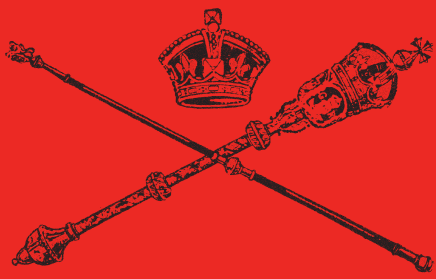

The Table

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IN
COMMONWEALTH PARLIAMENTS

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EDITED BY
NICOLAS BESLY

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CONTENTS

EDITORIAL

There are three themes in the articles in this edition of *The Table*: recent developments in parliamentary privilege; the referendum on Scottish independence; and former clerks.

The edition begins with an article by the Deputy Clerk of the New Zealand House of Representatives, Debra Angus, on New Zealand's Parliamentary Privilege Act 2014. There are some parallels with the 1987 Australian legislation on privilege: both statutes followed adverse and unexpected court rulings; the matter was then considered by a committee which recommended legislation; and the Acts which followed, while comprehensive, were not attempts at exhaustive codification. The article draws on this comparison and developments elsewhere in the Commonwealth in what makes for a fascinating read.

Later in the edition privilege is covered from the opposite angle. Alexander Horne and Oonagh Gay from the UK House of Commons Library write about the repeal of a statutory provision on privilege. Section 13 of the Defamation Act 1996 allowed individuals to waive privilege so far as the individual was concerned for the purpose of a defamation action. It was an unusual creature: it was passed in a hurry in response to a political scandal; it was unclear that it had the support of the then government or the mover of the amendment which became section 13; it marked a significant departure from the principle that privilege is owned by the House not the individual, and therefore is for the House to waive; and it was rarely invoked. Hence soon after its enactment in 1996 there were calls for its repeal. These calls were finally successful in the Deregulation Act 2015. This article recounts the full story of a provision which is unlikely to be missed.

There are two articles on the September 2014 referendum on whether Scotland should become an independent country. Stephen Imrie, clerk to the Scottish Parliament's Devolution (Further Powers) Committee, begins by examining events that led up to the referendum. He then sets out developments since. One of the most prominent of these was the Smith Commission. This was a cross-party group set up immediately after the referendum to reach consensus on a package of further devolution. Its timetable was tight. Tracey White, a clerk in the Scottish Parliament, was seconded to the Smith Commission secretariat and covers its workings.

The first article in this edition about clerks gone by is written by Colin Lee, a Principal Clerk of the UK House of Commons. He details the first part

of the career of Archibald Milman. Milman joined the House of Commons clerkship in 1857 and retired as Clerk of the House. This article covers the period 1877 to 1888, during the latter part of which Milman was Second Clerk Assistant to Sir Thomas Erskine May, the Clerk of the House of Commons and Under-Clerk of the Parliaments. This was a time of significant procedural change in the Commons, with obstruction by Irish MPs wanting home rule leading to the introduction of disciplinary powers for the chair and the ability to curtail debate. As Mr Lee puts it, Milman and other clerks "were by no means passive observers of the situation", showing a level of intervention which would probably now be considered inappropriate for an impartial clerk. The article is a thorough examination of Milman's career during this period. Readers can look forward to further information about Milman's later career in a future edition of *The Table*.

Finally, there is an article by Dr Gareth Griffith, manager of the New South Wales Parliamentary Research Service, about the experiences of three New South Wales clerks during the First World War. All three rose to be Clerk of the Legislative Assembly after wartime heroics. Dr Griffith covers their stories.

In addition to these interesting articles, this edition contains the usual parliamentary miscellanea, developments about privilege and standing order changes, and a comparative study about procedure during divisions. The editor is grateful for all contributions and hopes readers find the volume useful and enjoyable.

MEMBERS OF THE SOCIETY

Australia

House of Representatives

On 1 January 2014 **Bernard Wright** retired as Clerk. He was succeeded by **David Elder**.

Senate

Distinguished former member of the Society of Clerks-at-the-Table, **Harry Evans**, former Clerk of the Senate (1988–2009), died on 6 September 2014 after a long illness. Acknowledged as one of the driving forces behind the development of the Parliamentary Privileges Act 1987 (Cth), Evans also undertook a major revision of the standard text on the Australian Senate, *Australian Senate Practice*, after its original author, J R Odgers, produced the first five editions and contributed to the sixth. Renaming the work *Odgers' Australian Senate Practice*, Evans edited six editions of the work before his retirement in 2009. On the first sitting day after Evans' death (22 September 2014), senators speaking to a motion of condolence paid tribute to a long and distinguished

career of public service to the Senate and the people of Australia.

Rachel Callinan was appointed as Usher of the Black Rod in June 2014, having served in that role in the New South Wales Legislative Council.

New South Wales Legislative Council

On 30 June 2014 **Susan Want** was appointed the 25th Usher of the Black Rod, replacing **Rachel Callinan** (see above). Ms Want was formerly the Director—Procedure in the Legislative Council.

South Australia House of Assembly

Malcolm Lehman retired as Clerk of the House of Assembly on 30 May 2014.

Rick Crump was promoted to be Clerk of the House of Assembly with effect from 18 December 2014.

Victoria Legislative Assembly

Dr Vaughn Koops was promoted to Assistant Clerk (Committees) in September 2014.

Victoria Legislative Council

Wayne Tunnecliffe announced his retirement as Clerk of the Legislative Council in 2014. Although he will remain Clerk until July 2015, he took accumulated leave from July 2014. Wayne has been Clerk of the Legislative Council since December 1999. He has been a parliamentary officer since January 1967, having begun as a junior clerk in the Legislative Assembly aged 17. He spent most of his first seven years learning the basics of the parliamentary service in various positions in the Legislative Assembly, except for 12 months in the Legislative Council from 1968 to 1969. He transferred back to the Legislative Council in 1974 and worked as Clerk of the Papers and Joint Secretary to the Statute Law Revision Committee for nine years. Wayne was Usher of the Black Rod for five years, when he organised the 1985 and 1987 openings of Parliament, and Clerk Assistant and Clerk of Committees from 1988 to 1999.

Matthew Tricarico has taken extended leave before his retirement as Deputy Clerk of the Legislative Council takes effect in November 2015. Matthew served the Parliament of Victoria for 37 years. Following a brief career in the public service, he was appointed Accounting Officer at the Parliament of Victoria in 1978. He then rose through the ranks first as a committee clerk and then secretary of various parliamentary committees to become Clerk of the Papers and Assistant Clerk of Committees in 1983. In 1988 Matthew was appointed Usher of the Black Rod, a position he held until 1999 when he was appointed Deputy Clerk of the Legislative Council. He held this position until 2014.

Andrew Young has been appointed Acting Clerk until July 2015, when he

will take up the position permanently.

Anne Sargent was appointed Deputy Clerk in August 2014.

Western Australia Legislative Council

Nigel Pratt became Clerk of the Legislative Council in February 2014. He had previously been Deputy Clerk of the Tasmanian Legislative Council.

Canada

House of Commons

In September 2014 **Audrey O'Brien**, the Clerk of the House of Commons, went on extended medical leave. During her absence the Deputy Clerk, **Marc Bosc**, was Acting Clerk of the House of Commons. Consequently, **André Gagnon** became Acting Deputy Clerk, **Colette Labrecque-Riel** became interim Clerk Assistant, Committees and Legislative Service, and **Jeremy LeBlanc** became interim Principal Clerk, Journals Branch.

In February 2014 **Richard Fujarczuk** resigned as Law Clerk and Parliamentary Counsel for personal and medical reasons. He was replaced on an interim basis by **Richard Denis**, Deputy Law Clerk and Parliamentary Counsel.

Senate

Mark Audcent, former Law Clerk and Parliamentary Counsel, retired on 16 May 2014 after a long career in the Senate Administration. Former Deputy Law Clerk and Parliamentary Counsel **Michel Patrice** was officially appointed to the position on 13 June 2014, having been acting Law Clerk for over 18 months.

On 16 December 2014 the Clerk of the Senate and Clerk of the Parliaments, **Dr Gary O'Brien**, announced his retirement with effect from 13 February 2015.

Newfoundland and Labrador House of Assembly

The Law Clerk, **Lorna Proudfoot**, was appointed a QC in December 2014.

India

Lok Sabha

Shri Anoop Mishra was appointed Secretary General of the Lok Sabha in November 2014.

States of Jersey

Anne Harris retired as Deputy Greffier (i.e. deputy clerk) of the States of Jersey in April 2014. Mrs Harris had been Deputy Greffier since November

2002 and attended many meetings of the Society during her time in office. **Lisa Hart**, previously Assistant Greffier, was sworn in as the new Deputy Greffier in May 2014.

Michael de la Haye, Greffier of the States, was made an Officer of the Order of the British Empire in the Queen's Birthday Honours in June 2014.

Mauritius National Assembly

Mr R R Dowlutta retired as Clerk of the National Assembly in February 2014. **Mrs B S Lotun** succeeded him as Clerk of the National Assembly on 1 March 2014.

Miss U D Ramchurn became Deputy Clerk on 25 April 2014.

New Zealand House of Representatives

In 2014 the Queen appointed **Mary Harris**, Clerk of the House of Representatives, to the Queen's Service Order, for services to Parliament.

United Kingdom

House of Commons

Sir Robert Rogers KCB, Clerk of the House of Commons, retired in August 2014, having been Clerk since October 2011. In December 2014 he was created a life peer, as Lord Lisvane, entering the House of Lords as a Crossbencher.

Lord Lisvane's successor as Clerk of the House of Commons, David Natzler, writes:

Robert has been part of the life of the House of Commons for as long as most of us here can remember. Home and away, before or after a glass of Kir Royale, generations of clerks who have joined the House of Commons Service since he arrived in 1972 fresh from a misjudged attempt to fit into the straitjacket of the civil service in the Ministry of Defence have relished his company, admired his poise and polish, respected his learning and acuity, and loved his handwriting. And we have laughed till we cried. Robert has an encyclopaedic knowledge of *Blackadder* episodes, which has helped him and all his colleagues through difficult times. He is very funny, musical and very kind.

I have followed Robert in several jobs, inheriting filing systems I never mastered, a few bottles in the fridge and a very tidy ship. He inspired lifelong affection and loyalty among the members and staff he worked with.

His period of three years as Clerk of the House and Chief Executive was aptly portrayed in the BBC's four-part series *Inside the House*, in which he took the central part. At one point he noted that though he was in 18th-century dress it did not mean he had an 18th-century mind. That is evident in his rewriting and editing with Rhodri Walters of the classic *How Parliament Works*, now the standard answer for any literate person who asks that question.

Readers of *The Table* will also know of his affection for the Commonwealth, perhaps shading it over the EU after his years on the European Scrutiny Committee.

In his years as Clerk of the Journals, Clerk of Legislation, Clerk Assistant and Clerk of the House Robert demonstrated not only expertise in matters such as privilege and procedure, but a very sure political touch, teaching all of us that how things looked or would be reported was vital in the parliamentary environment. "Handling", "reputational" and "traction" were new words in the lexicon to many clerks.

Robert led from the front in modernising. He was the first clerk at the Table to use his iPad at the Table—still immaculately clothed in court dress—which gave real comfort to those fighting the battle against dependence on paper. In the spirit of a good modern ambassador, he opened up the Clerk's residence at No 3 Parliament Street for meetings of all sorts in the dining room; for very well-received thank you parties, informal seminars and serious chats in the reception room; and quite a few memorable parties where he was the most welcoming and generous of hosts. In particular he created links with the senior judiciary from nothing, and with the top of the public service.

He is also rightly proud of introducing an apprentice programme for 10 young people from less advantaged backgrounds who had a year in the House Service: eight of the 10 have found lasting employment here as a result. Under his benign rule some significant changes were made or set in train, including the Jenkins review of security governance and the introduction of the Parliamentary Digital Service.

Robert is still very much around Parliament, as a member of the House of Lords. He is the first Commons clerk since 1950 to be given such a signal honour, taking the title Lord Lisvane. He and Jane are missed at our end but now adorn the Other End. I am sure readers of *The Table* will follow his speeches in the Lords with interest.

House of Lords

Dr Rhodri Walters CB retired as Reading Clerk in February 2014. He joined the Parliament Office in 1975. Amongst other posts held, he was private secretary to the Leader of the House and Government Chief Whip from 1986 to 1989; Establishment Officer (including being clerk to the Finance, Staff and Refreshment sub-committees of the Offices Committee) from 1993 to 2000; Clerk of Public Bills from 2000 to 2002; Clerk of Committees from 2002 to 2007; Clerk of the Overseas Office from 2002 to 2014; and Reading Clerk, Clerk of Outdoor Committees and Head of Corporate Services from 2007 to 2014.

Dr Walters was also clerk of the Select Committee on the Constitutional

Reform Bill [HL] in 2004. That bill, which became the Constitutional Reform Act 2005, led to significant changes in the composition of the House of Lords. It allowed for the House to elect its own Lord Speaker, which it now does, and significantly reformed the office of Lord Chancellor, who now sits in the House of Commons. It also created a new Supreme Court physically and constitutionally separate from Parliament and so ended the House of Lords' appellate jurisdiction.

In 2011–12 Dr Walters was the Lords clerk to the Joint Committee on the Draft House of Lords Reform Bill. That bill, which did not proceed beyond its second reading in the House of Commons, would have created an 80%-elected House of Lords.

Dr Walters was co-author of all seven editions of *How Parliament Works*, an accessible guide to the business of Parliament. The latest edition has been described by the distinguished parliamentarian Lord Cormack as "as indispensable as *Erskine May*, it is a masterpiece."

Tributes were paid to Dr Walters' career by members of the House of Lords on 3 March 2014, led by the then Leader of the House.

In the Queen's Birthday Honours in June 2014 Dr Walters was made a Companion of the Order of the Bath, for parliamentary service.

Simon Burton succeeded Rhodri Walters as Reading Clerk on 3 March 2014.

Scottish Parliament

Michelle Hegarty was promoted, on a temporary basis, to Assistant Clerk/ Chief Executive in 2014. She was then promoted to the post on a permanent basis in 2015.

LEGISLATING FOR PARLIAMENTARY PRIVILEGE: THE NEW ZEALAND PARLIAMENTARY PRIVILEGE ACT 2014[1]

DEBRA ANGUS
Deputy Clerk of the House of Representatives, New Zealand

A long and winding road

Parliamentary privilege may sound like a dry and academic topic, but over the past three years the New Zealand Privileges Committee has been at the cutting edge of developments in parliamentary law and procedure, culminating in the enactment of the Parliamentary Privilege Act 2014.

Like many 19th century post-colonial legislatures, New Zealand has no single instrument or statute that sets out the privileges, powers and immunities of the legislature. In 1854, soon after it first met, the New Zealand General Assembly was concerned to secure contempt powers to uphold its authority. The common-law rule that colonial legislatures enjoyed only the privileges of the House of Commons that were incidental to and necessary for their efficient functioning was not sufficient for the legislature to operate effectively. The Parliamentary Privileges Act 1865 applied the full expression of parliamentary privilege to the New Zealand legislature by adopting all the powers and privileges "held, enjoyed and exercised" by the House of Commons as at 1865. The statutory basis of parliamentary privilege in New Zealand—encompassing section 242 of the Legislature Act 1908, supplemented by other legislation touching on the privileges of the House—continued largely unchanged for over a century.

Impetus for legislative reform

The immediate impetus for legislative reform was created by the decision of the New Zealand Supreme Court in *Attorney-General and Gow v Leigh*, which concluded that statements from an official to a minister for the purpose of preparing an answer to an oral question in the House were not protected by absolute privilege in a defamation case.[2] Qualified privilege was enough. In reaching this conclusion the court placed considerable weight on the recent judgment of the United Kingdom Supreme Court in *R v Chaytor*.[3]

[1] A version of this article was presented at the Australia and New Zealand Association of Clerks at the Table (ANZACATT) Professional Development Seminar in Sydney, Australia, in January 2015.

[2] [2011] NZSC 106.

[3] [2010] UKSC 52.

In *Leigh* the New Zealand Supreme Court maintained that the test was whether it was necessary for the proper and efficient functioning of the House of Representatives that the occasion on which the official communicated with the minister should be regarded as an occasion of absolute privilege. In other words, the test was whether it been shown that, without this kind of occasion being absolutely privileged, the House could not discharge its functions properly.

The court rejected the submissions of counsel for the Speaker that the proper test was whether the occasion in question was "reasonably incidental" to the discharge of the business of the House.[4] The Supreme Court also disagreed with the conclusion reached in *Parliamentary Practice in New Zealand* by David McGee QC that, while necessity may help to elucidate the existence and extent of a particular privilege, it was not the legal foundation of parliamentary privilege in New Zealand.[5] Although McGee considered that the foundation of parliamentary privilege had since 1865 been firmly rooted in New Zealand's own statute law, the Supreme Court concluded that necessity was and remains an essential basis for parliamentary privilege in New Zealand.

Privileges Committee consideration

In September 2011 the Speaker referred to the Privileges Committee a question of privilege relating to the decision. The committee made its report in June 2013.[6]

The committee examined the general principles of parliamentary privilege and the relationship of mutual respect and restraint (comity) between Parliament and the courts. It is at the margins that the greatest challenge in that relationship arises. The committee found that the Supreme Court decision represented a shift from previous judicial authority, and moved New Zealand away from other Commonwealth jurisdictions in its interpretation of the scope of Parliament's privilege of freedom of speech. While it is rare for a committee of the House to comment directly on a court decision, the Privileges Committee made clear that it did not accept that the decision was correct, particularly in its application of the "necessity test" to determine the extent of the House's privileges. The committee concluded that the judgment would damage the House's capacity to function in the public interest and would have a chilling effect on the ability of the House to receive information.

[4] See section 16(2)(c) of the Australian Parliamentary Privileges Act 1987 and Lord Browne-Wilkinson's judgment in *Prebble v Television New Zealand* [1994] 3 NZLR 1 (PC).

[5] Parliamentary Privileges Act 1865, s. 4; Legislature Act 1908, s. 242.

[6] *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* I.17A, June 2013.

The committee recommended legislation as the only way to remedy these issues, and made suggestions about the form legislation might take. The recommendations identified other areas for reform, including abolishing the doctrine of "effective repetition" as expressed in *Buchanan v Jennings*[7] and extending the protection for parliamentary communications beyond papers and publications.

