme Court, in *Attorney-General and Gow v Leigh* [2011] NZSC 106, held that statements made by an official to a minister for the purpose of replying to questions for oral answer are not themselves parliamentary proceedings. Such statements are therefore not protected by absolute privilege and can be the subject of court proceedings (in this case, defamation proceedings). The Supreme Court considered that a qualified privilege defence was sufficient in these circumstances.

The Speaker of the House of Representatives, as intervener, had argued that the official's statements were protected by parliamentary or absolute privilege because of their close connection to parliamentary proceedings. Such protections are required, it was argued, in order to protect the provision of free and frank advice to ministers and members by officials and parliamentary staff, for the purpose of supporting the effective conduct of the House's business. The Supreme Court took a narrower approach, holding that a necessity test

applied. In other words, the question was whether the protection of the advice by absolute privilege was necessary for the proper functioning of the House. The court held it was not on this occasion.

The Speaker determined that a question of privilege was involved in the court's decision, and referred the question to the Privileges Committee. In its recent report (June 2013), the Privileges Committee respectfully disagreed with the conclusion reached by the Supreme Court in *Leigh*, saying it was wrong to apply the common law test of necessity to ascertain the scope of Parliament's privilege of freedom of speech. The committee recommended to the Government that it introduce a parliamentary privilege bill to clarify, for the avoidance of doubt, the nature of parliamentary privilege in New Zealand, including defining the term "parliamentary proceedings" for the purpose of article 9 of the Bill of Rights 1688. Among other recommendations, the committee recommended that the bill make explicit that a person who, in a statement outside the House, affirms or adopts what has been said in parliamentary proceedings will not be liable to criminal or civil proceedings unless the statement outside the House was itself defamatory (which would overrule the Privy Council decision in *Buchanan v Jennings* [2005] 2 All ER 273). The committee also recommended clarifying the legal protections for the broadcast and publication of parliamentary proceedings. This includes taking account of technological changes.

UNITED KINGDOM

House of Commons

On 1 May the Culture, Media and Sport select committee (CMS) reported on its inquiry into phone hacking. The committee named three individuals and News Corp as having misled the committee and stated that therefore a breach of privilege had occurred. It was clear from comments made by several members of the committee when the report was published, as well as from the minutes relating to the report, that there was a lack of unanimity in the committee on some of the key conclusions. Nevertheless, the committee agreed subsequently the terms of a motion to put before the House that would refer the matter of any breach of privilege to the Committee on Standards and Privileges.

The Committee on Standards and Privileges published in its formal minutes a detailed note of how it intended to proceed with the issue. The high level of media and public interest in the phone-hacking inquiry and CMS report made it particularly important that the committee's determination could be shown to have been reached following a fair and meticulous process. The note included an undertaking to suspend the inquiry if requested by the Director of Public Prosecutions on the grounds that it might prejudice legal proceedings or criminal investigations. In September the committee resolved to suspend the

inquiry following the arrest of one of the individuals named in the report.

Just before the end of the 2010–12 session the Government published a green paper on parliamentary privilege. The green paper was a response to increasing interest in parliamentary privilege following criminal prosecutions related to the 2009 expenses scandal and questions about the House's penal jurisdiction in contempt cases following the CMS phone-hacking inquiry. The Commons appointed its members to the Joint Committee on Parliamentary Privilege—appointed to consider the green paper—at the end of 2012. The joint committee was expected to report in the summer of 2013. [*Note: the joint committee reported in July 2013 and will be described in the next edition of The Table.*]

STANDING ORDERS

AUSTRALIA

House of Representatives

On 8 February 2012 the standing orders were amended to reduce the time limits for oral questions and answers during Question Time. The time limit for questions was reduced from 45 to 30 seconds and for answers from four to three minutes. A corresponding change to the order of business was agreed, indicating that Question Time would conclude earlier, at approximately 3.10 pm (the duration of Question Time remains at the discretion of the Prime Minister).

Also on 8 February, amendments were made to the standing orders to change the name of the Main Committee (the second debating chamber) to the Federation Chamber. This change came into effect from 27 February 2012.

On 10 October 2012 standing order 13 was amended, omitting the provision that only a non-government member be elected Second Deputy Speaker.

Senate

The following are amendments to the Senate standing orders since the last reprint in June 2009.

The committee's 54th report recommended amendments to standing order 19 to empower the committee to meet with a similar committee of the House of Representatives for the purpose of providing high-level oversight of the provision of information and communications technology services to the Parliament. This was as a result of an agreement of the presiding officers in November 2011 to undertake a review of the management and delivery of information and communication technology related services and equipment to the Parliament. The report on the review (the Roche report) was delivered to the presiding officers in August 2012.

An outcome of the review was the transfer of the information and communications technology functions and resources of the Senate Department to the Department of Parliamentary Services. The Senate approved the transfer on 16 May 2013, as recommended in the committee's 55th report.

In the aftermath of the 2010 general election a minority government was formed in the House of Representatives following agreements between the ALP, the Australian Greens and certain independent members of the House. (One of these agreements, Agreement for a better Parliament—Parliamentary reform, was tabled by the Speaker in the House of Representatives on 20 October 2010; VP.99.) The terms of those agreements included a commitment to include an acknowledgement of country in the procedures of the Houses. On 26 October 2010 the Senate agreed, without debate, to include an acknowledgement of

country after the prayer each day in the following terms:

> "I acknowledge the Ngunnawal and Ngambri peoples who are the traditional custodians of the Canberra area and pay respect to the elders, past and present, of all Australia's Indigenous peoples."