Options for reform

It is useful to consider what options the New Zealand legislature had at this point. Parliaments have legislated in response to adverse court decisions about the extent of their exclusive cognisance, but attempts to assert privilege by means other than legislation have been less successful. In the *Stockdale v Hansard* conflict the court rejected the passing of resolutions by the House of Commons as a remedy; the matter was resolved only by the enactment of legislation.[8] More recently it was restated that a resolution of the House is not regarded by the court as being equal to primary legislation.[9] While the New Zealand House of Representatives had resolved to accept the Privileges Committee's finding that it "respectfully disagreed" with the decision in *Leigh*, something more was required to remedy the situation.

Parliament alone can make the law: the court's role is to interpret and apply it. While the courts can determine the extent of parliamentary privilege, if they interpret privilege in a way that Parliament considers to be wrong or damaging, it is open to Parliament to enact legislation to change the law. Statutory reform of aspects of parliamentary privilege has a long history.[10] The New Zealand Privileges Committee had examined the options for reform and concluded that Parliament needed to clarify the nature of its privileges for the courts. For the New Zealand Parliament, faced with two court decisions it did not agree with, the time had come to act.

Legislative reform

In response to the Privileges Committee recommendations, the Government agreed that legislative reform was necessary because when the judiciary and the legislature come to different views, legislation is the usually appropriate

[7] [2002] 3 NZLR 145 (CA) and *Jennings v Buchanan* [2004] UKPC 36.

[8] Joint Committee on Parliamentary Privilege, *Parliamentary Privilege* (2013–14, HL Paper 30, HC 100), p 37.

[9] *Izuazu (Article 8—new rules)* [2013] UKUT 00045 (IAC).

[10] The preamble to the Bill of Rights 1689 refers to the enactment "for the Vindicating and Asserting their ancient Rights and Liberties"; the litigation in *Stockdale v Hansard* ultimately led to the enactment of the Parliamentary Papers Act 1840, which provides for a statutory protection.

means of addressing the issue.[11] As it would be a government bill, the Ministry of Justice was nominated to be the lead agency in developing the legislation. As the legislation would ultimately be administered by the Office of the Clerk, that office was consulted at all stages, including the preparation of the government response, Cabinet papers, the regulatory impact statement and legislative quality statements. The Leader of the House introduced the Parliamentary Privilege Bill on 2 December 2013 and the bill had its first reading on 11 December 2013.

Purpose of the legislation

The legislation sought to implement the Privileges Committee's recommendations. It was intended to return the law to Parliament's understanding of the privilege of freedom of speech by clarifying critical definitions; and it modernised existing legislation to make it more accessible. The legislation was based on the Australian Commonwealth Parliamentary Privileges Act 1987. The reform also aimed to give effect to a series of parliamentary reports for reform, which included recommendations to override the effect of two adverse court decisions already referred to.[12] The legislation was declaratory of the law in certain areas and was not intended to codify the law of parliamentary privilege in New Zealand. It was to be read alongside Article 9 of the Bill of Rights 1689.

The purposes of the legislation were to:

- reaffirm and clarify the nature, scope and extent of the privileges, immunities and powers exercisable by the House, its committees and members;
- clarify the purpose of parliamentary privilege, but avoid comprehensive codification;
- reaffirm and clarify the effect of Article 9 of the Bill of Rights 1689;
- define the meaning of "proceedings in Parliament" for the purposes of Article 9 and alter the law set down by the decision in *Attorney-General and Gow v Leigh*;
- abolish and prohibit evidence concerning proceedings in Parliament being used for "effective repetition" claims, as exemplified in *Buchanan v Jennings*;
- replace with modern legislation the law formerly contained in the Legislature Act 1908, the Legislature Amendment Act 1992 and certain provisions of

[11] Government response, J.1, 3 September 2013.

[12] Privileges Committee, *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011-14] AJHR I 17A; Privileges Committee, *Question of privilege referred on 21 July 1998 concerning the action Buchanan v Jennings* [2002-05] AJHR I.17G.

the Defamation Act 1992;[13]
- update and remedy gaps in protections for the communication of proceedings in Parliament (including through broadcasting and publication);
- reaffirm the power of the legislature to fine for contempt.

Committee report on the bill

The Privileges Committee considered the bill and, after hearing submissions, reported it to the House with recommended amendments on 5 June 2014. The main changes were to take account of the Clerk's suggestions, which included restructuring the bill to organise its core elements more clearly. The changes would make clear the underlying justifications for parliamentary privilege: the privileges, immunities and powers in the bill exist to uphold the integrity of the House as a democratic institution and to secure the independence of the House, its committees and members in the performance of its functions.

Changes were also made to address confusion caused by importing defamation concepts of "absolute" and "qualified" privilege in the original bill, which may have inadvertently extended parliamentary privilege. The committee concluded that these concepts were best left in the Defamation Act 1992. The committee recommended an evidential prohibition approach to liability from statements regarded as effective repetition of statements made during parliamentary proceedings. The committee also recommended reinforced provisions for stays of court or tribunal proceedings in respect of communications (reporting or broadcasting by whatever means) under the authority of the House and qualified immunity for certain communications, such as fair and accurate reporting of proceedings.

Progress of the bill

The bill received its second reading on 22 July 2014. Following agreement at the Business Committee, the bill had its committee stage and third reading (without debate) during an extended sitting on 30 July 2014. This meant that the bill was considered and debated by those members who had originally examined the issue arising from the *Leigh* report and would be in force from the 51st Parliament. All parties supported legislating, from the recommendation of the Privileges Committee to legislate to the passing of the legislation through all stages. During the debates members recognised the complexity of the issues and the importance of working together to arrive at a legislative solution. The Act came into force on 8 August 2014.

The Office of the Clerk is now developing a programme to "operationalise"

[13] Parliamentary Privilege Act 2014, s. 3.

the legislation through its publications, seminars and workshops for staff, members of Parliament, public servants, lawyers, judges, the media and the public.

Inter-parliamentary conversations

One of the interesting aspects of the reform process was the interaction with privileges committees from other Westminster-style parliaments. Some committees made submissions to the New Zealand committee's inquiry into the *Leigh* case and, at the New Zealand Privileges Committee's invitation, made further submissions on the bill.

In the United Kingdom a report by a joint committee on the Government's green paper on parliamentary privilege was published in July 2013, one month after the *Leigh* report. The joint committee's report recommended a few changes but did not recommend comprehensive codification of privilege in the United Kingdom. The New Zealand Privileges Committee received a submission on the bill from Lord Sewel, the then Chairman of Committees in the House of Lords, which noted that the joint committee kept the legislative option open. For instance, on judicial questioning of proceedings in Parliament, the joint committee concluded that while at this stage the problem in the United Kingdom was not sufficient to justify legislation, "Parliament should be prepared to legislate if it becomes necessary to do so in order to protect freedom of speech from judicial questioning."[14]

Lord Sewel's submission on the bill also referred to the issues which led to the New Zealand legislative reform, where the joint committee "expressed regret" at the decision in *Leigh* but noted the decision was not binding in the United Kingdom and the matter had not been tested in the United Kingdom courts. The Government response to the joint committee's report agreed that briefings by officials to ministers to enable them to answer parliamentary questions should continue to enjoy absolute privilege, while recognising that would be a matter for the courts.[15]

The submission also referred to a member's liability for "effective repetition", where the joint committee shared the Privileges Committee's concerns but did not consider that legislation would be feasible. A recent United Kingdom court case—*Makudi v Baron Triesman*[16]—which raised similar issues to those in *Jennings v Buchanan* has now concluded. Details of statements made by a witness to a select committee were held to be not actionable, where in a

[14] *Op. cit.*, paragraph 136.

[15] Government Response to the Joint Committee on Parliamentary Privilege, December 2013, Cm 8771.

[16] [2014] EWCA Civ 179.

subsequent inquiry into arrangements over FIFA World Cup match-hosting, the maker of the statement objected to going into any further detail which would not be protected by privilege. The plaintiff had alleged that the witness had adopted by reference and/or confirmed and/or repeated his statements to the select committee. This shows that "effective repetition" depends very much on the facts of each case, but attempts may still be made to use a statement made outside a privileged occasion as a "hook" back into a proceeding in Parliament.

Some of the New Zealand submitters considered that the committee should satisfy itself that the Australian legislation was working effectively, particularly as the definition of proceedings in Parliament in the bill was based on the Australian legislation. In its submission, the Standing Committee of Privileges and Member's Interests of the House of Representatives of the Parliament of Australia provided a useful summary of the issues, including the court decisions which led to legislation making it clear how Article 9 of the Bill of Rights applied to the Australian Parliament.

In particular, section 16 of the Australian Parliamentary Privileges Act 1987 put beyond doubt that Article 9 is part of the law of Australia under the constitution and lists those actions which constitute proceedings in Parliament. The Australian committee noted that those provisions had functioned well and that there was no evidence that prescribing what constituted proceedings in Parliament had limited what could constitute those proceedings. Since 1987 there had been no need nor proposal to expand the items specified under section 16(2). In view of this experience, the committee believed that the provision in the New Zealand bill which mirrored the Australian legislation should serve the New Zealand Parliament effectively.

Reform is not for the faint-hearted

Legislative reform of the law of parliamentary privilege is not for the faint-hearted. In New Zealand there had been several committee reports recommending reform since the 1980s and one unsuccessful member's bill. The genesis for the Parliamentary Privilege Bill came from two court decisions litigated over many years and after several committee reports recommending reform. The Speaker had intervened in both sets of litigation deliberately late in the process, and the issues were referred to the Privileges Committee only after all legal avenues were ended.

There are challenges in legislating for post-colonial Westminster parliaments which have adopted the privileges "held, enjoyed and exercised" by the House of Commons at a particular 19th-century date. What that actually means now is unclear. Some privileges have not been exercised since the 17th century but arguably are still exercisable. In New Zealand, the legislation defines a new term of "exercisable" privileges, while retaining the history and body of precedent of

the previous terminology.

There is a further challenge in modernising the language of privilege legislation. The word "privilege" has unfortunate connotations of grandeur. Defining "proceedings in Parliament" requires explaining the 17th-century language and concepts of Article 9 of the Bill of Rights, while keeping its original meaning. The term "impeached or questioned" taken from the Bill of Rights 1689 remains in both the Australian and New Zealand legislation, with examples of what might be covered or excluded by these terms. The Legislature Act 1908 also needed modernising to use current terminology and to account for developments, particularly in broadcasting and reporting. There are multiple ways now of disseminating information beyond the 19th-century concept of "papers"; new terminology has to be future-proof. All these issues create considerable legislative drafting complexities.

Finally, the law of privilege tends to be scattered like a patchwork of legislative repairs which have dealt incrementally with specific issues or adverse court decisions. The resulting legislation can be described more as a series of building blocks (somewhat precariously) anchored on Article 9 of the Bill of Rights, rather than a codification of the law. Attempts to consolidate the law can highlight uncomfortable overlaps or intersections. This was evident in the way the New Zealand bill as introduced used defamation concepts of absolute and qualified privilege. On further reflection, the Privileges Committee considered that this caused confusion, was unnecessary and that privilege protections against liability in defamation were best left in the Defamation Act 1992.

All these are good reasons why legislative reform should be a last resort where Parliament considers that its ability to function has been eroded to the extent that it cannot carry out its core work.

SCOTTISH INDEPENDENCE REFERENDUM BEGAT CONSTITUTIONAL COMMISSION BEGAT COMMAND PAPER AND DRAFT LEGISLATION

STEPHEN IMRIE

Clerk to the Scottish Parliament's Devolution (Further Powers) Committee

Our cousins in what we call in Scotland the Auld Alliance that existed between Scotland and France in bygone days have a phrase for it: "Plus ça change, plus c'est la même chose"—the more things change, the more they remain the same. For students of Scotland's recent political history, a series of steps towards further devolution and even consideration of outright independence from the rest of the United Kingdom have marked the last 40 years.

In the mid-1970s, debates about the future of Scotland, proposals for further devolution and the re-establishment of a Scottish Parliament led to a referendum in 1979 on the creation of a Scottish Assembly with limited devolved powers. An amendment to the Scotland Act 1978 that allowed for the referendum stipulated that the Assembly would be established only if those voting Yes, as well as being a majority of those voting, accounted for at least 40% of the total electorate. The final result was that 51.6% supported the proposal, but with a turnout of 64% this represented only 32.9% of the registered electorate. The Act was subsequently repealed.

In 1997 a second referendum to create a devolved legislature in Scotland was held. This led to the Scotland Act 1998 and the establishment of a devolved Scottish Parliament in 1999, the first Parliament in Scotland since the pre-Union Scottish Parliament last sat in 1707.

Since then the powers of the Scottish Parliament have been augmented through a series of fairly regular changes made by Orders in Council under section 30 or 63 of the Scotland Act 1998, and by the Scotland Act 2012, which followed the creation of a Commission on Scottish Devolution, chaired by Sir Kenneth Calman (the Calman Commission).

At the core of the debate on further devolution since the Scottish Parliament was re-established in 1999 has been the extent of fiscal autonomy—how much of the expenditure in Scotland on decisions taken by the Scottish Parliament is raised by taxes that are devolved to the legislature?

The most significant provision of the 2012 Act gives the Scottish Parliament greater responsibility for raising its own revenue. This is to be done by reducing the rate of income tax in Scotland levied by the UK Government by ten percentage points (10p in the pound) in each tax band, and allowing the Scottish Parliament to raise as much or as little additional income tax as it wishes

through a new Scottish rate. (The 1998 Act gave the Parliament a power to vary income tax rates by up to 3p in the pound, but this has never been used.) The 2012 Act also devolved certain other taxes and created a power to request new taxes subject to approval at the UK level. In addition, the borrowing powers of the Scottish Government are to be extended.

In 2007 and again in 2011 the Scottish people returned first a minority and then a majority government from the Scottish National Party, a party whose central tenet is Scottish independence and which did not participate in the Calman Commission process.

On 15 October 2012 an intergovernmental process led to the signing of the "Edinburgh Agreement" by the Prime Minister, David Cameron MP, and the then First Minister, Alex Salmond MSP, which paved the way for a national referendum on independence for Scotland, held on 18 September 2014.

Following a record turnout of nearly 85% of those registered to vote in the referendum, just over 2 million voted to remain in the UK (55.3%), with a little over 1.6 million (44.7%) voting for independence.

On the morning after the referendum the Prime Minister made a statement to the press which led to the establishment of a new commission to look at proposals for devolving further powers to the Scottish Parliament.

The commission was chaired by Lord Smith of Kelvin, who was assisted by two representatives of each of the five political parties represented in the Scottish Parliament. This became known as the Smith Commission.[1]

The Smith Commission published its report on 30 November 2014, with the UK Government publishing their response in January 2015 in the form of a command paper and draft legislative clauses. The UK Government's response would, in their view, give effect to the agreement reached by all five political parties in the Smith Commission.

Central to the Smith Commission and the command paper were proposals for increased tax powers and for additional powers over welfare and benefits. The Smith Commission also recommended further devolution in a number of other policy areas.

Since January 2015 the leaders of the three main UK parties have publicly signalled their intention to introduce a bill in the UK Parliament, as part of a first Queen's Speech in after the 2015 general election, to take forward proposals for further devolution. Any such bill—affecting as it would the legislative competence of the Scottish Parliament and the executive powers of the Scottish Government—would require the consent of the Scottish Parliament before it

[1] A separate article on the work of the Smith Commission appears later in this edition of *The Table*.

could be passed into law by the UK Parliament.

It is for this reason that the Scottish Parliament tasked a committee—the Devolution (Further Powers) Committee—with scrutinising any proposals published by the Smith Commission and, subsequently, the UK Government. This committee has published an interim report on the UK Government's draft clauses. Following the UK general election in May 2015 it will consider any new Scotland bill introduced by the UK Government and the issue of the legislative consent of the Scottish Parliament.

Not all of the recommendations of the Smith Commission will be part of a new Scotland bill following the general election. The extending of the franchise to allow 16 and 17 year olds to vote in future elections to the Scottish Parliament and local authorities, following the precedent set in the independence referendum, was expedited through a pre-election transfer of competence that enables the Scottish Government to introduce the necessary legislation.

Another of our French cousins, the 17th-century classics author, François de la Rochefoucauld, said, "The only thing constant in life is change." How true.

THE SMITH COMMISSION FOR FURTHER DEVOLUTION OF POWERS TO THE SCOTTISH PARLIAMENT: FASTER, SAFER, BETTER CHANGE?

TRACEY WHITE

Clerk to the Scottish Parliament Justice Committee and secondee to the Smith Commission secretariat

On Tuesday 16 September 2014, just ahead of the Scottish independence referendum and with the polls too close to call, the three main UK party leaders gave a public commitment that a "No" vote would deliver "faster, safer and better change" than would independence. In the early morning three days later, when the result of the vote had become clear, the Prime Minister announced arrangements for a process to give effect to that commitment.

Lord Smith of Kelvin—a prominent Scottish business figure, cross-bencher in the House of Lords and successful chair of the 2014 Commonwealth Games organising committee—was to oversee a set of cross-party talks to agree a package of powers to be devolved to the Scottish Parliament, strengthening it within the UK. His task was to convene talks and facilitate an inclusive engagement process across Scotland to produce Heads of Agreement by St Andrew's Day on 30 November 2014, making recommendations to deliver additional financial, welfare and taxation powers. In turn, the UK Government were to produce a command paper by 31 October 2014 to inform the process and, by Burns Night on 25 January 2015, to publish draft clauses of a new Scotland bill to be enacted after the 2015 general election.

Remit and timescales pre-determined, Lord Smith set about his work apace. Having attended the first post-referendum debate in the Scottish Parliament and met the Presiding Officer and the leaders of the five political parties represented there, Lord Smith invited each of those parties to nominate two representatives to participate in the talks. He also asked the parties to make written submissions setting out their starting positions for the negotiations by 10 October, ahead of formal negotiations beginning a few days later. For the three parties which collaborated on the Better Together campaign, earlier party blueprints for further devolution formed the basis of their written submissions. For the Yes Scotland campaign parties, new positions were drawn up.

In the meantime, supported by an independent secretariat comprising secondees from the Scottish and UK governments and the Scottish Parliament, plans were put in place for as comprehensive a public engagement process as time allowed. Lord Smith wrote to over 100 intermediary organisations and networks, some of which had their origins in the referendum campaign, while

others were of greater longevity. They were invited to gather the views of people they represented and to submit those views by the end of October. The same opportunity to submit views was extended to members of the public. So a parallel process of opinion testing began.

In the four weeks leading up to the end of October, Lord Smith and the Commission secretariat participated in 25 events across Scotland attended by over 215 organisations and groups to listen to views on a new constitutional settlement, hearing different perspectives on what powers should be retained at Westminster or devolved to Scotland, and for what purposes. By the end of October the Smith Commission had received 407 submissions from civic institutions, organisations and groups and over 18,000 from individuals. Having created a space for public discourse on further powers, a key challenge was to find efficient ways to collate and analyse the volume of material generated to help inform the cross-party talks. One solution was a public evidence session, held in the Scottish Parliament, where the party nominees heard from a cross-section of civic organisations and discussed with them the evidence underpinning their views.

The cross-party talks were conducted through an intense series of bilateral and multilateral meetings. Political nominees were provided with detailed analyses commissioned from the Scottish and UK governments on the implications and practicalities of the various proposals for powers to be devolved. A series of briefing sessions and "teach-ins" were offered on technical areas to help inform negotiations. To augment the formal process, the secretariat worked intensively with party support staff (affectionately referred to as "sherpas", because they did much of the heavy lifting) in an attempt to identify where deals might lie.

With no standing orders, code of conduct or agreed guidance available to Lord Smith as a framework, a little time was invested early on to develop and agree principles to underpin negotiations and practical guidelines for the talks. The practical guidelines, among other things: asserted the independence of the secretariat and committed it to act in accordance with public-services values; set expectations that the parties would act constructively and in good faith; and established that, while the default position would be for transparency in the Commission's work, public disclosure of the substance of the negotiations while they were ongoing would be considered an act of bad faith. These rules of engagement held up remarkably well through most of the process and significant leaks began to emerge only in the days immediately before what came to be known as the "Smith agreement" was announced.

Ten weeks to the day after the Scottish independence referendum, and the morning after negotiations were concluded, the Smith agreement was publicly announced. It contained recommendations for new powers for a stronger, more accountable Scottish Parliament in the UK, for improved inter-governmental

working, and for activities to promote parliamentary oversight and better public awareness of the constitutional settlement. The agreement addressed financial, welfare and taxation powers, and powers in a number of additional areas. Whether a subsequent Scotland Act delivers faster, safer and better change remains to be seen and is for others to judge.

ARCHIBALD MILMAN AND THE PROCEDURAL RESPONSE TO OBSTRUCTION, 1877–1888

COLIN LEE
Principal Clerk, UK House of Commons[1]

Introduction

The years between 1877 and 1888 saw dramatic changes in the procedure of the United Kingdom House of Commons. The story of that transformation has been told before, most notably in the work of Josef Redlich.[2] The limited aim of this article is to shed light on these developments by drawing on the writings and experiences of Archibald Milman, who served as a clerk at the table from 1871. After describing Milman's early career, surveying some characteristics of the procedures of the House before the onset of obstruction and noting the campaigning approach of clerks at that time, the article examines the experience of obstruction and the measures taken in response in the two areas with which Milman was most concerned—the powers of the chair and the closure of debate—before concluding with some reflections on the personal impact of these events.

Milman's early life and career

An interview with Milman published soon after his death noted: "Of probably no other man in the United Kingdom than Sir Archibald Milman could it be said that he practically lived his life in connection with the House of Commons".[3] A year after his birth in 1834, his father, Henry Hart Milman, became Rector

[1] The author is profoundly indebted to Sir William McKay for advice, encouragement, access to his unpublished work on the development of the Clerk's office after 1850 and comments on an earlier draft; to Dr Mari Takayanagi, Senior Archivist in the Parliamentary Archives, for assistance in tracing material there; to David McClay, Manuscripts Curator (John Murray Archive) at the National Library of Scotland, for introducing the author to the Wellesley Index to Victorian Periodicals; to Greg Howard and other colleagues in the Oriel Room for their unstinting assistance with access to printed material; and to Dr Paul Seaward, Dr Stephen Farrell and Simon Patrick for comments on an earlier draft of this article.

[2] J Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form* (3 volumes, London, 1908). In addition to that work and other sources cited here, the author has benefited greatly from access to the unpublished *History of the Standing Orders of the House of Commons relating to Public Business, 1833–1935* written by Sir Edward Fellowes and edited by Simon Patrick.

[3] Rupert de Cordova, "Illustrated Interviews: The late Sir Archibald Milman KCB, Clerk of the House of Commons", *The Strand Magazine*, April 1902 (hereafter Strand interview), pp 373–79, at p 373.

at St Margaret's, Westminster, and the family lived in Ashburnham House in Little Dean's Yard.[4] From his earliest years, he would have seen the Speaker, clerks, other officials and members at divine service.[5] Milman was educated at Westminster School where he saw the new Palace of Westminster, which he was later to term "the great monument of England's free constitution", rising nearby.[6] Because Charles Barry needed to use the school's landing stage on the Thames, he allowed its pupils the run of the building site. Milman later recalled how he went "clambering up into the scaffolding over the building as it rose", twice nearly falling.[7] On leaving school, Milman went abroad for a year to study modern languages, before going to Trinity College, Cambridge.[8]

Milman's career path provides reminders that this was an era which mixed patronage and meritocracy, complicated in the case of table clerks by the tension between the roles in appointment of the Speaker and of the Prime Minister. After graduating, Milman secured a position in the Post Office in 1855 from Lord Canning, the Postmaster General. He did not find the work stimulating—"much routine work thoroughly done and checked"[9]—and in January 1857 he sought to become a Commons clerk. He was first examined in the compulsory subjects for the department, namely "writing; orthography; arithmetic (including vulgar and decimal fractions); the power of accurate comparison of copies with originals; English composition; the History of England and of the Constitution; Greek; Latin; and French". Then, keen to demonstrate the benefits of his gap year, he was examined "at his own request in translation from German, and … he displayed a very creditable knowledge of that language".[10] The appointment itself remained in the personal gift of the Clerk of the House, then Sir Denis Le Marchant, patronage which was to be liberally exercised by Sir Thomas Erskine May and which Milman himself was to use to nominate a cousin, William Milman, for a clerkship.[11]

Milman started his career in the Public Bill Office, but found himself in

4 H C G Matthew, "Henry Hart Milman", Oxford Dictionary of National Biography online edition (hereafter ODNB).

5 On their attendance, see *Report from the Select Committee on St. Margaret's Church, Westminster*, HC (1844) 474, p 3 and QQ 41–47, 117.

6 The Parliamentary Archives (hereafter TPA), HC/CL/CH/2/2/259, No. 3, The Palace of Westminster, An Introduction by Archibald J S Milman CB, p 7.

7 Strand interview, p 373.

8 *Ibid.*, p 374.

9 *Ibid.*, p 374.

10 TPA, HC/CL/PU/1/55, Box 1, Certificate of examination of Archibald Milman by the Civil Service Commissioners, 1857.

11 Strand interview, p 374; HC Deb, 27 April 1885, col 899; *The Times*, 6 September 1962, p 12. William Milman did not take up the nomination, preferring "a more adventurous life" in the merchant navy.

an organisation where, in the words of Speaker Denison, "promotion is slow, and encouragement to exertion not active".[12] An attempt to speed Milman's progress was made in 1866 by his father, by then Dean of St Paul's and a prominent public figure, who wrote to both May and the Speaker to press the case for Milman's appointment as Examiner of Petitions, only to be told that he was behind Reginald Palgrave "in order of merit and seniority".[13] Undeterred, Milman sought to further his career, spending much time in the chamber to judge by his later observations, and both studying and teaching history. In the late 1860s he gave lectures and set papers on the reigns of medieval English kings for the North of England Council for Promoting the Higher Education of Women, lectures which were repeated at South Kensington.[14] For Milman, his sense of history and of his workplace were intertwined, reflecting his view that "whoever would write the full history of the ancient Palace of Westminster must write the history of England".[15]

In 1870, when Sir Denis Le Marchant's retirement as Clerk of the House became imminent, Denison took soundings about the vacancies at the table. The appointments of May as Clerk and of Palgrave—whose appointment on merit as Second Clerk Assistant Denison had secured the year before[16]—as Clerk Assistant seem to have been beyond doubt and attention was centred on the post of Second Clerk Assistant. Milman later recollected that this post was regarded as "the prize; it is not at all taken by seniority"; candidates were considered "with the endeavour to obtain the most useful man who devoted most time to the service of the House".[17] Denison considered all the information on the candidates provided for him by May, and settled on Milman as his likely nominee. He gave early warning of his proposed choice to Gladstone:

> "It seems to me that the interest of Commons will be best consulted, and that full justice will be done to the establishment connected with it, if, in due time, I should recommend to your notice Mr A Milman, son of the late Dean of St Paul's … Mr A Milman would fairly hold his balance in the scale with

12 Strand interview, p 374; J E Denison, Viscount Ossington, *Notes from my Journal when Speaker of the House of Commons* (London, 1899) (hereafter Denison, *Journal*), p 203.

13 TPA, ERM 8, fos 59–60, H H Milman to May, 26 July 1866; Denison, *Journal*, pp 203–4.

14 Strand interview, *passim*; *York Herald*, 30 May 1868, p 9; *Sheffield Independent*, 12 September 1868, pp 1, 6; *Leeds Mercury*, 18 January 1869, p 3; *London Daily News*, 2 February 1869, p 5; George Darwin to Charles Darwin, 14 February 1869, available electronically via Darwin Correspondence Project, http://www.darwinproject.ac.uk/letter/entry-6614. Milman later corresponded with a writer and fellow Westminster old boy aiming to restore the reputation of Richard III: see C R Markham, *Richard III: his life and character* (1906), p viii; *The Times*, 19 November 1895, p 10.

15 TPA, HC/CL/CH/2/2/259, No. 3, p 1.

16 Denison, *Journal*, pp 236–38.

17 *Report from the Joint Committee on the House of Lords and Commons Permanent Staff*, HC (1899) 286, QQ 394–99.

> any competitor. I think you will agree with me that, in such case, the great abilities and distinguished services of the father justly force themselves on our consideration."[18]

Denison invited Gladstone's view on the matter, who initially did not demur. However, Gladstone later said that he had been "under the impression that Mr [Milman] had more of a vested right from standing than appeared, when I looked to the list, to be the case".[19] Gladstone's sudden interest in the list of seniority of clerks may have been sparked by May, who had encouraged Gladstone's private secretary, Algernon West, to be considered for the post.[20] Gladstone then pressed the case for West's appointment, while stressing that he meant no "disparagement" of Milman, whom he did not know.[21] Gladstone's response caused Denison "some anxiety". While conceding it was possible to appoint table clerks who were not staff of the Commons, he considered that a want of training in the service of the House was a "serious disqualification". He said it had always been his aim "to establish a feeling in the staff that merit should meet its just reward", and to pass them all by would "be doing a real injury to the public service".[22] Gladstone then gently gave way, trusting "that your judgment may be entirely justified as it was in the case of Mr Palgrave", and subsequently endorsed Milman's appointment.[23]

The procedures of the House before the onset of obstruction

The House's consideration of procedural change during the first 20 years of Milman's career proceeded, in the words of a select committee of 1861, "with the utmost caution", treating with respect "the written and the unwritten law of Parliament, which for ages has secured a good system of legislation, perfect freedom of debate, and a due regard for the rights of minorities".[24] That committee viewed "the old rules and orders" as "a sure defence against the oppression of overpowering majorities".[25] This view ensured strong support for the procedural *status quo* on the backbenches, but Viscount Palmerston as Prime Minister and Leader of the House was also a driving force of procedural conservatism, believing that it would be "very inexpedient to gag, as it were, this House, and prevent it from fully expressing the views of the nation on matters as they arose, by the introduction of any regulations which we might imagine

18 Denison, *Journal*, p 261.
19 Sir Algernon West, *Recollections 1832 to 1886* (2 volumes, London, 1899), I.374.
20 *Ibid.*, I. 373.
21 *Ibid.*., I. 373–4.
22 Denison, *Journal*, pp 262–63.
23 *Ibid.*, p 264; TPA, ERM 1, fos 20–21, Gladstone to May, 30 January 1871.
24 *Report from the Select Committee on the Business of the House*, HC (1861) 173, para 5.
25 *Ibid.*, para 57. See also Redlich, I.55–59, 98–104.

would be conducive to the despatch of public business".[26] Thus, despite the breadth and range of reforms proposed, the few changes agreed could later be characterised by Milman as "comparatively insignificant".[27] After being examined by another select committee that considered and rejected extensive procedural reforms in 1871, May concluded privately that "the temper of the House and the state of parties were unfavourable to the calm consideration of a question which was assumed to concern the Government, rather than the credit and efficiency of Parliament, and the public good".[28]

Milman recollected in 1902 of the pre-1877 period that "A member acting in good faith was rarely called to order, and the business of the Chairman of Committees, and even of the Speaker, was much lighter than it is at present".[29] In 1888 Milman told a select committee that, prior to the 1867 Reform Act, "the proceedings in the committee of Supply were very informal and conversational, and there was very little necessity of keeping order and enforcing the rules, and there was great laxity of practice".[30] When order was breached, there were severe limits to the power exercisable by the occupant of the chair. As Milman put it, the House had been "jealous of trusting its Speaker with sufficient executive authority to suppress disorder",[31] due in part to the view that "if the most moderate degree of authority were entrusted to the Speaker to deal with flagrant acts of disorder, he would straightaway be transformed into a tyrant and a partisan".[32] Thus, "the Speaker could only administer the rules as they stood",[33] and these gave him limited power. The Speaker did have a power to "name" a member as a last resort for what Milman termed "outrageous disobedience" under the "common law of Parliament", but the appropriate punishment had to be decided by the House at the time or later, and was open

[26] P Fraser, "The Growth of Ministerial Control in the Nineteenth-Century House of Commons", *English Historical Review*, Vol 75, No. 296, 1960, pp 444–63, at p 456; HC Deb, 11 February 1862, col 160.

[27] Redlich, I.125–31; *The New Volumes of the Encyclopædia Britannica constituting in combination with the existing volumes of the Ninth Edition the Tenth Edition … Volume 31* (London, 1902) (hereafter *Encyclopædia Britannica*), entry for Parliament written by Milman at pp 477–83, p 477.

[28] D Holland and D Menhennet, eds, *Erskine May's Private Journal, 1857–1882: Diary of a Great Parliamentarian* (London, 1972) (hereafter *Private Journal*), pp 25–26.

[29] Strand interview, p 375.

[30] *Report from the Select Committee on Estimates Procedure (Grants of Supply)*, HC (1888) 281, Q 445.

[31] "The House of Commons and the Obstructive Party", *Quarterly Review*, Volume 145, No 289, 1878 (hereafter "The Obstructive Party"), pp 231–57, at pp 235–36.

[32] "Parliamentary Procedure: Questions", *Edinburgh Review*, January 1890, pp 253–66, at p 266.

[33] *Encyclopædia Britannica*, p 477.

to debate.[34]

The risks inherent in the prevailing procedural arrangements were recognised to some degree at the time. The 1861 select committee stated that the Speaker was entitled to "the unanimous support of the House in his efforts to enforce" the House's rules and acknowledged: "Common consent is the best security for their maintenance. Order is their sole object; and without order, freedom of debate and prompt despatch of business cannot long exist."[35] Milman later wrote that the rules "had been evolved out of the experience of centuries, during which the House had been on the whole homogeneous, and, however much members might differ in politics, they were wholly loyal to the historic assembly to which they were elected, and were, moreover, answerable to the public opinion of their fellow-countrymen".[36] Even Palmerston had noted in the mid-1840s, reflecting upon Irish opposition to a bill to control firearms in Ireland, that "experience has shown that a compact body of opponents, though few in number, may, by debating every sentence and word of a bill, and by dividing upon every debate, so obstruct the progress of a bill through Parliament that a whole session may be scarcely long enough for carrying through one measure".[37] A similar point was made in 1857 by Benjamin Disraeli:

> "Any four men might, by the forms of the House, bring its business to a close … [and] make a dissolution of Parliament absolutely necessary. And if there was not sufficient good sense in the country to insure that these four men would never be returned again … why, they might destroy the British constitution at any time."[38]

Milman later drew attention to this forecast, praising Disraeli's "wonderful sagacity".[39] As Milman himself put it, the House through its approach had "quietly handed over a full veto to any or every proposition to the least regarded of its members".[40] The constraint prior to 1876 lay in the temper of the House: "members did not care to put themselves in opposition to the general feeling of the House, and run the risk of alienating support from their cause, unless special circumstances of urgency seemed to justify an impatience which would otherwise be injudicious, as well as unseemly".[41]

34 *Report from the Select Committee on Public Business*, HC (1878) 268, para 4 and QQ 1356, 1358; "The Block in the House of Commons", *Quarterly Review*, Volume 146, 1878 (hereafter "The Block"), pp 181–202, at p 193; *Treatise* (20th Edition, 1983), pp 442–43.

35 HC (1861) 173, para 57.

36 *Encyclopædia Britannica*, p 477.

37 Redlich, I.139, fn.

38 HC Deb, 19 June 1857, col 65.

39 "The Block", pp 183–84.

40 "The Obstructive Party", pp 235–36.

41 "Parliamentary Procedure: Questions", p 256.

Campaigning clerks and Milman's approach

The clerks at the table whose number Milman joined in 1871 were by no means passive observers of the situation, but pursued a definite procedural agenda which challenged the prevailing conservatism. In the late 1840s May, as author of his Treatise and Assistant Librarian of the House, began a campaign for the rationalisation of the way in with which the House conducted its financial and legislative business, reflecting his views that organisation was "not less essential in a Senate than in a factory".[42] He published a pamphlet with wide-ranging proposals "to facilitate the dispatch of public business in Parliament".[43] He followed this up with an even more forthright article in the *Edinburgh Review* at the start of 1854. In this article and in his evidence to successive committees concerned with procedural questions, May consistently advocated radical changes in defiance of the prevailing majority opinion encapsulated by Palmerston. Reginald Palgrave wrote a perceptive analysis of the difficulties faced by the House in controlling public expenditure for the *Quarterly Review* in 1876, which coupled sympathy for new members facing the complexity of the House's financial procedures with early advocacy of the importance of the role of the Committee of Public Accounts.[44]

Most of Milman's writings appeared in the *Quarterly Review*, broadly associated with Toryism as the *Edinburgh Review* was with the Liberal cause.[45] In the case of both Palgrave and Milman, writing for the *Quarterly Review* ran in the family,[46] so that the choice of publication need not have reflected political loyalties, and indeed Milman was also to write for the *Edinburgh Review.* Moreover, both periodicals published articles anonymously. May's 1854 article was widely attributed to him when it was re-published in 1881 for use by members, although May himself remained at pains to refer to its author in

42 "The Machinery of Parliamentary Legislation", *Edinburgh Review*, January 1854, Vol 99, pp 244–82, at p 244.