The Procedure Committee, in its first report of 2012, recommended that a temporary order relating to non-controversial bills be agreed to. The committee agreed that the order would assist senators to plan their week if the traditional time for consideration of non-controversial legislation were restored to Thursdays at 12.45 pm. The term "non-controversial" is intended to apply to business that senators agree may be dealt with without divisions. It does not preclude debate and amendment of bills but it involves an understanding that divisions will not be called between 12.45 and 2 pm. The requirement for the Senate to proceed to non-controversial government business only at 12.45 pm does not preclude other business being conducted after such bills have been dealt with, subject to the usual consultations amongst senators and the necessary motions to rearrange business.

A minor change to standing order 74(3) removing the requirement to print answers in Hansard was recommended in the Procedure Committee's first report of 2012. Historically, answers to questions on notice were printed in Hansard. This practice was mandated by standing order 74 in its earlier form (although answers were authorised for publication when received by the Clerk). This resulted in delays to publication of answers to the general public if the answer was provided in a non-sitting period. If answers awaiting publication were lengthy or numerous, it was necessary for Hansard to stagger publication over several days. Answers are now published in an electronic database linked to the notice paper.

The Procedure Committee has before it a general reference on the Senate's routine of business, but substantial recommendations are not expected to arise in the near future.

Queensland Legislative Assembly

The standing orders were amended on 17 May 2012 by replacing Schedule 6, which outlines the portfolio committees of the Legislative Assembly and their primary areas of responsibility. As a result of a change in government in May 2012 and subsequent changes to the administrative arrangements of the newly formed government, the portfolio committees were restructured with different names and different areas of responsibility to reflect the new administrative arrangements.

On 22 August 2012 the House amended standing order 136(4) to reduce the number of days that must elapse before the second reading debate of a government bill can begin. The House also replaced part 6 relating to financial

procedures and, in particular, made changes regarding the Appropriation (Parliament) Bill. Key changes included:

- the Committee of the Legislative Assembly would be able to hold a public meeting at which members will be invited to ask questions prior to the broader estimates hearing process;
- details of the contents will be included in the Committee of the Legislative Assembly's estimates report.

Standing orders 24, 26, 166 and 168 were replaced by the House on 29 November 2012, significantly reducing the number of hard copies of reports and bills required for distribution. These standing orders were amended following a "less paper Parliament" strategy that had been adopted by the Committee of the Legislative Assembly.

CANADA

Québec National Assembly

On 7 November 2012 the National Assembly adopted temporary modifications to its rules. These mainly addressed the minority government situation as well as the presence of three parliamentary groups.

Further modifications mostly concerned the matter of calling attention to the lack of a quorum, as well as the membership of the parliamentary committees and their chairmanships so as to take into account the composition of the Assembly.

Yukon Legislative Assembly

Pursuant to motion 265, adopted by the Assembly on 30 October 2012, standing order 14.2(2) and 14.2(3) were amended to allow an independent member in opposition to call bills or motions for debate under Opposition Private Members' Business.

An addendum has been added to include the 29 October 2012 agreement among the House Leaders and the independent member regarding guidelines for the use of electronic devices in the Legislative Assembly chamber.

INDIA

Lok Sabha

At the initiative of the Speaker, Lok Sabha, an exercise is underway to rephrase the Rules of Procedure and Conduct of Business in the Lok Sabha and directions by the Speaker to make them gender neutral.

Uttar Pradesh Legislative Assembly

A new sub-rule (4) of rule 201 of the Rules of Procedure and Conduct of Business of the Uttar Pradesh Legislative Assembly has been added. It reads:

"While the office of Deputy Speaker of the Uttar Pradesh Legislative Assembly is vacant, the functions of the chairman of such committees where the Deputy Speaker is ex officio chairman may be performed by the Speaker himself or by such chairman of other committees as may be appointed by the Speaker."

NEW ZEALAND HOUSE OF REPRESENTATIVES

Recent practice has been for the Standing Orders Committee to review the standing orders, practices and procedures of the House towards the end of each term of Parliament. The resulting changes to rules and procedures are usually adopted with effect from the next term. The Standing Orders Committee has recently received submissions on its triennial review of the standing orders and will hear evidence and consider possible changes prior to the 2014 general election.

Meanwhile, the committee has recommended (November 2013) a sessional order to establish a procedure for recording members' attendance and absence. This procedure is associated with provisions in the Members of Parliament (Remuneration and Services) Act 2013, which substantially increases the penalty imposed on members who are persistently absent from the House without permission.

UNITED KINGDOM

House of Commons

On 12 March 2012 the House passed standing order changes relating to the following.

Backbench Business Committee

Amendments were made so that the candidates for chair of the committee may not come from a party represented in the Government (standing orders 122D and 152J).

Committee on Standards and the Committee of Privileges

New standing orders provided for the Committee on Standards and Privileges to be split into a new Committee on Standards and a separate Committee of Privileges. This change was a consequence of the decision to add lay members to the Committee on Standards, which was included in new standing order 149.