43 T E May, *Remarks and Suggestions with a view to facilitate the dispatch of Public Business in Parliament* (London, 1849).

44 "Parliament and the Public Moneys", *Quarterly Review*, Vol 141, January and April 1876, pp 224–50.

45 It was convenient to emphasise the links between the journals and the parties when the views expressed were awkward to a front bench: thus, Disraeli referred to the *Edinburgh Review* as "still partially the organ of the hon. Gentlemen opposite" (HC Deb, 29 April 1869, col 1892) and Gladstone described the *Quarterly Review* as a "respectable organ" of the Conservative party (HC Deb, 24 April 1874, col 1122).

46 Milman's father wrote at least 65 articles between 1824 and 1865: H C G Matthew, "Henry Hart Milman", ODNB. Palgrave family authorship can be traced in the Wellesley Index.

the third person.[47] Milman was coy when drawing attention to his anonymous writings to a sympathetic recipient,[48] and it appears that there was no wider contemporary attribution of his anonymous writings. It was only following his appointment as Clerk of the House that he began preparing publications in his own name, which it transpired would all be published posthumously.[49] And it is only following publication of *The Wellesley Index to Victorian Periodicals* between 1965 and 1988, which provides an authoritative index of the authors of contributions to many journals of the period, that it is possible to assess Milman's career and writings together.

In many ways, Milman's approach in his writings followed in the footsteps of May. He sometimes explicitly supported May's views, commending his "carefully thought-out plan for the regular appointment of grand committees".[50] He shared with May an impatience at what Milman called the House's "morbid fear of any change in procedure",[51] so that it was "always nervously conservative of archaic forms and inveterate habits".[52]

Milman also followed May in according priority to the progress of legislative business and supply, compared with the House's wider representative function. In 1878 Milman wrote that "the poor Government are allowed but two days a week to transact all the business of this mighty nation, and out of this scanty allowance they have to find opportunities for every regular attack on their policy, and to receive every minor assault that can be made upon them on Supply".[53] He was later to characterise obstruction as a means by which "the

[47] British Library (hereafter BL) Add MS 44154, fos 98–102: Memorandum on Changes of Procedure since 1832, dated 29 November 1881 (published as "Sir Erskine May's Views on Parliamentary Procedure in 1882", E Hughes, *Public Administration*, 1958, pp 419–24, at p 421); W McCullagh Torrens, *Reform of Procedure in Parliament to clear the Block of Public Business* (London, 1881), pp 115, 121; HC Deb, 8 November 1882, col 1071.

[48] BL, Add MS 46057, fos 123–25, Milman to Herbert Gladstone, 11 February 1899 and excerpt from *St James's Gazette*, 9 February 1899. Milman commended the way the author had "marshalled some of the arguments in favour of the course you recommended"; his authorship of this article may be deduced from many echoes of his unpublished History of the Old Palace. The article related to planned building works in Parliament Street to which Herbert Gladstone also objected: see *Report from the Select Committee on Government Offices (Appropriation of Sites)*, HC (1897) 335, p vii.

[49] Strand interview, *passim*; *Encyclopædia Britannica*, entry for Parliament written by Milman at pp 477–83; A Milman, "Who composed the parliamentary prayer?", *The Nineteenth Century and after*, Vol 51, No 301, March 1902, pp 473–77.

[50] "The Block", p 201.

[51] "The Peril of Parliament", *Quarterly Review,* Vol 178, 1894 (hereafter "Peril of Parliament"), pp 263–88, at p 277.

[52] "Parliamentary Procedure *versus* Obstruction", *Quarterly Review*, Vol 178, 1894 (hereafter "Parliamentary Procedure *versus* Obstruction"), pp 486–503, at p 486.

[53] "The Obstructive Party", p 232.

forms of the House were openly utilised to delay the progress of Government business".[54] One Irish member picked up on this shared approach, observing critically in 1885 that the clerks at the table "very naturally desired to see the work of the Government done, and they did their best to facilitate the work of the House".[55]

Like May, Milman wished to see greater rationality in the determination of business. He regretted the fact that the precedence of private members' motions was "settled by the irrational method of a ballot". He suggested that the Committee of Selection, "which consists of eminent and experienced members of both parties" might determine the precedence of motions under instructions "to consider the urgency of the case, the efficacy of the remedy proposed, the number of persons interested, and generally the interest of the public in the matter".[56] This more rational approach was not immediately adopted; it was only in 2010 that a Backbench Business Committee was established to adopt criteria for deciding precedence for such motions along the lines proposed by Milman in 1878.[57]

"The monstrous growth of obstruction"

The obstruction experienced in the House of Commons from 1877 onwards arose from what Milman termed a "civil war" within the Irish Home Rule party.[58] The party emerged with 59 seats in the 1874 general election—the first held with a secret ballot—under the leadership of Isaac Butt, a Protestant who had begun his career as a Tory. Under him, the party was "determined strictly to follow English parliamentary tradition, both in their demeanour and in their entire obedience to the rules of the House".[59] Charles Stewart Parnell was elected to the House at a by-election in 1875, immediately attracting attention as a member of a different stamp, John Bright remarking that "he has the eye of a madman".[60] Obstruction at this time was not new—the Liberals thought it had been practised by certain Tories in the closing years of Gladstone's first administration[61]—and it already had one regular practitioner in Home

54 *Encyclopædia Britannica*, p 477.

55 HC Deb, 27 April 1885, col 912 (Tim Healy).

56 "The Obstructive Party", p 256.

57 Backbench Business Committee, *First Special Report of Session 2014–15: Work of the Committee in the 2010–15 Parliament*, HC (2014–15) 1106, para 13.

58 "The Obstructive Party", p 247.

59 Redlich, I.135–6; Alan O'Day, "Isaac Butt", ODNB; Lord Sherbrooke, "Obstruction or 'Clôture'", *Nineteenth Century*, No. 44, October 1880, p 517.

60 W McCullagh Torrens, *Twenty Years in Parliament* (London, 1893), p 246.

61 Sherbrooke, "Obstruction or 'Clôture'", pp 516–17; J Morley, "Home and Foreign Affairs", *Fortnightly Review*, Vol 30, October 1881, p 528.

Rule ranks in Joseph Biggar, whose voice was recollected by one admirer as "horrible".[62] However, Parnell used obstruction not as a parliamentary tactic, but as a political strategy. As Milman later wrote: "Parnell's professed object was to discredit that assembly, and, by demonstrating its insufficiency to deal with the affairs of the United Kingdom, to prove the necessity of Home Rule for Ireland."[63]

Parnell began his campaign in the session of 1877 when, in Milman's phrase, "Mr Parnell patented his continuous brake, and brought the heavily freighted parliamentary train to a permanent standstill".[64] Reflecting on that session, Milman was convinced that "the monstrous growth of obstruction" led by Parnell was different in kind to "earlier forms of obstinate opposition". Parnell's "originality consisted in extending this familiar system to all business, official and non-official, and to all hours of the day and night, and carrying it out with a persistency and reiteration of words which prevented the business in hand being disposed of and other business reached".[65] The House sat after midnight on two-thirds of sitting days in the session.[66] Milman's written accounts reflect his long hours spent at the table and vividly convey what he termed "the desperate boredom" inflicted on listeners to speeches by members of the "obstructive party".[67] He observed: "The greater part of our parliamentary in-gathering has been drowned under ceaseless floods of small talk, illumined by no gleam of genius, gladdened by no flash of fun, nor matured by the fostering heat of a generous rivalry".[68] Milman considered Guy Fawkes merciful in his plans for the instant destruction of Parliament compared with Parnell's approach: "by the ingenious method of the modern deliverer the torture inflicted is to be exquisite and prolonged, the destruction lingering and painful, as well as complete; the House is to be slowly bored to death".[69]

In 1877 Parnell and his supporters were to some degree faced down after a sitting of over 26 hours on the South Africa Bill,[70] but the campaign began afresh in 1878. Obstruction was not practised continually, but turned on and off like a tap: "Whenever exasperation reached the boiling-point they cleverly relaxed the strain, and announced that they would no longer oppose the wishes of the

62 Redlich, I.137–8; Sir Alfred E Pease, *Elections and Recollections* (London, 1932), p 249.
63 *Encyclopædia Britannica*, p 477.
64 Redlich, I.141–5; "The Obstructive Party", p 246.
65 "Peril of Parliament", p 272.
66 *Sittings of the House: A Return of the Number of Days on which the House sat …*, HC (1877) 0.149. All subsequent references to these returns are in the short form *Sittings of the House*.
67 "The Obstructive Party", p 247.
68 *Ibid*., p 232.
69 "The Block", p 185.
70 Redlich, I.144–5; "The Obstructive Party", pp 244–47.

House, but no sooner had the anger cooled down than they began again".[71] Supply proceedings proved particularly useful for this purpose, because of the vast number of Votes, and the scope for debate and multiple speeches in committee.[72] Throughout the sessions of 1877 and 1878, Parnell pursued obstruction with only between six and eight other members, convincing Milman that Parnell's position was a minority one within the Home Rule party: "more than nine-tenths of the Irish representatives utterly repudiate their devices".[73]

According to Milman's analysis, swift action in the 1878 session could defeat Parnell's small band and lead to the triumph of the "true Irish party".[74] While laying the blame for obstruction firmly at the door of Parnell and his followers, he also criticised the House's "irresolution ... in dealing with indiscriminate obstruction" so that they "misbehaved with impunity".[75] He observed that Sir Stafford Northcote, Chancellor of the Exchequer, and Leader of the House after Disraeli's ennoblement, was "not a fighting captain", being hamstrung by "his curious inability to realise that obstruction was not a passing extravagance, but a settled policy".[76] However, Milman later acknowledged that the political complexion of the 1874 Parliament was not conducive to action, with many Conservatives instinctively pleased to see the House unable to legislate and many Liberals pleased to see ministers discredited by inaction.[77]

A select committee on public business was established at the outset of the 1878 session, although Northcote insisted that he was "not making the proposals, as has been stated out-of-doors, with the view of meeting what is called 'wilful obstruction'."[78] Much of the committee's time was absorbed in revisiting the issues examined by previous committees, and May was not questioned on the matter of obstruction, even though he had strong views which he expressed in the ensuing edition of his Treatise.[79] Milman reacted caustically to the decision to appoint Parnell as a member of the committee. Thus, while the Chairman of Ways and Means, Henry Cecil Raikes, asserted that the last two years had seen "an attempt made to defeat … the ends of parliamentary Government

71 "Peril of Parliament", p 273.
72 "The Block", pp 185, 188–89.
73 "The Obstructive Party", pp 234, 240; "The Block", pp 195–96; Strand interview, p 376.
74 "The Obstructive Party", p 248; "The Block", p 196.
75 "Peril of Parliament", p 270; "The Obstructive Party", pp 234–35.
76 "Peril of Parliament", p 276. See also "The Obstructive Party", p 249.
77 "Peril of Parliament", p 273.
78 HC Deb, 24 January 1878, col 382.
79 "Of late these salutary rules have been strained and perverted … for the purposes of obstruction … Such a course, if persisted in, would frustrate the power and authority of Parliament, and secure the domination of a small minority, condemned by the deliberate judgement of the House and of the country": *Treatise* (8th Edition, 1879), pp 351–52.

by systematic obstruction on the part of a small knot of members", he had to do so under questioning from the leader of that knot.[80] To Milman's mind, this equated to "Guy Fawkes cross-examining the Speaker and the Chairman of Committees as to the reality of the gunpowder plot", or the "chief of the Russian torpedo squad" being "handed courteously to a chair at the council of war held in the state cabin of the British admiral".[81]

Disciplinary powers

Although there were several aspects to the procedural response to obstruction, Milman's advocacy and analysis concentrated on two main elements. The first of these was action to restore to the chair through the grant of formal powers what Raikes termed "that authority which it formerly derived from the willing obedience of members, and the wish which every member had to enjoy the good opinion of the House and of the public".[82]

The first attempt to bear down on systematic obstruction by the Speaker in 1877 was viewed by Milman as an embarrassing failure. When Parnell admitted in committee of the whole House that he gloried in his obstruction and thwarting the will of the government, there was uproar, the Speaker resumed the chair and Parnell's words were reported in part. The Speaker declared such wilful and persistent obstruction a contempt, but Northcote and the House responded with "forbearance and delay", inaction that rankled with May and Raikes as well as Milman.[83]

Northcote did subsequently secure agreement to a proposal for the remainder of the 1877 session that, when a member was twice called to order and continued to disregard the authority of the chair, the debate should then be suspended, the member concerned should be able to make a further speech in defence of his position, and the question then put on a motion that he be no longer heard.[84] In January 1878 Milman highlighted the weakness of this response because, after the third breach of order in a single speech, the obstructing member had the chance to make a separate speech, and a motion was then needed to end the one previously interrupted.[85] To curb persistently disorderly speeches, Milman advocated a solution based on the "simple and direct" process of the Italian parliament, whereby the chair had authority to order a member, after two

80 HC (1878) 268, Q 1286.

81 "The Block", p 186.

82 H C Raikes, "Parliamentary Obstruction and its Remedies", *Nineteenth Century*, December 1880, pp 1031–46, at pp 1037–38.

83 "The Obstructive Party", p 242; HC (1878) 268, QQ 291, 1271–73.

84 HC Deb, 27 July 1877, cols 25–82.

85 "The Obstructive Party", pp 248, 243.

warnings, to resume his seat and call on the next speaker.[86] In evidence later that year the Italian provision was cited by the Speaker, and Raikes also highlighted its great merit of terminating a disorderly speech without debate or discussion.[87]

For the "cumulative offence" of persistent obstruction, Milman advocated swingeing penalties. He proposed that any member could move that another member was guilty of obstruction and, if the Speaker agreed to put the question and it was agreed to, the member would be suspended for a month "and for such further period until he shall have made his submission to the House, and have given assurance that he will not so offend again".[88] He acknowledged that this proposal was open to the objection that a constituency would be left without a representative, but thought that an electorate that had returned such a member "should suffer some inconvenience". While Milman conceded that "expulsion is too severe a penalty for a first offence", he thought that "the constituency should either recall its representative to reason, or petition Parliament for a new writ". The House could then issue a new writ, "and give the electors an opportunity of correcting their error".[89] This proposal has some modern resonance insofar as it foreshadows a very recent provision for decisions by the House of Commons about its own members to open the way to petitions for recall.[90] However, expulsion or some other means of forcing a by-election would have served little purpose given the prevailing political mood in Ireland. Even Milman was later to concede that members whom he saw as obstructive had the evident support of a majority in their constituencies.[91]

The 1878 committee focused on two options for enhanced disciplinary powers, one from Northcote and one from Raikes, both of which Milman saw as "of the mildest character".[92] Northcote's proposal was for a member, having twice been called to order by the Speaker or Chairman, to be suspended for the remainder of a sitting day on the basis of a question put forthwith by the chair.[93] Raikes's suggestion differed from that, and followed Milman's, in proposing that another member should initiate the suspension by moving a

86 *Ibid.*, p 243.
87 HC (1878) 268, QQ 1531, 1331–33.
88 "The Obstructive Party", pp 249–50.
89 *Ibid.*, pp 250–51.
90 See section 1(4) and (5) of the Recall of MPs Act 2015 (c 25), although this will apply to suspension of at least 10 sitting days or 14 days only following a report from the Committee on Standards in relation to a member, which is distinct from suspension arising from the exercise of the disciplinary powers of the chair.
91 *Encyclopædia Britannica*, p 477; "Parliamentary Procedure *versus* Obstruction", p 488.
92 "The Block", p 190.
93 HC (1878) 268, p xiii.

motion, with the chair having discretion on whether to accept the motion.[94] The committee concluded by recommending a resolution that a member named by the Speaker or Chairman as disregarding the authority of the chair, or abusing the rules of the House, by persistently and wilfully obstructing the business of the House would be permitted a 10-minute speech in explanation, but could then be suspended for the remainder of the sitting by a question put from the chair without the making of a motion.[95]

Milman considered the committee's recommendation preferable to Northcote's original proposal in several ways: it defined the classes of offences which could lead to suspension; it did not require a specific number of warnings from the chair; it drew on the traditional practice of naming of members. However, he criticised the provision for the member "taken red-handed" to make a 10-minute speech, because it would give that member a chance to impugn the conduct of the chair. He also thought suspension for a single day insufficient for repeat offenders, suggesting that those who had already been suspended twice should be suspended for a longer period, and be allowed back to the House only after giving an assurance not to re-offend.[96]

No action in response to the committee's work was taken in 1879, even though the House's sitting hours in that session were even longer than in 1877 and 1878.[97] It was only early in 1880 that Northcote came forward with a proposed standing order, under prompting.[98] Northcote's proposal took account of weaknesses in the recommendation of the 1878 committee, including some that Milman had identified. The speech in defence was removed, so that the question was put forthwith. A third offence in the same session would lead to suspension for at least a week, with the House having the chance to extend the period depending upon the contriteness of the member. A motion had to be made to give effect to the suspension following naming in order to distance the Speaker somewhat from the execution of the punitive act. Northcote's proposal was agreed and became a standing order after three days of debate.[99] Milman described this measure as "wholly inadequate" and "of no practical use against obstruction". He thought that "the tardily inflicted punishment merely secured the offender one night's comfortable sleep ... and he returned next morning refreshed and invigorated to laugh in the haggard faces of his opponents who had been contending against his confederates all night". Milman nevertheless

94 *Ibid.*, QQ 1196–97, 1224; "The Block", p 191.
95 HC (1878) 268, para 7(6).
96 "The Block", pp 192–96.
97 *Sittings of the House* (1831–32 to 1881), HC (1881) 445, pp 23–24.
98 Redlich, I.149–50; *Encyclopædia Britannica*, p 477.
99 CJ (1880) 68; HC Deb, 26 February 1880, cols 1458–63.

conceded it contained one "precious principle—that of dealing summarily with offences".[100]

In the 1880s the disciplinary powers available became more flexible and more punitive. First, the Speaker and Chairman acquired a power to bring an individual speech to a close for irrelevancy or repetition, loosely modelled on the Italian provision to which Milman and others had drawn attention in 1878.[101] This was introduced temporarily in 1881, in circumstances discussed in the next section. May considered that none of the temporary rules introduced in 1881 met with more general approval than this one,[102] and it became a standing order in November 1882 with little controversy.[103]

Second, the penalties for naming were strengthened to overcome the problem with suspension for the remainder of a sitting day identified by Milman. May had suggested to the Cabinet that a second suspension in a session should be for a week, and the third for a month, but had not proposed any alteration to the length of the first suspension.[104] Gladstone concluded, like Milman, that the rule as first enacted "had failed in the sense of having been insufficient for its purpose", suggesting that the "mild" penalty caused more inconvenience to the House than the suspended member, entailing one division (or two in committee of the whole House), so that "the House was compelled to spend almost as much time in deciding the Question—or the two Questions—as the offending member would be suspended for, if he were only suspended for the residue of the evening".[105] Gladstone proposed that "the deterrent power" be increased: the House agreed to the government's proposal that a first suspension be for a week, the second for a fortnight and the third for a month.[106]

Finally, in 1888, the House gave the Speaker and Chairman the power to impose an intermediate penalty which did more than merely terminate a speech, but fell short of the new minimum penalty for naming of suspension for a week. A new standing order enabled the chair to suspend a member for the remainder of a sitting day (as provided for under the 1880 standing order) but enabled this, in Raikes's words, to be exercised through "a summary jurisdiction": a member was to be directed to withdraw, but the need for a motion to give effect

100 "Peril of Parliament", pp 273–74.