The new standing order provides that the Committee on Standards cannot meet without a lay member being present, and that it may not make a report until any paper setting out a lay member's opinion of the report has been added to it. This solution elegantly sidesteps questions that had been raised about whether the proceedings of a committee where co-opted lay members had

full voting rights would be protected by parliamentary privilege to the same degree as a select committee wholly composed of Members of Parliament. The approach adopted in effect increases the influence of the lay members: since the credibility of the committee would be severely dented by any lay member's note of dissent, the committee has every incentive to reach a consensus acceptable to the lay members on any issue before it. The Government's green paper on parliamentary privilege contained draft clauses to give lay members a statutory right to participate in proceedings, but has progressed no further.

On 13 December 2012 the House agreed the appointment of three lay persons nominated by the House of Commons Commission after a fair and open competition, as mandated by a new ancillary standing order 149A on the appointment and discharge of lay members of the Committee on Standards.

The new Committee of Standards came into existence in January 2013, with the split reviving the ancient Committee of Privileges.

House of Lords

In July 2012 the House of Lords Procedure Committee considered a request from a severely disabled member to dispense with a standing order so as to allow the member to call upon an assistant in the chamber or in committee, both to provide practical help (for example, by managing papers or taking notes) and to read out the text of speeches on the member's behalf when she was unable to complete a speech.

Standing order 12 dates from 1707 and states, "When the House is sitting, no person shall be on the floor of the House except Lords of Parliament and such other persons as assist or attend the House". Those "persons [who] assist or attend the House" are staff of the House—clerks and doorkeepers—whose work supporting the House as a whole requires them to be on the floor of the House. Standing order 12 therefore prohibits the admission of a member's personal assistant, and the Procedure Committee was clear that this general prohibition should be maintained.

The Procedure Committee noted, however, that the concept of "reasonable adjustment" or "reasonable accommodation" (a modification to physical or working practices to assist a disabled person to participate equally in normal activities) is familiar in domestic and international law. In this member's case, refusing her request would limit and ultimately prevent her from taking part in the work of the House. Thus the Procedure Committee recommended to the House that, while the general principle set out in standing order 12 would continue to apply, in this particular case an exception was justified. The House agreed this recommendation.

NATIONAL ASSEMBLY FOR WALES

On 8 May 2012 the requirement for an initial ballot for questions to the Counsel General and Assembly Commission was removed.

On 20 June 2012 a new procedure for private bills was introduced.

On 23 October 2012 the restriction on former ministers taking part in Public Accounts Committee consideration of matters for which they were not directly responsible was removed.

On 28 November 2012 the functions that a temporary chair (as opposed to a temporary presiding officer) may exercise in plenary meetings were clarified and extended.

SITTING DAYS

Lines in Roman show figures for 2012; 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	10	8	0	11	8	0	7	8	6	5	0	63
Aus SEN	0	3	7	0	3	7	4	7	8	4	12	0	55
Aus ACT	*0*	*6*	*6*	*0*	*3*	*5*	*1*	*6*	*3*	*6*	*3*	*3*	*42*
Aus N Terr*	0	6	3	0	3	1	0	0	0	6	6	0	25
Aus NSW LA	0	6	9	3	12	6	0	6	9	6	6	0	63
Aus NSW LC	0	6	9	3	12	6	0	6	9	6	6	0	63
Aus Queen LA*	0	3	0	0	6	6	3	6	4	3	6	0	37
Aus S Aus HA	0	5	7	3	9	5	4	0	6	5	7	0	51
Aus S Aus LC	*0*	*8*	*7*	*1*	*9*	*6*	*5*	*0*	*7*	*8*	*8*	*4*	*63*
Aus Tasm HA	0	0	9	3	6	3	0	6	3	5	7	1	43
*Aus Tasm LC**	*0*	*0*	*0*	*0*	*1*	*9*	*4*	*2*	*5*	*3*	*7*	*0*	*31*
Aus Vict LA	*0*	*3*	*6*	*3*	*7*	*8*	*0*	*5*	*4*	*6*	*6*	*3*	*51*
Aus Vict LC	0	5	7	3	6	6	0	6	4	6	6	3	52
Aus W Aus LA	*0*	*3*	*6*	*3*	*9*	*6*	*0*	*6*	*9*	*6*	*9*	*0*	*57*
Aus W Aus LC	0	0	9	0	9	9	0	6	9	6	10	0	58
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	2	16	17	10	18	14	0	0	10	18	16	8	129
Canada Sen	*0*	*9*	*11*	*0*	*0*	*12*	*0*	*0*	*3*	*9*	*11*	*9*	*64*
Canada Alb	0	10	12	0	6	0	0	0	0	6	13	4	51
Canada BC	0	10	13	9	15	0	0	0	0	0	0	0	47
Canada Man	0	0	0	10	18	8	0	0	0	0	9	4	49
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	0	13	0	0	17	0	0	0	0	15	0	0	45
*Canada Ontario**	*0*	*4*	*15*	*12*	*13*	*1*	*0*	*0*	*0*	*0*	*7*	*5*	*57*
Canada PEI	0	0	0	13	18	0	0	0	0	0	12	4	47
Canada Québec*	0	8	7	9	16	8	0	0	0	2	14	4	68
*Canada Sask**	*0*	*0*	*16*	*12*	*12*	*0*	*0*	*0*	*0*	*0*	*0*	*8*	*48*

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Canada Yukon	0	0	9	16	7	0	0	0	0	4	16	8	60
Cayman Island	*0*	*0*	*13*	*0*	*0*	*7*	*0*	*0*	*10*	*0*	*15*	*0*	*45*
Cook Islands													
Cyprus	*4*	*4*	*5*	*3*	*0*	*5*	*3*	*1*	*3*	*4*	*5*	*5*	*42*
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**	*5*	*4*	*4*	*3*	*1*	*1*	*1*	*0*	*2*	*3*	*2*	*3*	*29*
India LS	0	0	14	5	16	0	0	14	5	0	6	14	74
India RS	*0*	*5*	*10*	*12*	*5*	*0*	*5*	*21*	*0*	*0*	*14*	*9*	*81*
India Gujarat	0	4	26	0	0	0	0	0	2	0	0	0	32
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*	*6*	*0*	*0*	*0*	*0*	*0*	*1*	*0*	*0*	*0*	*7*
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													*19*
India Sikkim													
India Tamil Nadu	*5*	*0*	*7*	*16*	*6*	*0*	*0*	*0*	*0*	*0*	*5*	*0*	*39*
India Uttar P	0	0	0	0	4	15	2	0	0	0	4	2	27
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	4	4	3	7	5	7	1	3	5	4	2	48
Jamaica Senate	1	2	2	3	4	5	3	1	2	4	5	2	34
Jersey	3	1	3	1	6	2	4	0	3	3	4	6	36
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*

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
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*
Malaysia Negeri Sembilan	*0*	*0*	*0*	*3*	*0*	*0*	*0*	*1*	*0*	*0*	*3*	*0*	*7*
Montserrat													
Namibia													
NZ H Reps	0	8	10	3	12	9	7	9	9	6	9	5	87
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 Senate	0	0	7	9	6	8	6	5	5	9	10	7	77
Pak MWFP	*0*	*5*	*0*	*0*	*0*	*25*	*3*	*0*	*10*	*0*	*0*	*0*	*43*
Pak Pun Lah	*15*	*0*	*13*	*2*	*1*	*13*	*1*	*1*	*6*	*1*	*0*	*15*	*68*
St Lucia	*0*	*1*	*1*	*3*	*1*	*0*	*1*	*1*	*1*	*0*	*1*	*1*	*11*
St V & G													13
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*
S Africa Western Cape Prov Parl	*0*	*3*	*9*	*0*	*0*	*3*	*0*	*4*	*3*	*2*	*4*	*5*	*33*
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													142
UK Lords	14	14	17	5	13	13	16	0	0	16	18	12	138
Wales	7	7	8	2	10	6	6	0	2	8	8	2	66
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

They are the “Three Stooges” of opposition economic policy.	8 February
Comparing her to Lady Macbeth is unfair on Lady Macbeth—she only had one victim to her name; this Prime Minister has a list of victims longer than Richard III.	8 February
If the Leader of the Opposition was to take appropriate action in relation to standards in the opposition, the deputy leader would not have her position by the end of question time today.	9 February
… you do bear some share of the blame, Madam Deputy Speaker.	9 February
This is a Prime Minister who is incapable of honestly explaining her actions, a Prime Minister who is chronically incapable of giving truthful answers.	14 February
She is just as guilty as her entire government.	14 February
We are not going to cop lectures from those opposite, who have no morals …	15 February
… malevolent …	16 February
... he is guilty of these allegations.	28 February
You basically have said that they paid for their opinion to be heard.	14 March
You made him claim that graziers had bribed the National Party to get this outcome, to get this trial.	14 March
... the “minister for mates”.	15 March
... the member for Dobell is so tainted by the Fair Work Australia investigation ...	19 March
... the grubby, filthy politics from those opposite ...	19 March
Well, he is certainly no member for Dobell.	19 March
But there is a saying “garbage in, garbage out”, which is, really, how you can judge a lot of the contribution that has been made ...	20 March
The puppeteer of water policy on that side of the House ...	21 March
... the Member for Goldstein was caught out in leaking the $70 billion figure ...	21 March
Goodbye and take that tin foil with you.	21 March
Australia has produced a few political charlatans. Jock Garden ... TJ Ley ... But the member for Canning’s performance today indicates he is a bullet performer as a charlatan in regard to debates.	10 May
They are happy to see people in a wheelchair go to the back of the queue, but they are happy to put Clive and Gina at the front of the queue.	21 May
If the Leader of the House knew his job, he would know that.	21 May
... in a mealy-mouthed way ...	21 May
... compared to the bleating that we have from the sheep on the opposition side ...	22 May
... back in control of himself.	30 May
... hurling abuse ...	31 May
… this government is worse for our Defence forces than the Taliban.	21 August
As a proud South Australian—unlike the Manager of Opposition Business ...	23 August
The only person who was very, very pleased with the Olympic Dam decision not going ahead in the immediate future yesterday was the Leader of the Opposition.	23 August

… the delight of members opposite from South Australia … that there was bad news for South Australia.	23 August
… the minister, who had to leap into the debate because there were actually no government members prepared to speak on it …	17 September
… he has never seen a public servant that he did not want to sack. He has never seen a public sector worker that he does not blame for all the problems of Australia.	18 September
… that he would undermine the national interest in this way.	18 September
Clearly, Labor have been treating—and will continue to treat—the defence community with contempt.	18 September
Labor is guilty of unacceptable public maladministration.	18 September
He just does not get it about respect for other people.	19 September
… corrupt, morally bankrupt, long-term Labor governments ...	19 September
You have voted for this, Mr Deputy Speaker …	9 October
… contempt …	31 October
… out there every day playing the politics of smear and sleaze and with no policies at all. We have an opposition leader going the biff, trying to knock out everything and everyone. It is all about aggression and not about outcomes.	28 November