101 Redlich, III.247, 248.

102 BL Add MS 44154, fos 79–85: Memorandum from May dated 2 November 1881, printed for the Cabinet on 8 November 1881 (also available as the National Archives (hereafter TNA), CAB 37/6/29), p 12.

103 CJ (1882) 507, 517; HC Deb, 16 November 1882, cols 1595–628.

104 TNA, CAB 37/6/29, pp 12–13.

105 HC Deb, 22 November 1882, col 1870; HC Deb, 20 November 1882, cols 1752–53. See also HC Deb, 21 November 1882, col 1855.

106 HC Deb, 22 November 1882, col 1870; CJ (1882) 514.

to the penalty, with the potential ensuing disruption and delay of a division or two, was removed.[107]

The disciplinary powers created in the 1880s dramatically strengthened the formal powers of the chair over the conduct of debate. Milman still believed that those powers were not "sufficiently strong, prompt or supple to cope with the various forms of obstruction. They are too slow in coming into operation; they are wanting in pliancy to suit varying circumstances; they impose penalties which are either too trivial or of the wrong kind."[108] He continued to retain a preference for the arrangement which he had advocated whereby members could provoke the Speaker into acting, rather than the Speaker having the initiative, which he considered led to action only when "the offence was rank".[109] He also envisaged a motion which any member could move to bring a single speech or speaker to a conclusion, to be moved in the form "That Mr Blackmail or Mr Wasteall be not further heard on this bill or motion".[110] Although Milman made the case for further provisions, the three disciplinary standing orders introduced in the 1880s have stood the test of time, and remain the essential formal powers with a "graduated code of punishments" by which the chair exercises ultimate control over conduct in the chamber.[111]

The closure

Milman's main concern in the late 1870s had been to strengthen the chair's authority to take action against little more than a handful of members determined to defy it. The House faced a fundamentally new challenge after the 1880 general election, when Parnell had become, in Milman's words, "paramount in his party".[112] His following had increased from seven members to 85,[113] and he had secured membership of the House for trusted lieutenants, such as Tim Healy, Thomas Sexton and Thomas Power ("T P") O'Connor, who were to prove adept and determined parliamentarians. Healy frequented the table to seek advice,[114] and Milman later acknowledged that Parnell himself "used as well as abused the rules of the House" and "would consult the authorities at the table as to the best line to take".[115] In the first session of the new Parliament,

107 CJ (1888) 70–71; HC Deb, 28 February 1888, cols 1677–705; the quotation from Raikes is at col 1684. A member who refused to withdraw when directed could be named.

108 "Parliamentary Procedure *versus* Obstruction", p 490.

109 "Peril of Parliament", p 274.

110 "Parliamentary Procedure *versus* Obstruction", pp 502–03.

111 *Treatise* (24th Edition, 2011), p 452.

112 Strand interview, p 376.

113 *Ibid.*, p 376; "Peril of Parliament", p 274.

114 HC Deb, 27 April 1885, col 907; HC Deb, 15 July 1912, col 124.

115 Strand interview, p 376.

the problems faced by Gladstone's incoming administration were compounded when some of the techniques of obstruction were adopted by a group of Conservatives led by Lord Randolph Churchill and dubbed the Fourth Party. Milman described them as "a little knot of so-called Conservatives ... determined to prolong the existence of chaos".[116] During the session of 1880 May noted that "the tactics of obstruction became more intolerable", but he was also aware that the government's determination to crack down on the Irish Land League through further coercive legislation "portended aggravated troubles in the next session".[117]

The size and determination of Irish opposition necessitated a weapon that could be used not to control individual members, but to curtail debate altogether. The tools used to this end in other assemblies—the clôture in the French National Assembly and the "previous question" in the US House of Representatives—had been examined by committees of the House since the 1840s.[118] In 1854 Speaker Shaw Lefevre suggested that the time would come when useless debate would need to be curtailed, and the idea was entertained for the future by Speaker Denison in 1871.[119] The 1878 select committee had considered whether to allow the closing of debate, but was "not prepared to offer such a recommendation for the present adoption of the House".[120] The matter was, however, to be brought to a head by Speaker Brand on the fourth sitting day of debate on the motion for leave to introduce the Protection of Persons and Property in Ireland Bill in 1881. The sitting began on Monday 31 January and continued for over 41 hours until Wednesday morning, punctuated by numerous dilatory motions moved by Home Rule members. At 9 am that morning Speaker Brand addressed the House, saying that "a new and exceptional course is imperatively demanded" and closed the debate by putting the question.[121]

This was followed the next day by what Milman termed "the decisive struggle".[122] Gladstone had given notice on Wednesday morning of his intention the next day to move to invest the Speaker with untrammelled powers over the regulation of business categorised as urgent by a decision of the House with the support of a 3:1 ratio, and the Home Rule party had had a day to

116 "Peril of Parliament", p 276.

117 *Private Journal*, pp 52–53.

118 *Report from the Select Committee on Public Business*, HC (1848) 644, QQ 89–287, 309–78.

119 E Hughes, "The Changes in Parliamentary Procedure, 1880–1882", in R Pares and A J P Taylor, eds, *Essays presented to Sir Lewis Namier* (London, 1956), pp 290–319, at p 292.

120 HC (1878) 268, para 5.

121 CJ (1881) 49–50; HC Deb, 31 January 1881, cols 1748–2035; *Private Journal*, pp 53–54; Redlich, I.153–9; Hughes, "The Changes in Parliamentary Procedure", pp 305–06.

122 *Encyclopædia Britannica*, p 478.

prepare their resistance.[123] As Gladstone began to make his speech, the official report recorded that "the greatest excitement and confusion prevailed"; soon after, "the business proceeded under indescribable confusion". 36 Irish members were named under the 1880 standing order, including 28 together.[124] May considered that "Never had there been so grave a scene of disorder and contumacy in the House of Commons".[125] Milman was characteristically active during these events. Major John Nolan, the Home Rule whip, appeared to have stood apart somewhat from his colleagues, voting when his colleagues remained in the chamber.[126] Nolan later recollected that, during the last division, Milman "walked up the whole length" of the division lobby, "came up to me and asked me clearly whether I wished to get suspended or not".[127] Nolan did not record his reply to this strange enquiry, but remained to participate in the debate that evening.[128]

Gladstone secured the passage of the provisions to grant emergency powers to the Speaker, followed a few days later by the introduction of the urgency rules which had been prepared together by Gladstone, May and Brand, before the session began.[129] These gave the Speaker exceptional powers to prevent delay, including the power to enforce the closure, again provided there was a 3:1 majority in favour.[130] Milman considered these events to be "the Gettysburg of the parliamentary rebellion" as "from that hour the tide of successful obstruction began to ebb".[131] He reflected that, while the urgency rules remained in force, "progress in public business was possible", but it was a continuous battle: he calculated that in 1881 "the Speaker had to intervene on points of order 935 times, and the Chairman of Committees 939 times; so that, allowing only five minutes on each occasion, the wrangling between the chair and members occupied 150 hours".[132] The House sat longer and later than ever before, rising after midnight on 108 out of 154 sitting days between early January and late August.[133]

The process of making the closure a permanent procedural feature rather

123 HC Deb, 31 January 1881, cols 2035–38; HC Deb, 2 February 1881, cols 5–43.

124 CJ (1881) 55–57; HC Deb, 3 February 1881, cols 68–88; Redlich, I.159–62.

125 *Private Journal*, p 54.

126 Redlich, I.161; *Pall Mall Gazette*, 4 February 1881, p 8.

127 HC Deb, 22 November 1882, cols 1859–64. See also HC Deb, 21 November 1882, cols 1837–42.

128 HC Deb, 3 February 1881, cols 148–49.

129 CJ (1881) 57–58, 60, 65–66; Hughes, "The Changes in Parliamentary Procedure" pp 301–06.

130 *Treatise* (Ninth Edition, 1883), pp 381–82; Redlich, I.164–66, III.247–50.

131 "Peril of Parliament", p 275.

132 *Encyclopædia Britannica*, p 478.

133 HC (1881) 445, p 25; *Sittings of the House*, HC (1881) 0.123.

than an emergency measure was immensely difficult. Even though the measures of February and March 1881 had received, and were numerically dependent for their implementation upon, the support of the Conservative opposition, Northcote refused to countenance the closure as a permanent rule of the House.[134] Raikes, although like Milman a firm advocate of enhancing the formal powers exercisable by the chair, viewed such strengthening as a way to "avoid the evil inherent in clôture, of abridging the right of speech of the whole of the minority", a remedy which he considered "more intolerable than the disease".[135] Many on the Liberal benches doubted the necessity for closure, one writing late in 1881 that "it would be an evil day for the credit and ascendency of Parliament if, for the sake of any temporary convenience, ease, or advantage, it legalised the use of a weapon so un-English as the French clôture".[136] Even Gladstone was sceptical about the necessity for, or at least the benefit of, the closure, and had to be coaxed by May, Brand and members of his cabinet to advocate it.[137]

After the cabinet had agreed, Gladstone set out the case for the closure in what Milman termed "an eloquent speech" to the House on 20 February 1882. Gladstone argued that the House had effectively possessed a closing power in the past because of the uniform deference of members to the will of the House but that, because such moral sanction had ceased to be operative, a written law was needed.[138] He sought to address the argument that the closure was un-English, saying that "the Colonies, in which the British character is reflected, and which value British freedom not less than we value it, have felt it necessary to go into the system to some considerable extent".[139] However, he admitted that his evidence on colonial precedents was unreliable, and that buttress for his case was effectively demolished by a subsequent contribution to the debate.[140]

The closure was "vehemently opposed" and debate stretched through the spring and into the autumn. In November 1882, after consideration during 19 sittings, it was finally introduced as a permanent feature of the House's procedure.[141] This success served as the cornerstone for other reforms: to curb the abuse of dilatory motions and to streamline legislative and supply proceedings, alongside the strengthening of disciplinary powers already described. These changes took place in the face of fierce resistance, not only

134 Hughes, "The Changes in Parliamentary Procedure", pp 317–18.
135 HC (1878) 268, Q 1337; "Parliamentary Obstruction and its Remedies", p 1033.
136 McCullagh Torrens, *Reform of Procedure in Parliament*, pp 161–62.
137 Hughes, "The Changes in Parliamentary Procedure", pp 299–300, 307–11.
138 HC Deb, 20 February 1882, cols 1124–51; *Encyclopædia Britannica*, p 478.
139 HC Deb, 20 February 1882, cols 1137–38.
140 *Ibid.*, col 1151; HC Deb, 3 November 1882, col 782 (Mr Ellis Ashmead-Bartlett).
141 *Encyclopædia Britannica*, p 478; CJ (1882) 501, 517.

from the Home Rulers, but also from the Fourth Party, and were passed only with some significant concessions being made. Milman thought that the Fourth Party "did ultimately succeed in emasculating" many of the new rules.[142]

Although the introduction of the closure was a watershed, Milman considered the closure rule as then introduced "both objectionable and inadequate".[143] Milman's first concern was that the initiative for the closure lay entirely with the Speaker, rather than another member claiming to move the closure. May had told the Cabinet it was "invidious discretion" wherever it lay, but contended that "probably the selection of the Speaker, as interpreter of the general sense of the House, will prove more acceptable than any other proposal".[144] Raikes had identified the problem this caused for the Speaker, who would be seen as a partisan supporter of the majority when he invoked the closure.[145] Two attempts were made in 1882 to transfer the initiative to other members so that the Speaker would have only a "moderating function", but Gladstone successfully resisted these amendments.[146]

Milman echoed Raikes in arguing that the rule as enacted "involved the Speaker in party politics ... If the Speaker were prompt and determined, he might seem, or might be represented to seem, to favour one side, because the Speaker could only intervene on the side of the majority".[147] The closure was not used until 24 February 1885, when Gladstone sought to secure priority for a debate on foreign affairs on a day set aside for an Irish private member's motion. The House descended into chaos, with one Irish member named before the question could be put and even one Conservative querying whether the Speaker had followed the correct procedure.[148] The closure was agreed to with 207 members voting aye, only seven more than the required majority. Milman later wrote: "It was clear that no Speaker was likely to run the risk of a rebuff by again assuming the initiative unless in the face of extreme urgency", and the rule in that form was used only once more.[149]

In 1887 W H Smith, as Leader of the House, solved the problem by introducing changes, agreed after 14 sittings,[150] for a member to claim the closure, which the Speaker would then grant except in two circumstances. The first was if it infringed the rights of minorities. Milman considered that, as a result, the

142 Redlich, I.170–74; "Peril of Parliament", p 276.
143 "Parliamentary Procedure *versus* Obstruction", p 490.
144 TNA, CAB 37/6/29, p 5.
145 HC Deb, 20 March 1882, cols 1315–16.
146 HC Deb, 1 May 1882, cols 1842–900; HC Deb, 30 October 1882, cols 386–411.
147 "Parliamentary Procedure *versus* Obstruction", p 490.
148 CJ (1884–85) 65–66; HC Deb, 24 February 1885, cols 1179–90.
149 *Encyclopædia Britannica*, p 478; CJ (1887) 74.
150 "Peril of Parliament", p 276.

Speaker was "no longer under the invidious obligation of intervening only on the side of the majority".[151] The second was if it was an abuse of the rules of the House, which Milman associated particularly with claiming a closure simply to interrupt a speech. As a result of these changes, in Milman's view, "the Speaker was constituted the guardian of rational debate" and Milman believed that "the safeguards work smoothly".[152] Member initiative was also made easier by a further change in 1888, reducing the required majority from 200 to 100.[153]

Milman's second concern about the closure rule as introduced in 1882 was that it applied only to a single question, so that each amendment to a bill could be debated separately, and, after each use of the closure, a debate could be started on a new amendment and, as Milman put it, "amendments could be multiplied *ad infinitum* with very little ingenuity".[154] The rule as prepared by May and Gladstone in the autumn of 1881 had included provisions for the closure to close debate on a succession of amendments and on provisions standing part, but the Speaker had thought such a proposal "too strong in my opinion for acceptance by the House, and not required at present".[155] By early 1887, with new coercive legislation in relation to Ireland imminent, W H Smith thought that the time was right. He introduced what would later become known as the "kangaroo closure", which enabled the question on an amendment to be combined with a question on a clause, or words within a clause, standing part.[156] Milman considered this provision to be an improvement, but "imperfect" in the handling of multiplying amendments or new clauses. He also thought that "its success must necessarily depend on the temper of the minority at the moment, and the esteem in which any particular chairman may be held by the opposition".[157]

Milman considered the closure as amended in the late 1880s to be a "remarkable success". The "exaggerated prophecies of evil" from the measure had been refuted by experience and it was "effective against obstruction by a few, for which it was mainly devised".[158] Milman still advocated further changes. He wished to see the "kangaroo closure" applied to motions, such as motions to amend standing orders, in the same way as to amendments to bills.[159] He

151 "Parliamentary Procedure *versus* Obstruction", p 491.
152 *Ibid.*, pp 491–92.
153 CJ (1888) 70; HC Deb, 28 February 1888, cols 1657–77.
154 "Parliamentary Procedure *versus* Obstruction", p 492.
155 Hughes, "Changes in Parliamentary Procedure", pp 309–10.
156 *Encyclopædia Britannica*, p 478; HC Deb, 20 August 1909, col 1687; "Parliamentary Procedure *versus* Obstruction", p 492.
157 *Ibid.*, pp 492–93.
158 "Peril of Parliament", p 277.
159 "Parliamentary Procedure *versus* Obstruction", p 494.

proposed that the power to accept closure be extended to temporary chairmen in committee of the whole House.[160] He also wished to see a motion permitted, subject to the same controls by the chair as the closure, to exclude certain orderly amendments from consideration, a rule which he argued "would enable the House to control the abuse which has hitherto baffled its authority".[161] Measures along these lines were largely effected in the early 20th century. A power of selection was incorporated in the closure rule in 1909 and applied to motions as well as bills.[162] The power to allow closure was formally extended to chairmen of standing committees in 1907 and to deputy speakers in 1909, although it remains unavailable to temporary chairs.[163]

The personal impact

Milman's writings on the crisis of obstruction have a forthright and opinionated quality which seems jarring to modern ears. This tone may reflect in part the impact of the crisis on Milman and his colleagues at the table. The decisions of the clerks, and particularly of Milman on whom the main burden of considering motions and questions fell, were tested and questioned as never before by Irish members. After one occasion in 1884 where a member referred to possible collusion by clerks to prevent his motion being taken, Gladstone said "although for more than half-a-century I have been a member of this House, I have never, until the last three or four years, known such an attack made".[164] Some Irish members sought to get under the skin of the clerks—often succeeding with Milman—and to decouple the Speaker from the clerks. On one occasion Healy stated:

> "Nobody objected more strongly than the English people to the Infallibility of the Pope ... As a matter of fact, the position of the Speaker in the House of Commons was more infallible than the Pope's position in the Catholic Church. The Pope was provided with a Council, but the Speaker of the House of Commons was provided with nothing of the kind. It would be to the advantage of debate, and it would not in the least detract or derogate from the position of Speaker or Chairman of Committees, if those Gentleman had some authority to guide them, independently of the Clerks at the Table."[165]

Obstruction and the wider use of delaying tactics on legislation and supply meant that the House sat for extraordinarily long hours, rising more often than

160 *Ibid.*, p 494.
161 *Ibid.*, p 494.
162 HC Deb, 28 July 1909, cols 1177–317.
163 *Ibid.*, cols 1179–80; *Treatise* (24th edition), p 465.
164 HC Deb, 19 May 1884, cols 680–81.
165 HC Deb, 27 April 1885, cols 911–12.

not after midnight.[166] This created a burden on the three individuals who alone undertook duty at the table and probably on Milman most of all. Sexton coupled sympathy for Milman's ordeal with a certain relish: "The second Clerk Assistant … was paid a salary considerably less than either of his colleagues, and he was not provided with an official residence … He had frequently seen the second Clerk Assistant at the end of a long sitting retire from the performance of his duty in such a state of fatigue as certainly to require rest upon the premises."[167] O'Connor much later recollected that Milman "always looked a delicate man, for even when he was still only approaching middle age he walked as if he were doubled up in two with pain in his back".[168] Milman's stoop was captured in Liberio Prosperi's illustration of the *Lobby of the House of Commons* published in *Vanity Fair* in November 1886 and now in the National Portrait Gallery.[169]

In April 1886 May announced his sudden retirement as Clerk, having concluded that his strength was "no longer equal to the continued strain of a laborious session".[170] Milman wrote to May in the early days of retirement in characteristic terms: "I hope you are feeling better. You have escaped the Irish without relegating them to Ireland."[171] Milman's hopes for May's recovery were very soon to prove misplaced, with May's death taking place a month after his retirement. After some uncertainty, and the offer of the clerkship to two external candidates, Palgrave became Clerk and Milman Clerk Assistant.[172] Milman thus gained the additional salary and the residence to which Sexton had alluded the year before, but the sources of strain and fatigue were not behind him. The methods pursued by Parnell and his party to promote the cause of Home Rule for Ireland had brought about a significant transformation of the procedures of the House of Commons. That cause—and Gladstone's conversion to it to which Milman's last letter to May alluded—was also to be central to the challenges that Milman was to face in his new post in the years that followed.

166 *Sittings of the House*, HC (1883) 0.115, HC (1884) 0.123, HC (1884–85) 0.139.
167 HC Deb, 27 April 1885, cols 912–13.
168 *The Sunday Times*, 23 September 1928, p 15.
169 The portrait is also on the National Portrait Gallery's website.
170 HC Deb, 15 April 1886, cols 1631–32.
171 TPA, ERM 8, fos 276–77, Milman to May, Good Friday (23 April) 1886.
172 *Ibid*., fos 270–71, J M Carmichael (Gladstone's private secretary) to May, 20 April 1886, and fos 276–77, Milman to May, Good Friday (23 April) 1886.

WAIVING GOOD RIDDANCE TO SECTION 13 OF THE DEFAMATION ACT 1996?

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Abstract
This article considers the history of section 13 of the Defamation Act 1996, which was intended to address a problem that arose in what came to be known as the "cash for questions" affair: namely, that Article 9 of the Bill of Rights 1689 precluded a defendant from using proceedings in Parliament to justify what the defendant had published. The provision was designed to facilitate a remedy by enabling a person (who may be a member of either House or of neither House) to waive parliamentary privilege so far as he or she is concerned, for the purposes of defamation proceedings. The article examines the effect of section 13 and the justification for its repeal in the Deregulation Act 2015.

Background
Article 9 of the Bill of Rights 1689 prohibits the questioning or impeaching in court of the freedom of speech and debates or proceedings in Parliament.[1] Section 13 was inserted into the bill which became the Defamation Act 1996 in order to address a problem that arose in the wake of what came to be known as the "cash for questions" affair. A judge had stopped libel proceedings brought by Mr Neil Hamilton MP against *The Guardian* because Article 9 prevented the newspaper from using proceedings in Parliament to justify what it had published. Section 13 was intended to facilitate a remedy by enabling a person (who may be a member of either House or of neither House) to waive parliamentary privilege so far as he or she is concerned, for the purposes of

[1] For background see: Horne, Drewry and Oliver (eds), *Parliament and the Law* (Hart, 2013), chapters 1–3 (reviewed in the book section of this edition of *The Table*); and Jack (ed.), *Erskine May: Parliamentary Practice* (Lexis Nexis, 24th edition, 2011), part 2.

defamation proceedings.[2] Section 13 did not reduce the essential protection of members and witnesses against legal liability for what they have said or done in Parliament under Article 9; that protection remained (and cannot be waived).

The affair (insofar as it is relevant to the introduction of section 13 of the 1996 Act) can be summarised briefly.[3] In 1994 Mr Hamilton (Conservative, Tatton) had been forced to resign his junior ministerial post after *The Guardian* published several stories accusing him of receiving sums of money which had not been declared in the House of Commons Register of Members' Interests. Hamilton claimed that the stories were defamatory. On 21 July 1995 Mr Justice May in the High Court stayed the defamation actions brought by Mr Hamilton and Ian Greer Associates against *The Guardian* and David Hencke, one of its journalists, over allegations that the prominent businessman Mohammed Al-Fayed had paid Mr Hamilton and another member for tabling parliamentary questions and doing other essentially parliamentary activities favourable to Mr Al-Fayed's interests.

In his judgment,[4] drawing extensively on Lord Browne-Wilkinson's judgment delivered to the Judicial Committee of the Privy Council in *Prebble v Television New Zealand Ltd*,[5] Mr Justice May ruled that Parliament could not, except by subsequent legislation, grant leave to ignore the provisions and effect of a statute: in this case, the bar in Article 9 of the Bill of Rights on proceedings in Parliament being impeached or questioned in any court. The judge recognised that staying the actions might be perceived as a profound denial of justice to the plaintiffs and a denial of a forum to the defendants to justify their publication; it even could be a licence to publish material about proceedings which, if untrue, could go unremedied.[6]

The perceived injustice rankled Neil Hamilton. As a consequence, the then Leader of the House of Commons (Tony Newton) commissioned parliamentary counsel to draft a clause for the forthcoming Defamation Bill, without committing the Government to supporting its inclusion.

If the Leader's intention had been no more than to allow a new clause to be tabled in order to ventilate the issue, then it all got a bit out of hand. The new

[2] *Hamilton v The Guardian* (1995) Times, 8 June. For more background see: Loveland and Sharland, "The Defamation Act 1996 and political libels" [1997] *Public Law* 113; and Kevin Williams, "'Only Flattery is Safe': Political Speech and the Defamation Act 1996", *Modern Law Review* 1997 vol 3 (60), pp 388–93.

[3] For a full chronology of the affair see Geoffrey Lock, "The Hamilton Affair", in Oonagh Gay and Patricia Leopold (eds) *Conduct Unbecoming* (Politicos, 2004), pp 29–58.

[4] For background see: Marshall, "Impugning Parliamentary Impunity" [1994] *Public Law* 509; and Leopold, "Free Speech in Parliament and the Courts" (1994) 15 *Legal Studies* 204.

[5] [1994] 3 WLR 970; [1995] AC 321.

[6] *Hamilton and another v Henke and others* (unreported, 21 July 1995).

clause was moved in the House of Lords by a Law Lord, Lord Hoffmann; it was debated and withdrawn in committee, then negatived (no tellers for the contents) on report. Most unusually, it was brought back at third reading,[7] where it was passed on a free vote with a substantial majority, despite Lord Hoffmann himself not voting for it (indeed it was far from clear that he even supported the amendment).[8]

Despite some probing by the Labour party's then legal affairs spokesperson, Paul Boateng, and others during the bill's subsequent passage through the House of Commons, the "Hoffmann amendment" was not seriously challenged and so made its way onto the statute book.[9]

While the Government remained officially neutral, it has been suggested that the clause was supported "behind the scenes" by the then Lord Chancellor, Lord Mackay of Clashfern, and the then Prime Minister, John Major.[10] This was as good as confirmed by Lord Mackay of Clashfern's contribution to a Lords debate on 27 June 2014 (discussed further below).[11] Professor Tony Bradley observed: "the manner in which section 13 was proposed and carried through Parliament is an object lesson in how not to reform a long-standing rule of constitutional law."[12]

Section 13 was as follows:

"13 Evidence concerning proceedings in Parliament.

(1) Where the conduct of a person in or in relation to proceedings in Parliament is in issue in defamation proceedings, he may waive for the purposes of those proceedings, so far as concerns him, the protection of any enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place out of Parliament.

(2) Where a person waives that protection—

(a) any such enactment or rule of law shall not apply to prevent evidence being given, questions being asked or statements, submissions, comments or findings being made about his conduct, and

(b) none of those things shall be regarded as infringing the privilege of

[7] The practice of the House of Lords is that an amendment which has been negatived at a previous stage should not be brought back at third reading.

[8] Loveland and Sharland, "The Defamation Act 1996 and political libels" [1997] *Public Law* 113 at 115–16. In a House of Lords debate on 27 June 2014 Lord Williams of Elvel recounted the unusual way in which section 13 made its way into the bill in 1996: cols 1522–24.

[9] *Ibid.*, at 119.

[10] Williams, "'Only Flattery is Safe': Political Speech and the Defamation Act 1996", *Modern Law Review* 1997 vol 3 (60), p 389.

[11] HL Deb, 27 June 2014, cols 1521–23.

[12] Bradley, "Mr Al Fayed, Mr Hamilton and parliamentary privilege" [2000] *Public Law* 556 at 559.

either House of Parliament.

(3) The waiver by one person of that protection does not affect its operation in relation to another person who has not waived it.

(4) Nothing in this section affects any enactment or rule of law so far as it protects a person (including a person who has waived the protection referred to above) from legal liability for words spoken or things done in the course of, or for the purposes of or incidental to, any proceedings in Parliament.

(5) Without prejudice to the generality of subsection (4), that subsection applies to—

(a) the giving of evidence before either House or a committee;

(b) the presentation or submission of a document to either House or a committee;

(c) the preparation of a document for the purposes of or incidental to the transacting of any such business;

(d) the formulation, making or publication of a document, including a report, by or pursuant to an order of either House or a committee; and

(e) any communication with the Parliamentary Commissioner for Standards or any person having functions in connection with the registration of members' interests.

In this subsection "a committee" means a committee of either House or a joint committee of both Houses of Parliament."

Rupert Allason MP was the first person to take advantage of section 13, waiving the House's privilege in order to continue a libel action against a tabloid newspaper.[13]

Neil Hamilton followed suit in his action against *The Guardian*. However, because of differences that emerged between him and Ian Greer Associates, Mr Hamilton in the end withdrew his legal action against *The Guardian*, so section 13 was not put to the test as originally intended.

Mr Hamilton subsequently sued Mr Al-Fayed for making similar allegations on television. His claim was dismissed. In incidental litigation relating to the latter case, the House of Lords ruled on 7 October 1999, giving its opinions on 23 March 2000, that it was permissible to impeach proceedings in Parliament, such as a report from the Parliamentary Commissioner for Standards, in a defamation case where privilege had been waived.[14] Lord Browne-Wilkinson gave the only substantive opinion in a unanimous decision by the Appellate

[13] Loveland and Sharland, "The Defamation Act 1996 and political libels" [1997] *Public Law* 113 at 119.

[14] *Hamilton v Al-Fayed (No. 1)* [2001] 1 AC 395 (HL).

Committee. In respect of section 13, he concluded, *inter alia*:

> "Before the passing of the Act of 1996, it was generally considered that parliamentary privilege could not be waived either by the member whose parliamentary conduct was in issue or by the House itself. All parliamentary privilege exists for the better discharge of the function of Parliament as a whole and belongs to Parliament as a whole. Under section 13, the individual member bringing defamation proceedings is given power to waive for the purposes of those proceedings "the protection of any enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place out of Parliament." The section then provides by subsection (2) that such waiver operates so that evidence, cross-examination or submissions made relative to the particular MP are not to be excluded by reason of parliamentary privilege. The MP thus having been given statutory power to waive the protection afforded by the privilege so far as he is concerned, the section goes on to provide that the admission of such evidence, questioning etc., should not be treated as infringing the privilege of either House of Parliament: see subsection (2)(b).
>
> The effect of the section seems to me to be entirely clear. It deals specifically with the circumstances raised by Mr Hamilton's case against *The Guardian*. He could waive his own protection from parliamentary privilege and in consequence any privilege of Parliament as a whole would fall to be regarded as not infringed. At least in part, section 13 was passed by Parliament to enable specifically Mr Hamilton to proceed with *The Guardian* action. The issues in this present action against Mr Al-Fayed are for the most part identical. It would, indeed, be very strange if the section had failed to enable Mr Hamilton to bring this action."[15]

Following the judgment, Professor Bradley noted that "without section 13, Mr Hamilton would have been likely to apply to the European Court of Human Rights alleging breach of his rights under article 6(1)". However he remained critical of the provision, stating that in his view "the weaknesses of section 13 remain."[16]

After the case of *Hamilton v Al-Fayed* there the law remained: on the statute book but otherwise not (to the best of the authors' knowledge) invoked.

In the meantime, in the wake of the Hoffmann amendment, Lord Simon of Glaisdale, a distinguished former Law Lord, enlisted the support of the clerks of both Houses for the appointment of a joint committee to consider the whole question of the courts and privilege. Section 13 was a significant factor behind

[15] For a commentary on the judgment see Bradley, "Mr Al Fayed, Mr Hamilton and parliamentary privilege" [2000] *Public Law* 556.

[16] *Ibid.*, p 559.

the eventual establishment of the Joint Committee on Parliamentary Privilege.[17] It was appointed in July 1997, and was chaired by another Law Lord, Lord Nicholls of Birkenhead. Its report in March 1999 recommended the repeal of section 13:

> "67. Section 13 of the Defamation Act 1996 was intended to remedy the injustice perceived to exist in the Hamilton type of case. The text of section 13 enables a person, who may be a member of either House or of neither House, to waive parliamentary privilege so far as he is concerned, for the purposes of defamation proceedings. The essential protection of members against legal liability for what they have said or done in Parliament remains and cannot be waived.
>
> 68. Unfortunately the cure that section 13 seeks to achieve has severe problems of its own and has attracted widespread criticism, not least from our witnesses. A fundamental flaw is that it undermines the basis of privilege: freedom of speech is the privilege of the House as a whole and not of the individual member in his own right, although an individual member can assert and rely on it. Application of the new provision could also be impracticable in complicated cases; for example, where two members, or a member and a non-member, are closely involved in the same action and one waives privilege and the other does not. Section 13 is also anomalous: it is available only in defamation proceedings. No similar waiver is available for any criminal action, or any other form of civil action.
>
> 69. The Joint Committee considers these criticisms are unanswerable. The enactment of section 13, seeking to remedy a perceived injustice, has created indefensible anomalies of its own which should not be allowed to continue. The Joint Committee **recommends** that section 13 should be repealed."

That joint committee's report, calling for an Australian-style parliamentary privilege Act, was debated inconclusively in the House of Commons. Most of its recommendations were not implemented.[18]

In his comprehensive study of the systems of parliamentary immunity in the United Kingdom, France and the Netherlands in a European context,[19] Sascha Hardt comments in detail on the significant encroachment on Article 9 by section 13 of the Defamation Act 1996. In his view "the passing of section 13 of

[17] See also: HC Deb, 9 June 1997, col 319WA, where Ann Taylor (the then Leader of the House of Commons) noted other reasons for the review, including the need to "modernise Parliament".

[18] The report was debated in the House of Commons on 27 October 1999 on a general motion to adjourn the House. The then Leader of the House, Margaret Beckett, indicated that legislation was not a priority: see HC Deb, 27 October 1999, cols 1020–74.

[19] A PhD thesis subsequently published as: Hardt, *Parliamentary Immunity* (2013, Cambridge–Antwerp–Portland, Intersentia).

the Defamation Act must be seen as a most remarkable and incisive event in the development of the relationship between *lex terrae* and *lex parlamenti* as it opens up—or, rather, completely removes—parliamentary privilege in defamation suits where the member so wishes without a decision of the House, a committee or the Speaker. In such cases, the individual member can therefore relinquish *lex parlamenti* jurisdiction on behalf of the entire House, though only with regard to themselves, and instead allow the court to extend *lex terrae* jurisdiction into the very core of Parliament's internal affairs and the parliamentary legal system".

Hardt presciently concluded that "it is very possible that the damage done by section 13 to the doctrinal framework of privilege, but also its practical value, outweighs its benefits."[20]

Repeal of section 13 of the Defamation Act 1996

The possibility of a parliamentary privilege Act was revived in the 2010 Queen's speech, in which the coalition Government promised a draft bill on "reforming parliamentary privilege". What emerged at the end of the 2010–12 session was a green paper on Parliamentary Privilege with draft clauses.[21] The prospect of a thorough overhaul of privilege meant that the repeal of section 13 was not pursued by the Joint Committee on the draft Defamation Bill or in debates on the subsequent bill which became the Defamation Act 2013.

The green paper was considered by a new Joint Committee on Parliamentary Privilege, which was established in 2013 and chaired by Lord Brabazon of Tara. In its report[22] that joint committee echoed its predecessor in calling for the repeal of section 13:

"169. The Government told us:

> "There are clearly problems with section 13 of the Defamation Act. It is at odds with the principle that freedom of speech is a privilege of the House, not just individual members and it can create an imbalance where one party to proceedings can choose to use the parliamentary record but the other cannot.
>
> However, the Government is not aware of any instances in which anyone has used the power of waiver and as such it would not appear to be a pressing priority to repeal section 13. The Government acknowledges concerns with introducing a general power of waiver for Parliament given the potential chilling effect on debate".

170. **We recommend the repeal of section 13 of the Defamation Act 1996.**

[20] *Ibid*., p 91.

[21] Cm 8318.

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

The anomalies it creates are more damaging than the mischief it was intended to cure. There is no persuasive argument for granting either House a power of waiver or for restricting such a power to defamation cases alone. A wider power of waiver would create uncertainty, and have the potential to undermine the fundamental constitutional principle of freedom of speech in Parliament."

The Government's response[23] in December 2013 stated: "The Government recognises the problems identified by the committee with regard to section 13 of the Defamation Act 1996, as well as those associated with a general power of waiver. The Government therefore agrees that repealing section 13 would be the wisest course of action and intends to do so when parliamentary time and a suitable legislative opportunity allows."

Former members of the joint committee William Cash, Thomas Docherty and Bernard Jenkin gave a gentle nudge to the Government by tabling an amendment (amendment 4) to repeal section 13 for the report stage of the Deregulation Bill 2013–14.