Northern Territory Legislative Assembly

He is literally mad …	14 February
Using the department as a human shield—you are a coward.	16 February
… our Chief Minister, highly embarrassingly, was televised across the nation standing behind Julia Gillard nodding like a smiling dog. How embarrassing!	16 February
… they do not like being reminded the Chief Minister is nothing but a great big suck hole to the member for Lalor in Canberra.	16 February
… a gentleman behind the fellow I was talking to stood up and—excuse the language—shat in the mall in the middle of the day where people were walking around ...	21 February
However, the CLP has also put in this dusty old fossil, dragged up from decades previous, that it will dam the Elizabeth River.	21 February
… one of the three stooges from Alice Springs.	22 February
You sly girl!	23 February
I look across at the member for Johnston in his twilight and what do I see? I see a human shell.	23 February
He is a sexist and he is a racist.	23 February
Maybe he has a problem with Aboriginal women.	23 February
You make me sick too, Leader of the Opposition, because you are spineless.	23 February
… you were briefed as much as any CLP member, because none of them got a briefing.	27 March
What sort of a dropkick are you?	27 March
Not like you, you drongo.	28 March
She is drunk/You are slurring your words.	2 May

For the students of Darwin High School, you just met the parliamentarian nicknamed Eeyore. He is the harbinger of doom and gloom.	3 May
It comes very close to what many people would call corrupt behaviour.	3 May
Why are you putting yourself up as anything like trustworthy to the people of the Northern Territory?	3 May
You will be seen to be the shallow person you are.	25 October
You cowards over there …	31 October
You might be interested to hear this, dopey.	31 October
As I said, you always have the racist connotations underneath your questions ...	29 November
I withdraw "coward". That is nothing but being a dog [*also ordered to be withdrawn*].	6 December

New South Wales Legislative Assembly

I direct a number of members, including the bonehead from Dubbo, to the record.	15 February
The member for Kiama is an evil individual.	16 February
As opposed to a Pinochet fascist.	23 February
The Minister for Education has never told the truth in his life.	15 March
This is a BS bill, designed by the Premier for BS …	2 April
I find it astonishing that the member for Wollongong would be so stupid	24 May
It is gutlessness and cowardice to come into this place and refuse to stand up for your principles and go outside the House and say other things.	31 May
The Premier will be known as Barry O'Fibber because that is what he is.	21 June
… he was regarded as a union thug	23 August
... a bunch of elected seat-warming pissants	6 September
… what the member for Tamworth stupidly believes	11 September
… the Parliamentary Secretary may not have understood me—he is a bit dim.	13 September

New South Wales Legislative Council

The corrupt member in the other place	15 February
You never tell the truth	2 April
Scumbag	4 April
[*Of a member in the other House*] Robert Road Crash	23 May
Low-life gutter scum	23 May
A disgrace	24 May
Have you been hitting the liquor cabinet?	30 May
Corncob Joe	4 September
Grub	4 September
[*A member*] has no comprehension of the importance of Australia's history	6 September
Nutcase	11 September
Wimp	7 October
Bully	24 October
[*Of members*] the North Korean faction	13 November
Racist	22 November

Queensland Legislative Assembly

Oh, shut your mouth	31 May
They are weak and gutless MPs who conned the people into voting for them	7 June
You poor, precious little petals!	7 June
As the little banshee stated	21 June
They want to hear the dribble falling out of you!	31 July
You're a dill!	1 August
… like a lunatic	22 August
… produced bugger-all in highway improvements	23 August
… produced stuff-all	23 August
… you thug	23 August
… you gutless wonders	12 September
… hypocrisy of the Deputy Premier is truly staggering	13 November
… when you lie down with dogs you get up with fleas	27 November
I cannot sit here and listen to this crap all night	27 November
Far Knuth	28 November
… the Premier had a temper tantrum	29 November

South Australia House of Assembly

Clown	11 July
Whited sepulchre	18 October

Victoria Legislative Council

Tweedledum and TweedleTee [*reference to a Council member, Brian Tee*]	7 February
The intellectual giant … the Member for Lara in the Assembly	7 February
I am loath to use the word "shonky", but perhaps it is appropriate	29 February
Shyster	1 March
Biggles Brumby [*reference to former Premier John Brumby*]	14 March
Stealing	18 April
Buddy	18 April
There was a lot of rubbish and lies in what he contributed	18 April
Leaked letter scandal	1 May
Silly Lily [*in relation to an Assembly member*]	2 May
Communist Ken [*in relation to the Speaker of the Legislative Assembly*]	2 May
I cannot be responsible for Mrs Peulich's lack of cognitive powers	2 May
Not moonlighting [*in reference to an Assembly member*]	7 June
You are intellectually challenged	20 June
What a goose!	14 August
Low life	12 September
Mr Sourpuss	14 November
What a hypocrite Mr Leane is	27 November

CANADA

House of Commons

Mr Speaker, in all fairness, I have to keep Band Aids on my ankles from the partisan ankle-biter trying to change the channel	6 June
You and that flock of sheep you call a government	12 June
The minister's response to the suggestion is, and I quote, "he is a complete and utter asshole"	19 June
Neither he nor his wife will ever have a damned penny to pay their bills	9 September
It was unacceptable then and it is damn unacceptable today	16 October
Yet the Conservative government … is going to ram this through come hell or high water	23 October
… traitor in the House	10 December