The names of two Government ministers (Solicitor General Oliver Heald (Conservative, North East Hertfordshire) and Deputy Leader of the House Tom Brake (Liberal Democrat, Carshalton and Wallingford)) were added to amendment 4. When the amendment was debated on 14 May 2014, the last day of the 2013–14 session,[24] Oliver Heald, Chi Onwurah, Thomas Docherty and William Cash supported its adoption and therefore the repeal of section 13. At the end of the debate, amendment 4 was called formally and agreed to without demur.[25]

The explanatory notes on the Deregulation Bill (as introduced in session 2014–15) concisely explained the background to the repeal:

"**Part 8: Civil law**

773. Parliamentary privilege protects freedom of speech in debates or other proceedings in Parliament. It does so by preventing the proceedings being impeached or questioned in any court or place out of Parliament. Traditionally, the privilege could not be waived but section 13 of the Defamation Act 1996 allowed a person (whether a member of Parliament or not) to waive it for the purpose of defamation proceedings.

774. Paragraph 40 repeals section 13 of the Defamation Act 1996. The removal of this provision means that a person is no longer able to waive this protection.

775. Joint Committees on Parliamentary Privilege in 1999 and 2013 both

[23] Cm 8771.

[24] The Deregulation Bill was carried over from session 2013–14 to session 2014–15.

[25] HC Deb, 14 May 2014, cols 796–803.

> recommended that section 13 of the Defamation Act 1996 be repealed (see Reports of the Joint Committee on Parliamentary Privilege, Session 1998–99, HL Paper 43–I, HC 214–I and Session 2013–14, HL Paper 30, HC 100). 776. The repeal forms part of the law of England and Wales, Scotland and Northern Ireland, and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act."

In session 2014–15 Lord Lester of Herne Hill introduced to the House of Lords a private member's bill to repeal section 13 of the Defamation Act 1996.[26] The bill received a second reading on 27 June 2014, in the cheerful expectation that it would be rendered otiose once the carried-over Deregulation Bill had completed its passage through the House of Lords.

That expectation was justified when the Deregulation Bill received royal assent on 26 March 2015. During the second reading debate on the bill in the House of Lords two members of the 2013 Joint Committee on Parliamentary Privilege (its chairman, Lord Brabazon of Tara, and Lord Bew) welcomed the proposed repeal.[27] It passed unremarked on during the remainder of the bill's stages. The repeal is now made by paragraph 44 of Schedule 23 to the Deregulation Act 2015.

Conclusion

Section 13 failed to secure the outcome desired by its original proponents. It was roundly criticised for its incursion across the Article 9 frontier between Parliament and the courts. Its demise will attract few mourners. But as Lord Mackay of Clashfern mildly pointed out in a recent Lords debate,[28] a return to the *status quo ante* will do nothing to resolve the potential unfairness pointed out almost 20 years ago by Mr Justice May.

26 Parliamentary Privilege (Defamation) Bill [HL].
27 HL Deb, 7 July 2014, cols 64 and 67–69.
28 HL Deb, 27 June 2014, col 1522.

CLERKS AT WAR—WILLIAM RUPERT MCCOURT, FREDERICK BARKER LANGLEY AND HARRY ROBBINS

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Seemingly living parallel lives, Rupert McCourt[2] and Frederick Langley[3] both served on the Western Front and were long-serving members of the staff of the New South Wales Parliament. McCourt rose to become Clerk of the NSW Legislative Assembly from 1930 to 1947, with Langley briefly succeeding him in 1947. He was succeeded in turn by a third veteran of the Great War, Harry Robbins. The office of the Clerk, which is responsible for the administration of the House and for advice on procedure, dates back to the 14th century, when the first Clerk was appointed to the House of Commons

Born in Moss Vale in 1885 and educated at Newington College, Rupert McCourt joined the staff of the NSW Parliament in 1901. At the time his father, William Joseph McCourt, was Speaker of the Legislative Assembly, a position he held from June 1900 to November 1910. In 1916 Rupert McCourt joined the 17th Battalion as a private, qualifying for a commission a year later. He was wounded in action on 20 September 1917 at the Battle of Menin Road, part of the Third Battle of Ypres on the Western Front in which the 1st and 2nd Divisions of the Australian Imperial Force sustained 5,013 casualties. In the last phase of the war the 17th Battalion saw action at Amiens, Mont St Quentin and Montbrehain.

Born in Sydney in 1883 and educated at Barker College and Sydney University, Frederick Langley was the son of the Anglican Bishop of Bendigo. He joined the staff of the Parliament in his early 20s. Enlisting in February 1916 as a sergeant and promoted to lieutenant in March 1917, he served in the 38th Battalion, which saw its first major battle at Messines in Belgium between 7 and 9 June 1917. He was mentioned in Douglas Haig's despatch of 7 November 1917 for "distinguished and gallant service and devotion to duty". The commendation stated:

> "Lieutenant Langley has had charge of the Battalion Transport since the Battalion arrived in France in November 1916, and by his keenness and

[1] This article was first written for the New South Wales parliamentary exhibition "Politics & Sacrifice: NSW Parliament and the ANZACs".

[2] See pages 10–15 of volume XV (1946) of *The Table* for an obituary.

[3] See volume XVI (1947) of *The Table*.

> ability has kept it in a high state of efficiency. He has devoted himself wholeheartedly to his duties and has inspired them under him to a similar devotion."

In September 1918 he was recommended for the Military Cross, the commendation stating:

> "Lieutenant Langley has been transport officer of the Battalion since its inception and his work has been invaluable. Even in the times of trench warfare his job was a dangerous one but since March last it has been specially so. In all weathers and under all conditions of shell fire, machine gun fire and bombing he has ably carried out his duties without the slightest thought of self and with the single idea of doing his job thoroughly. He has proved a splendid organiser and commander of the transport section and his initiative and control have at all times been admirable."

Along with Rupert McCourt, Langley was seconded to the staff of the House of Commons before returning to the New South Wales Parliament, apparently the first Australians to have occupied such positions.

McCourt's rise through the Legislative Assembly ranks was rapid by the standard of the times. He was appointed Clerk in 1930, in his mid-40s, a position he retained until his sudden death in 1947. In a June 1932 profile in the *Arrow* newspaper McCourt is described as "tall and lithe", a "dignified figure" in his ceremonial robes, "one of the real gentlemen in the House". He was made a Companion of the Order of St Michael and St George in 1937. Speaking on a condolence motion in 1947, Lt Colonel Bruxner said:

> "Rupert McCourt was a great citizen and a zealous and distinguished officer of the State … I recall that when the call came in the First World War he unhesitatingly answered it, and served with distinction and bravery through that dreadful period. As all those who were then associated with him will testify, there was no better soldier than Rupert McCourt."

Langley's career followed a similar trajectory, albeit as McCourt's deputy, until he stepped into the Clerk's role for a brief period before retiring in August 1947 while the House was in recess. A special function was arranged in his honour at which members expressed their appreciation and recognition of Langley's long and distinguished service to the Legislative Assembly.

Langley's successor was Harry Robbins, a man who had served alongside him in the 38th Australian Infantry Battalion. Originally from Victoria, Robbins joined the parliamentary clerical staff in 1920, rising through the ranks to serve, between August 1947 and June 1956, as Clerk of the Legislative Assembly. Enlisting at the age of 19 in the First World War as a private, he was promoted to sergeant in May 1916 and lieutenant in January 1916. He was wounded on 27 February 1917 in the trench raid at Houplines and awarded the Military Cross in 1919, one of the youngest recipients. The recommendation for the award, signed by Brigadier General W Ramsay McNicoll, said of Robbins:

> "This officer is Assistant Adjutant of the 38th Battalion and acted as Adjutant during the greater part of the recent fighting and it was mainly owing to his untiring and ceaseless efforts that the work of the Battalion office was kept up to date. He was at all times utterly headless of personal danger and set a splendid example of disregard of self and single-minded devotion to duty. Throughout the whole time he was unceasing in his attention to his duties and had less sleep than any other member of the Battalion."

The despatch went on to say:

> "On the death in action of Major Maudsley (acting commanding officer of the 38th Battalion) in the early morning of 31 August 1918, the command of the battalion passed into Lieutenant Robbins' hands, in addition to his ordinary duties, and was administered by him with great skill, much to the admiration of all concerned."

When the relieving officer became indisposed, Robbins continued in command of the battalion to the end of the attack. The despatch closed with these words:

> "The manner in which he has carried out his duties leaves nothing to be desired and it is safe to say that at the present time he is the officer in the Battalion who could least be spared."

On the occasion of Robbins' retirement as Clerk of the Legislative Assembly, Premier Cahill noted that the action in question was at Clery-sur-Somme in the fierce fighting of August 1918. The Premier added that a member of his staff who served in the 38th Battalion had assured him that Robbins earned his Military Cross "many times, at Houplines, Ploegsteert, Messines, Passchendaele, Warneton, Curlu and Bony, and in the fierce battles for the Hindenburg Line".

The loyalty, integrity and dependability he had shown in battle were carried over into civilian life. On his death in 1985 the then Attorney General, Mr Sheahan, quoted what Speaker Lamb had said in 1956:

> "Mr Robbins had many illustrious predecessors, but in my opinion none excelled him in ability, constancy of purpose, devotion to duty, deep regard for the welfare of the parliamentary institution, and meticulous and determined efficiency in the observance of the established practice and procedure of Parliament. Parliament is losing a man of outstanding ability and highest integrity, and a loyal, energetic, sincere and courteous gentleman."

MISCELLANEOUS NOTES

AUSTRALIA

House of Representatives

Addresses by foreign leaders

On 24 June 2014 the House agreed a motion to invite the Prime Minister of Japan, the Honourable Shinzo Abe, to attend and address the House on 8 July (not a scheduled sitting day). Proceedings on 8 July comprised welcoming remarks by the Prime Minister and Leader of the Opposition, and Mr Abe's address. Following the address the Speaker adjourned the House, in accordance with the resolution of 24 June.

On 28 October 2014 the House agreed motions inviting the leaders of the United Kingdom, the People's Republic of China and the Republic of India to attend and address the House on 14, 17 and 18 November respectively.

The Right Honourable David Cameron MP, Prime Minister of the United Kingdom, addressed members and senators in the House of Representatives chamber on 14 November. His Excellency Xi Jinping, President of the People's Republic of China, addressed the House on 17 November. The President spoke in Mandarin whilst members, senators, clerks and those in the galleries wore headsets to hear an official simultaneous translation.

Narendra Modi, Prime Minister of the Republic of India, addressed the House on 18 November. Prime Minister Modi is the first Indian leader to have addressed the House.

Consistent with other recent addresses by foreign leaders, each address was to a sitting of the House of Representatives to which senators were invited as guests, as distinct from a joint sitting of the two Houses. The Speaker presided and the standing orders of the House applied.

Senate

New Senate

The "new" Senate came into operation on 1 July 2014. The large size of the cross-bench (18 out of 76 senators) presented numerous challenges, principally for the Government in negotiating about legislation. Senators made use of the wide variety of procedural devices built into the standing orders to assert the principle that the Senate controls its own business. Bills were negatived; the routine of business was altered to consider unscheduled business; and decisions were retaken when circumstances changed. The disaffiliation of cross-bench senators from the parties on whose platform they were elected added to the complexity of negotiations. After many difficulties contentious legislation

initiated by the previous government was largely repealed and some other elements of the Government's legislative programme were enacted.

Authorisation of expenditure

The rushed consideration and lack of parliamentary scrutiny of proposals to authorise public expenditure was commented on in these notes in a previous edition (see volume 81 (2013), pp 87–88). A second case was launched against the funding by the Commonwealth of a body providing school chaplaincy services using the mechanism hastily enacted by the Parliament to overcome the effect of the High Court's decision in the first challenge to the validity of the funding. The mechanism for future authorisation of direct payments to bodies other than the states and territories (for which there is explicit constitutional authority) involved authorisation by delegated legislation made by the executive government.

The second challenge, known as *Williams No. 2* (*Williams v The Commonwealth of Australia & Ors* [2014] HCA 23), was also successful. The judgment confirmed the High Court's earlier decision that an appropriation of money of itself provides insufficient constitutional authority for expenditure; that authority must be found elsewhere in the constitution, including under one of the specific legislative heads of power given to the Commonwealth or under the executive power in section 61. In the second case, the High Court found that the specific payments were not authorised by the executive power of the Commonwealth. Nor were they authorised by such specific heads of power as the corporations power or the social services power.

Although the decision did not directly affect any other grants programmes of this type, it raised doubts over the constitutional authority of each of the grants programmes which together account for 5–10% of Commonwealth government expenditure. As the court observed, there is an existing and sound constitutional process for making payments to the states, with or without conditions. The implication of the case in a federation is that the national government needs to have clear constitutional authority to bypass the states and make payments direct to other bodies. The Senate represents the people of the states, so has a strong interest in states' rights. The Senate Standing Committee on Regulations and Ordinances has been tasked with monitoring regulations authorising expenditure of this nature and reporting to the Senate, and has done so on a number of occasions.

Scrutiny of delegated legislation

Interesting proceedings were associated with the Senate's scrutiny of the Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014 (widely referred to as the FOFA regulation). The variety of

procedures employed illustrates the range of options available to senators in pursuing objectives.

The issue had its origins in legislation introduced by the previous government and passed in the last Parliament after much examination and consultation. The legislation provided greater regulation of the financial advice industry, particularly with a view to increasing consumer protection and oversight of commissions paid to advisers to sell financial products to consumers. Partly opposed by the then opposition, the changes were wound back by the current Government using regulations (which may be disallowed by either House).

In the Senate the Regulations and Ordinances Committee (established in 1932) scrutinises delegated legislation against a set of principles relating to civil liberties, proper framing of decision-making and other powers, and parliamentary propriety, including appropriate exercise of delegated law-making powers. In addition, any senator may initiate a notice of motion for disallowance on any ground, including policy grounds. The standing orders explicitly exclude disallowance motions from the same question rule because of the potential for instruments the same in substance as disallowed instruments to be remade. The availability of different grounds for disallowing delegated legislation underpins the idea that repeated motions for disallowance are rarely, if ever, the same motion.

The FOFA regulation was registered on 30 June to come into effect on 1 July 2014. It was reported in the press that the Government intended to use all of the available six sitting days under the Legislative Instruments Act 2003 to table the regulation, thereby delaying the ability of senators to give notice for its disallowance.

Opposition senators sought, and were denied, leave to table the regulation. The process was the subject of questions without notice and debate on motions to take note of answers to questions without notice (a half-hour debate which follows question time each day). On 10 July the Senate agreed an order for the regulation to be tabled that day. When the deadline passed a further question without notice was asked and the answer was then debated during motions to take note of answers.

Relying on a parliamentary procedure last used in the Senate in 1994, an opposition senator quoted extensively from the regulation and at the end of his speech a colleague, pursuant to standing order 168, moved that the document quoted by the senator be tabled. The motion was agreed to on a division and the opposition senator was thereby ordered to table the regulation, a copy of which was in his possession. He complied. A response to the order for production of the regulation, tabled shortly afterwards, indicated that the Government would table the regulation by 15 July, consistent with the requirements of the Legislative Instruments Act 2003. The regulation and explanatory statement

were tabled on that date—the last possible day.

In the meantime, two senators gave notice on 14 July of a motion to disallow the regulation in its entirety. The motion was defeated on 15 July, the Finance Minister tabling a letter during the debate to a minor party holding the balance of power in the Senate (the Palmer United Party) outlining further concessions to be made in exchange for that party's support for the regulation.

The opposition senator who was ordered to table the regulation gave a further notice of motion on 16 July for the disallowance of parts of the regulation. The notice reached its last possible day for resolution on 1 October. For the avoidance of misadventure that would have resulted in the instrument being deemed to have been disallowed (because the matter was not resolved by the end of the 15th day), the disallowance motion was called under a special order on 1 October that provided for the question to be put by a certain time. The regulation was not disallowed.

In the meantime, the Regulations and Ordinances Committee had given a notice for the disallowance of the regulation as a protective measure to give the committee time to negotiate with the Government over the committee's concerns. Such notices are usually withdrawn but a mechanism in standing order 78 requires notice to be given of any such withdrawal, in order to preserve the rights of other senators to take over the notice in the context of the time limits prescribed by the Legislative Instruments Act 2003 for dealing with disallowance matters. When the committee chair gave notice of the withdrawal of the committee's notice, the same opposition senator exercised his right to take it over and the regulation therefore came to a vote for a third time.

By this stage earlier support for the regulation had fallen away. On 19 November the opposition moved to suspend standing orders to vary the hours of meeting and routine of business to bring forward debate on the proposed disallowance of the regulation. After a morning spent on procedural manoeuvres, including various amendments, the substantive motion was unresolved by the time the Senate proceeded to other scheduled business at 12.45 pm. During question time the opposition again moved to suspend standing orders to put different arrangements in place, involving the expedited consideration (without amendment or debate) of a motion to vary the hours of meeting and routine of business to consider the disallowance of the FOFA regulation. On this occasion the manoeuvres succeeded and the motion to disallow the regulation was called on, debated and agreed.

The matter did not end there. After the Senate disallowed the FOFA regulation in its entirety, there was broad agreement for the remaking of part of the regulation providing for the grandfathering of certain financial commission arrangements. The Legislative Instruments Act 2003 provides that a regulation or provision of a regulation the same in substance as a regulation or provision

of a regulation that has been disallowed by a House may not be remade within six months unless the House concerned rescinds the disallowance motion. Such a motion is not technically a rescission motion which has the effect of undoing an action as if it had never been taken. It is a motion with prospective effect only, permitting the remaking of the regulation or provision. For the avoidance of doubt, such a motion was agreed on 27 November to allow the remaking of the grandfathering provisions.

The issue will return for further debate in 2015 when legislation to achieve the Government's desired policy (currently before the House of Representatives) makes its way to the Senate.

Australian Capital Territory Legislative Assembly

Select committee unable to report

On 27 February2014 the chair of the Select Committee on Regional Development (which has four members: two government and two opposition, with no casting vote for the chair) presented a special report which indicated that the committee had been unable to agree to a report. The Assembly then adopted the following resolution:

> "That the report is noted and that the committee chair, before the Assembly rises today, table the chair's draft and the alternative draft that was considered by the committee."

Later that day the chair presented the chair's draft and the alternative draft; both were authorised for publication. (Committee reports are automatically authorised for publication upon tabling, but drafts are not.)