Manitoba Legislative Assembly

"Madam FIPPA", the Member from Morris over there [*reference was in regard to Freedom of Information Act requests*]	5 June
You can take your bill and "shove it"	7 June

Prince Edward Island Legislative Assembly

Wesonomics	12 April
Firing squads	13 April
Disgusting	13 April
This arrogant government is not listening	20 November
Sightings of the Premier are like seeing a rare bird. Everyone gets on the 'phone. Guess what? I just saw the Premier. Yes, Premier sightings are very rare these days.	20 November
Are you crazy?	27 November
How big is your ego to allow you to keep selling out Islanders?	27 November
Baseless accusations	4 December

Québec National Assembly

Liberal childcare scandal	15 February
The Government is hiding behind the courts	3 May
Liberal childcare racket	8 May
To have deceived this House and Québecers	10 May
Go and hide for the summer	10 May
Bad faith	17 May
Determine criminal liability of several Government members	17 May
Funny business in childcare	6 June
Revolting language	13 June
Abject language	13 June
Deceive people	13 June
Cover-up operation	13 June
Close friends of the regime	15 June
Our people have been deceived	7 November

He is totally incompetent	13 November
Hide a document	22 November
False representation	22 November
The Official Opposition manipulates public opinion	28 November
Buffoon	29 November

Yukon Legislative Assembly

Screw up the system	21 March
Talking out of both sides of their mouth	22 March
That rant	30 April
Tirade	10 May
Whitewash	10 May
The member … isn't taking this seriously because it's not in his riding	10 December

INDIA

Lok Sabha

You have committed theft in daylight; you have looted the whole nation	13 March
… Because they have connived with the murderers	13 March
The chair is doing injustice to us [*aspersion on the chair*]	13 March
The Government should be ashamed of it	19 March
You should be ashamed	19 March
… Complete ruination of one …	20 March
Those who strike at the poor of India by dodge and duplicity	21 March
His tongue is black, it always speaks untrue, it speaks bad	21 March
Habitually wicked	21 March
Fraudulent	21 March
Shame	21 March
State-sponsored terrorism	22 March
More than 50 Left Party workers and leaders were killed by Trinamool Congress goons	22 March
Pilferers, swindlers, rapists, corrupts and looters	26 March
Thieves and swindlers	26 March
They are murderers, dacoits, rapists	26 March
Thieves, dacoits, corrupts, scammers are sitting here	26 March
Like a mosquito, you are sucking the blood of the people	27 March
Some uncivilised people of a civilised society or the so-called upholder of the society	27 March
Insane	27 March
False	27 April
They are being described as devils, brutes, thieves and rapists	2 May
Income tax people have played a mess	7 May
Rupees 1 crore to Rupees 4 crore in bribe	7 May
They are hand in glove with big contractors, distillers … [*interruptions*] … they have taken money from distillers … [*interruptions*] … they are looting Punjab …	9 May

They are in league with distillers …[*interruptions*] … they have ruined Punjab … five-star hotels are coming up, properties worth millions and billions are being built and they are talking of the poor … [*interruptions*] … it is just like a thief threatening a policeman … see how the things are happening …	15 May
You have gone mad	15 May
… Because they belong to that Bin Laden's community …	9 August
She is the dictator. She is intolerant	14 August
… Chief Minister of West Bengal of being totally dictatorial, intolerant and whimsical	17 August
The Prime Minister has run away… [*interruptions*] … this makes us feel ashamed	17 August
Shameful	30 November
Agent of America	4 December
Jamoore [*joker*]	4 December
You are awesome	4 December
You can go on shouting	7 December
You should be ashamed	10 December
Dirty, filthy	11 December
Brokerage	11 December
Who pocketed the commission, bribe and brokerage?	11 December
Commission agent	11 December
Spoiler of economy	13 December
The Government of Pakistan should feel ashamed of it …	14 December
Ridiculous statement	17 December
Absurd talks	17 December
Deaf and dumb	17 December
Why are you taunting like this? …Why do you react to us like this? … It is not proper [*aspersion on the chair*]	18 December

Rajya Sabha

Betrayal	15 March
It is a matter of shame	15 March
Somebody is kicking from that side and someone from the other side	15 March
You belong to Congress Party … [*aspersion on the chair*]	19 March
Stooge	19 March
Bullying	19 March
Cheating	20 March
It was an account of evil deeds, they were the evils …	20 March
Dacoity	26 March
Such partiality will not do … it is favouritism	26 April
It is a general massacre and the murderer is UPA government	2 May
He is a selfish man	4 May
Nonsense	7 May
Illegal	13 May
It is a government that stabs in the back	14 May

Accused	14 May
They are spreading the poison of communalism … they have played the card of sectarianism	18 May
Sectarianism is spread by Bhartiya Janata Party	18 May
There is complete anarchy	21 May
... Castigated the entire opposition without any responsibility	21 May
Useless	9 August
Cheap	9 August
Beast	30 November
The chair should have the courage [*aspersion on the chair*]	6 December
Maybe you are familiar with corruption [*aspersion on the chair*]	6 December
Now you are disrupting the work [*aspersion on the chair*]	6 December
A thrashed army resorting to rampage	6 December
Meanness, frivolity and pettiness	6 December
Stupid	6 December
Hooliganism	6 December
Please do not come in between us and the Government [*aspersion on the chair*]	11 December
At 12 you will get up … you always go away at 12 … when clock strikes at 12, you will disappear [*aspersion on the chair*]	12 December
Harijan [*untouchable*]	13 December
You are the people consuming the leftover of the Englishmen	17 December
Scavenger	17 December
Notorious criminal of the city. That criminal happens to be the present police commissioner of Delhi city. He is busy in his own crimes. Crimes that the police commissioner is committing	18 December
Arrogant	19 December
The chair does not give fair treatment to all [*aspersion on the chair*]	19 December

Uttar Pradesh Legislative Assembly

Hooliganism	30 May
The Commission to Brokers	5 June
Gundaraj	8 June

STATES OF JERSEY

You cannot have it both ways, my sweethearts, I am sorry. [*approbation*] The Bailiff: That may not be a parliamentary expression. [*Laughter*] I know, I am sorry, but I am new.	16 May
I am accused of not answering questions but when a barrage of questions is made, it is rather difficult to deal with it. I am perfectly happy to deal with it. [*Aside*] I think I have just been called “sweetheart”.	10 July

NEW ZEALAND HOUSE OF REPRESENTATIVES

As a species, Mr Robertson is not covered	1 February
Commissar	15 February
The perma-tanned member	7 March

The malignant hands of that member	8 March
Lies and manipulations that people have said in this place	3 April
Aunt Daisy	2 May
Thug	9 May
The member's questions do not often make sense	10 May
Bloody bigot	24 May
Bugger the rest	24 May
The two-faced attitude here	31 May
Did not have the guts	12 June
Big chicken	26 June
It is basically being rooted	2 August
If the Government had the courage of its convictions	13 September
Barking mad	19 September
Own little mad, Green world	5 December

NATIONAL ASSEMBLY FOR WALES

Mealy mouthed	22 February
Idiot	26 September
Bollocks [*used in a quote but still ruled unparliamentary*]	14 November

BOOKS ON PARLIAMENT IN 2012

AUSTRALIA

House of Representatives Practice, 6th edition, by B. C. Wright (ed.) with P. E. Fowler (asst. ed.), Department of the House of Representatives, Canberra, ISBN 9780642794253

Revised edition of the definitive text on the parliamentary law, procedures and practices of the House of Representatives. This edition incorporates the procedural reforms adopted by the House in the 43rd Parliament.

Odgers' Australian Senate practice, 13th edition, by J. R. Odgers, Department of the Senate, $78, ISBN 9781742296203

Odgers' Australian Senate Practice is the authoritative account of the practices and procedures of the Australian Senate and its place in the framework of the Australian Constitution. First produced as *Australian Senate Practic*e in 1953 by James Rowland Odgers, Clerk of the Senate 1965–79, it went through five editions in Odgers' lifetime with a sixth edition produced posthumously in 1991 but based on additional material prepared by its original author. By that stage, the work had grown considerably and contained a great deal of historical information.

The seventh edition was a complete revision, authored by Harry Evans, Clerk of the Senate 1988–2009. It was written to a revised set of standing orders adopted in 1989 and after the passage of the Parliamentary Privileges Act 1987 and the consequent adoption by the Senate of the Privilege Resolutions in 1988. It reflected a Senate which had matured significantly after the adoption of a system of standing committees in 1970 and which now had in place a system for referring a significant proportion of bills to committees, as well as a standing committee devoted to the scrutiny of bills against principles similar to those adopted by the much older Regulations and Ordinances Committee. It was a Senate in which procedures designed to hold the government to account had evolved considerably since 1974 when senior public servants had been called to the Bar of the Senate to answer questions about the overseas loans affair, but which held to the principles enunciated during those difficult times about its power to order documents and its right to determine claims of executive privilege. It was also a Senate which had inquired into the conduct of a judge in an attempt to establish whether misbehaviour had occurred for the purpose of a possible process to remove the judge under section 72 of the Constitution.

There was thus much new material to address. The seventh edition made reference to the voluminous historical material in the sixth edition but did not attempt to replicate it. Odgers' contribution to the work was recognised by a change of title to *Odgers' Australian Senate Practice*. Harry Evans edited five more editions before his retirement in 2009, producing supplements to each

edition at six-monthly intervals to ensure that it remained up to date until the next edition. Although it had been published online since the seventh edition, it was—and remains—primarily a reference book for use by senators and staff, including in the Senate chamber where it is regularly cited.

This 13th edition remains very much the work of Harry Evans and therefore continues to bear his name. There has been some restructuring of chapters and some omission of historical material, particularly chapter 13 on financial legislation, and a complete reformatting to corral references in footnotes, among other things. Essentially, however, it is the 12th edition updated to take account of developments since 2008.

(Taken from the preface to the 13th edition.)

Parliamentary government in Australia, by Alan J. Ward, Australian Scholarly, $49.95, ISBN 9781921875908

Alexander Macleay: from Scotland to Sydney, by D. A. Cherry, Paradise Publishers, ISBN 9780646557526

Carrick: principles, politics and policy, Graeme Starr Connor Court Publishing, ISBN 9781921421655

From Carr to Keneally: Labor in office in NSW 1995–2011, by David Clune and Rodney Smith, Allen and Unwin, ISBN 9781742376639

New South Wales Legislative Council, 1824–1856: the select committees, by R. F. Doust, NSW Parliamentary Library, ISBN 9780731318834

CANADA

La procédure parlementaire du Québec, 3rd edition, Assemblée nationale, ISBN 9782551251520

On 28 February 2012 the President of the National Assembly of Québec, Mr Jacques Chagnon, launched the third edition of the book *La procédure parlementaire du Québec*. An essential tool in understanding the organisation and proceedings of the institution, this third edition differs from the previous two, which were published in 2000 and 2003. Since the last edition there have been major changes in the organisation and operation of the National Assembly and its committees: the election in 2007 of the first minority government in the modern history of Québec, including the presence of a third parliamentary group, and reforms in 2009 of the standing orders of the National Assembly and its Rules of Procedure.

Les commissions parlementaires à l'Assemblée nationale du Québec, Assemblée nationale du Québec, ISBN 9782550657125

La démocratie, une affaire de tous : redécouvrir le vrai sens de la politique, by Yvan Bordeleau, Montréal: Liber, ISBN 9782895783541

Le déclin de la participation électorale au Québec, 1985–2008, by François Gélineau and Ronan Teyssie, Cahier de recherche électorale et parlementaire,

numéro 6, Québec : Chaire de recherche sur la démocratie et les institutions parlementaires.
Colloque sur la démocratie, les députés et les médias: actes, Québec: Assemblée nationale du Québec, ISBN 9782550648079

INDIA

Parliamentary elections' representation and the law, by Caroline Morris, Hart Publishing, PD. 40, ISBN 9781849461474
Parliamentary democracy in India, by L. M. Singhvi, Ocean Books, New Delhi, Rs. 750/-, ISBN 978818484301267
The Indian Parliament, by T.K. Viswanathan (ed.), Lok Sabha Secretariat, Rs. 900/-
Indian Parliament dynamics and details, by M.K. Singh, the Readers Paradise, Rs. 2495/-, ISBN 9789382110064
Hung Parliament: a global perspective on Hung House, politics of coalitions and defections in the system of cabinet governments, by Archana Sinha, Taxmann Publications, Rs. 575/-, ISBN 9788171949625
Voice of environment in Parliament, by Rama Chandra Khuntia, Pallibani Publications, Rs.650/-, ISBN 8190247664
Has Parliament failed? A critical review of the apex democratic organization of the country, by B. Goswami, Abhishek Publications, Rs. 595/-, ISBN 9788182474277
Voice of Labour in Parliament, by Ram Chandra Khuntia, Vitasta, Rs. 850/-, ISBN 9789380828817
Voice of Odisha in Parliament, by Ram Chandra Khuntia, Vitasta, Rs. 750/-, ISBN 9789380828763
The Kesavananda Bharati Case: the untold story of struggle for supremacy by Supreme Court and Parliament, by T. R. Andhyarujina, Universal Law Publishing, Rs. 295/-, ISBN 9789350351406
Trideb Chaudhuri in Parliament: a commemorative volume, Lok Sabha Secretariat, Rs. 600/-
Parliament for the People, by Era Sezhiyan, Institute of Social Science, Rs. 1450/-, ISBN 9788192104102
60 Years of the Indian Constitution: Retrospect and Prospects, by Kirti Narain and Mohini C. Dias, Macmillan Publishers India, Rs. 1250/-, ISBN 0230323820

NEW ZEALAND

Towards a better understanding: a history of the New Zealand Business and Parliament Trust, 1991–2011, by John R. Martin, New Zealand Business and Parliament Trust, ISBN 9780473207984

PAKISTAN

A Biography of Federalism in Pakistan: Unity in Diversity, by Raza Rabbani, Leo Books, Rs. 850/-

UNITED KINGDOM

Parliaments and Legislative Activity: Motivations for Bill Introduction, by Martin Brunner, Springer VS, ISBN 9783531196114

This book examines the motivations of opposition parties and government backbenchers for proposing legislation.

How to be an MP, by Paul Flynn, Biteback Publishing, ISBN 9781849542203

The politics of coalition: how Conservative–Liberal Democrat government works, by Robert Hazell and Ben Yong, Hart Publishing, ISBN 9781849463102

This book devotes a chapter to "the coalition in Parliament".

Eminent Parliamentarians: the Speaker's Lectures, by Philip Norton, Biteback, ISBN 9781849544078

Who goes home?: a parliamentary miscellany, by Robert Rogers, Biteback Publishing, ISBN 9781849543965

The roles and function of parliamentary questions, by Martin Shane (ed.), Routledge, ISBN 9780415669801

This book was published as a special issue of the *Journal of Legislative Studies*.

The day Parliament burned down, by Caroline Shenton, OUP, ISBN 9780199646708

Westminster: a biography: from earlier times to the present, by Robert Shepherd, Bloomsbury ISBN 9780826423801

Contempt of Parliament, by Kieron Wood, Clarus Press, ISBN 9781905536436

This book examines the history of parliamentary privilege and contempt of Parliament. "The focus of this book relates to common law jurisdictions, such as the United Kingdom, Canada, Australia, New Zealand, the United States, Ireland, India and other Commonwealth countries."

CONSOLIDATED INDEX TO VOLUMES 77 (2009) – 81 (2013)

This index is in three parts: a geographical index; an index of subjects; and lists of members of the Society who have died or retired, 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, amendments to standing orders and unparliamentary expressions. Miscellaneous notes 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