Standing committee unable to report

On 6 May 2014 the chair of the Standing Committee on Planning, Environment and Territory and Municipal Services made a statement on its inquiry into the Planning and Development (Project Facilitation) Amendment Bill 2014.

The statement outlined the progress of the committee's inquiry and concluded:

> "The Standing Committee on Planning, Environment and Territory and Municipal Services was unable to reach agreement on a report for its inquiry into the Planning and Development (Project Facilitation) Amendment Bill 2014."

Immediately after the presentation of that statement the Assembly agreed a resolution calling for the presentation of the chair's draft report and any alternative report considered by the committee. The drafts were subsequently tabled.

Register of lobbyists for the Australian Capital Territory

On 5 June 2014 the Standing Committee on Administration and Procedure presented a report entitled *Lobbyist Regulation*, which provided advice to the Assembly about the possible application of a register of lobbyists for the Territory. The committee set out two scenarios for who a register of lobbyists should apply to: (1) to the executive only; or (2) to all members.

On 5 August 2014 the Chief Minister moved a motion establishing a register of lobbyists in the Territory, together with a Lobbying Code of Conduct. From the commencement date of the register (1 January 2015) all ministers, members, their staff and ACT public-service staff will be able to interact only with lobbyists who appear on the register of lobbyists. A further resolution was passed on 25 September creating guidelines for the register of lobbyists. Under the resolution, the Clerk maintains the register of lobbyists and deals with any complaints that lobbying activities have been conducted by a person not on the register, or that a person so registered has breached the Lobbyists Code of Conduct. The register of lobbyists is on the Assembly's website.

Size of the Legislative Assembly

On 5 June 2014 the Attorney-General introduced the Australian Capital Territory (Legislative Assembly) Bill 2014. The purpose of the bill was to increase the size of the Legislative Assembly from 17 to 25 members, with an accompanying bill providing for five constituencies of five members each. On 5 August 2014 the Assembly passed the two bills. The increase in the number of members takes effect at the 2016 election. In accordance with the Proportional Representation (Hare Clark) Entrenchment Act 1994, the bill was passed with the required two-thirds majority in the Assembly.

Appointment of sixth minister

On 4 July 2014 the Chief Minister appointed a sixth minister, for the first time in the Assembly's history. This meant that each minister had, on average, 4.5 ministerial portfolios, as opposed to the previous 4.8 portfolios. It also meant that the proportion of executive members in the legislature rose from 29% to 35%.

Response to Select Committee on Estimates 2014–15 report

On 14 August 2014 the Speaker tabled a response to six recommendations made in the report of the Select Committee on Estimates 2014–15 concerning the Assembly and the Office of the Legislative Assembly.

The response:

- agreed with two recommendations (to continue and, if possible, expand community engagement and outreach programmes and hold an Assembly

open day);
- agreed in principle with one recommendation (that the Assembly provide a research facility for members along the lines provided by the Commonwealth Parliamentary Library to federal members of the Commonwealth Parliament); and
- noted three other recommendations (that the Assembly investigate purchasing a research facility for members from the Commonwealth Parliamentary Library and that the Senior Committee Secretary be a stand-alone position and not also a committee secretary).

The Speaker wrote to the Commonwealth presiding officers about the recommendations on research capabilities being provided by the Commonwealth Parliamentary Library.

Resolution calling on Federal Parliament to repeal limitation imposed by Euthanasia Laws Act 1997 (Cwlth)

On 18 September the Assembly passed a resolution calling on the Speaker to write to the Prime Minister and the Commonwealth Minister for Health requesting them to ensure that the Australian Parliament repeal the limitation imposed by the Euthanasia Laws Act 1997 (Cwlth) and restore the right of the ACT and other territories to pass laws on euthanasia.

Second Older Persons Assembly

On 21 October 2014 the Minister for Ageing tabled a report on the second Older Persons Assembly, which was held in the Assembly chamber on 1 October 2014. 56 delegates participated and three resolutions were agreed. The Government indicated that they would respond to the resolutions at a later time.

Auslan interpreter allowed on the floor of Assembly chamber

On 23 October 2014 an opposition MLA was granted leave by the Assembly to permit an Australian Sign Language (Auslan) interpreter to stand next to her on the floor of the Assembly chamber whilst she gave an adjournment speech marking Deafness Awareness Week.

Recall of Assembly to consider report and bill

On 27 November 2014 (the last scheduled sitting day in 2014) a resolution was passed recalling the Assembly for one additional sitting day to consider a Standing Committee on Public Accounts report on the Appropriation Bill that was introduced two days earlier, as well as to consider the bill. The Assembly met on 4 December 2014 and considered the report and bill.

Recall of Assembly to elect new Chief Minister

On 10 December 2014 the Chief Minister resigned. The Speaker, pursuant to the Australian Capital Territory (Self-Government) Act 1988, convened a meeting of the Assembly on 11 December 2014, at which the Assembly elected a new Chief Minister.

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

Early recall on 30 January 2014

On 30 January 2014 both Houses were recalled for one day four weeks earlier than scheduled in order to consider legislation intended to address alcohol-related violence, and to amend the Mining Act 1992 as a result of investigations and proceedings of the Independent Commission Against Corruption.

Procedures for early recall differed in each House. In the Legislative Assembly the Government made a request to the Speaker for the House to meet at the earlier time, according to standing orders. In the Legislative Council the request was made by the Leader of the Government in the House to the President, in accordance with the special adjournment motion the last time the House sat (on 27 November 2013).

Parliament was last recalled in August 2008 and December 2005.

New South Wales Senate vacancy

As reported in the previous edition of *The Table*, in October 2013 a vacancy occurred in the representation of NSW in the Senate following the resignation of Senator Bob Carr.

Senator Carr stated that his resignation applied to his seat in the existing Senate until 30 June 2014 and his seat in the next Senate, commencing on 1 July 2014, for which he was elected at the 2013 half-Senate election.

On advice from the NSW Crown Solicitor, at a joint sitting of the NSW Parliament on 12 November 2013 Parliament filled only the casual vacancy in the Senate up to 30 June 2014, with Deborah O'Neill elected to fill the vacancy. The Crown Solicitor advised that the vacancy after 1 July 2014 would have to be dealt with separately.

The matter arose again in late May 2014 as the changeover to the new Senate on 1 July 2014 approached. The Labor party, in particular, wanted to ensure that the vacancy that would arise after 1 July 2014 was filled before the new Senate sat on 7 July.

However, a joint sitting of the NSW Parliament to fill the casual vacancy after 1 July was complicated by the fact that the NSW Parliament was not due to sit again until August.

Advice was sought from the Crown Solicitor about whether the casual vacancy could be filled by a nominee of the Governor under section 15 of the Commonwealth Constitution if Parliament was adjourned but not prorogued or, failing that, whether there was any impediment to arranging before 1 July a joint sitting of Parliament after 1 July for the purposes of filling the vacancy.

The Crown Solicitor confirmed previous advice that the Governor could act under section 15 to fill a casual vacancy only when Parliament was prorogued: section 15 requires that Parliament not be in session for the Governor to act. The Crown Solicitor advised that a state parliament is "not in session" when a session of the Parliament has ended by prorogation; and that "not in session" should not be taken to have some other meaning, such as "not sitting".

The Crown Solicitor also indicated that, while it would not be beyond the power of the NSW Parliament to make arrangements before 1 July for a joint sitting for the purposes of filling the casual vacancy, in his opinion it would be open to the presiding officers to take the view that such proceedings were inappropriate and so to rule them out of order.

After extensive consideration of the options for filling the casual vacancy, including the option of prorogation, it was decided that the NSW Parliament would wait until after 1 July and receipt of advice of the vacancy from the President of the Senate and the Governor.

The two Houses adjourned at the end of the autumn sittings until 2 July when, on receipt of advice of the casual vacancy, a joint sitting was held to fill the vacancy.

Deborah O'Neill was again elected to hold the place in the Senate rendered vacant by the resignation of Bob Carr.

World War I commemorations

"I desire to inform the House that today war has broken out between Great Britain and Germany." Premier Holman, 5 August 1914.

The second half of 2014 saw a number of commemorations in the NSW Parliament to mark World War I. The centenary of its outbreak was recognised when the two Houses sat in August, with the presiding officers making the first of a series of weekly statements acknowledging the experiences of that time. Members and officers stood in their places as a mark of respect. The presiding officers have proposed that the weekly statements will continue for the four years until the centenary of the Armistice.

On 5 August the Premier made a statement to the Legislative Assembly commemorating the centenary of the announcement by Premier William Holman that New South Wales, as part of Australia, was at war. He paid tribute to the 120,000 men and women from New South Wales who enlisted for service in the Great War, of whom 21,000 died and 50,000 were wounded.

The Premier's statement was followed by a statement by the then Leader of the Opposition, who spoke of the courage and sacrifice of those who served, including that of his grandfather who survived battles in Turkey and France but died after the war as a result of the mustard gas that was used at Gallipoli.

The theme for "History Week" in September gave the public the opportunity to explore the response of the NSW Parliament, citizens and the media to the outbreak of war.

In October restoration work was carried out on the Braund and Larkin memorial plaque in the Legislative Assembly chamber. This plaque commemorates Lieutenant-Colonel George Frederick Braund VD and Sergeant Edward Rennix Larkin, who were members of the Legislative Assembly when they enlisted and were later killed at Gallipoli.

The exhibition "Politics & Sacrifice: NSW Parliament and the ANZACS" explores some of the political aspects of the war through photographs, books, newspaper articles, propaganda and records from the parliamentary and other collections. The exhibition also tells the stories of the members and staff who served as soldiers, officers and medical personnel in campaigns at Gallipoli and on the Western Front.

Opening of the 55th Parliament and farewell to the Governor

On 9 September 2014 the second session of the 55th Parliament was opened by the Governor, Her Excellency Professor the Honourable Dame Marie Bashir AD CVO. This provided Her Excellency with an opportunity to address members of both Houses and reflect on her time as Governor before leaving office on 1 October 2014.

General David Hurley succeeded Dame Marie Bashir as Governor on 2 October 2014. General Hurley has enjoyed a distinguished military career, including three years as Chief of the Defence Force. In 2010 General Hurley became a Companion of the Order of Australia for eminent service to the defence force and was awarded the Distinguished Service Cross for service in Somalia.

Constitutional provisions about presiding officers and deputy presiding officers

The Constitution Amendment (Parliamentary Presiding Officers) Act 2014 was passed to make provision about the offices of President of the Legislative Council and the deputy presiding officer of each House.

The President of the Legislative Council and the Deputy President will continue to hold those offices during the suspension of Legislative Council business for a general election of the Legislative Assembly and until the first meeting of the Legislative Council following a periodic Council election.

Similarly, the Speaker of the Legislative Assembly and the Deputy Speaker will continue to hold those offices during the dissolution or expiry of the Legislative Assembly and until the first meeting of the Legislative Assembly following a general election. The Act provides a statutory basis for what had previously been administrative practice in relation to the Speaker.

The Deputy Speaker of the Legislative Assembly and the Deputy President of the Legislative Council will be able to act as the Speaker or the President respectively whenever they are unavailable. Previously, the deputy presiding officers could act only if their respective presiding officer was outside the state.

Assembly bill divided by the Legislative Council

On 5 November 2014 the Attorney General and Minister for Justice introduced the Statute Law (Miscellaneous Provisions) Bill (No. 2) 2014 in the Legislative Assembly.

In the minister's second reading speech on 12 November he noted that "bills of this kind are an effective method for making minor policy changes, repealing redundant legislation and maintaining the quality of the New South Wales statute book". In his closing remarks the minister offered to provide additional information on any provision of the bill: "if any amendment causes concern or requires clarification, it should be brought to my attention".

The Shadow Attorney General then sought an explanation from the Government on amendments to the Public Interest Disclosures Act 1994 in the bill which would exempt specified public authorities (or specified classes of public authorities) from the requirement to report to the Ombudsman and to Parliament about the public authority's obligations under the Act.

Further information was provided by the Government on this matter and the bill was passed by the Assembly and introduced into the Legislative Council the same day.

Debate in the Council echoed the concerns raised in the Assembly about the amendments to the Public Interest Disclosures Act.

Statute law bills usually contain minor amendments, as noted by the Hon. David Clarke when speaking on the bill, and it is longstanding practice for a provision in such a bill which a member objects to or has concerns about to be omitted in committee of the whole. Mr Clarke stated that the proposed amendments to the Ombudsman and Public Interest Disclosures Acts should not continue to be part of the statute law bill.

Following the second reading of the bill, instead of resolving into committee of the whole to consider amendments to omit the relevant clauses, Mr Clarke moved an instruction to allow the committee to split the bill into two bills. The instruction was agreed and in committee a motion to divide the bill and incorporate in a new bill the provisions on the Ombudsman and Public Interest

Disclosures Acts was agreed.

The Statute Law (Miscellaneous Provisions) Bill (No. 2) minus the relevant provisions was then agreed. The Ombudsman and Public Interest Disclosures Legislation Amendment Bill was subject to considerable debate, during which government amendments to its commencement provisions were agreed, an opposition amendment to the Government's amendment being unsuccessful.

The bills were read a third time. A message was sent to the Assembly returning the Statute Law (Miscellaneous Provisions) Bill (No. 2) 2014, consisting of the original bill minus the provisions on the Ombudsman and public interest disclosures and without further amendment, and sending the Ombudsman and Public Interest Disclosures Legislation Amendment Bill 2014 with amendments for the concurrence of the Assembly. The Assembly's concurrence with the action taken by the Council was also requested.

On 20 November 2014, on a motion of the Leader of the House, the Assembly concurred with the division of the bill into two bills and agreed the proposed amendments to the bills.

Although the division of a Legislative Assembly bill by the Council is not unprecedented it is extremely rare and not without contention. In June 2000 the Legislative Council divided the Industrial Relations Amendment Bill into two bills. On that occasion the Assembly sent a message to the Council advising that it considered that "the established rules and practices of the Houses provide ample opportunity for the consideration and amendment of bills by each House" and that "the division of a bill in the House in which the bill did not originate is highly undesirable".

An alternative procedure might have been for the Legislative Council to amend the original bill by removing the proposals for public interest disclosures. The Legislative Assembly could then have accepted the Council amendment and proposed its own changes to public interest disclosures by introducing a new bill. However, it is highly likely that a consideration in dividing the bill was that it was the last sitting before the general election and therefore about five months before the parliament would meet again. Thus the Assembly might have concurred to the division of bill to expedite the amendment.

Security of the parliamentary precinct

Under the Parliamentary Precincts Act 1997 security control is extended beyond the immediate parliamentary precinct to include areas within the "parliamentary zone". Following an increase to the National Terrorism Alert System level, the NSW Police Force reviewed the parliamentary precinct and recommended changes to the boundaries of the parliamentary zone. On 12 November 2014 the Legislative Assembly passed a resolution under section 17 of the Act to extend the boundaries of the parliamentary zone, and sent a

message to the Legislative Council asking it to consider a similar resolution. The Legislative Council passed such a resolution on 13 November 2014.

Parliament tested its security response procedures in November 2014, conducting a "code black—active shooter" scenario during sitting of both Houses. Members and staff were required to "hold in place" for the duration of the exercise in which NSW Police Force Special Constables and the Parliament's Emergency Control Organisation simulated an armed intruder event. Members remained in the chambers for the duration of the "hold in place", which was not recorded as part of the proceedings of the House.

Due to its proximity to the Martin Place Lindt Café, the NSW Parliament was affected by the siege in December 2014. Roads around and entrances to the parliamentary precinct were closed. Members and staff who continued to work onsite were frequently updated via email and PA system announcements, and a security response review was undertaken following the incident. A public condolence book was available at Parliament House for signing.

New South Wales Legislative Assembly

New Premier and consequential appointments

On 6 May 2014 the Leader of the House informed the House that the Honourable Barry O'Farrell had resigned as Premier on 17 April 2014 and that Her Excellency the Governor had asked the Honourable Michael Baird to form a new ministry.

The Leader of the House then tabled a list of ministers and parliamentary secretaries appointed on 23 April 2014.

Unlike ministers, parliamentary secretaries are not appointed by the Governor. They are appointed by the Premier under section 38B of the NSW Constitution Act. Accordingly a parliamentary secretary ceases to hold office if the person who appointed them ceases to be Premier.

On 6 May 2014 Anthony Roberts, on behalf of the Premier, informed the House that he had been appointment Leader of the House on 23 April 2014. Mr Roberts also informed the House of the election on 6 May 2014 of Andrew Cornwell as Government Whip and of Gareth Ward as Deputy Government Whip.

Resignations and by-elections

On 12 August the Speaker informed the House that she had received letters from Andrew Cornwell and Timothy Owen resigning their seats as members for the electoral districts of Charlestown and Newcastle respectively.

The members' resignations followed admissions to the Independent Commission Against Corruption that they accepted money from developers, who are not allowed to make political donations under NSW electoral laws.

By-elections were held on 25 October, with Jodie Harrison being elected as the member for Charlestown and Tim Crakanthorp for Newcastle. Both members made their inaugural speeches in the House on 13 November 2014.

New South Wales Legislative Council

Failure to fully comply with an order for papers

The previous edition of *The Table* contained a note on the inquiry by the Legislative Council Privileges Committee into the failure of the government to comply fully with an order for papers.

The matter of non-compliance arose again in March and April 2014.

In March the House made two orders for papers relating to documents from the office of the former Minister for Finance and Services and Minister for the Illawarra and documents concerning reform of planning laws in NSW.

On 16 April the Clerk received correspondence from the Acting Secretary of the Department of Premier and Cabinet indicating that it was not practicable to produce the documents within the timeframes specified. In support the Government provided an opinion from the Solicitor General dated 9 April 2014.

When the House sat on 16 May the Clerk tabled the correspondence from the Acting Secretary of the Department of Premier and Cabinet and certain documents, but not a full return, received earlier that day from the Department of Premier and Cabinet in relation to the two orders for papers.

Following the tabling the Leader of the Government in the House made a ministerial statement about the late and incomplete returns. At the outset the minister stated that the Government did not dispute the power of the House to compel ministers and agencies to produce documents and the Government took seriously its obligations to comply fully with any order. However, in the circumstances the Government had been unable to comply in full with the orders.

The order for papers on the reform of planning laws in NSW was subsequently resolved by the House relatively expeditiously.

On 8 May the House passed a resolution accepting the partial return to the order of 6 May 2014 as though the initial resolution had been passed with the omission of a particular word. However, the House amended the resolution to remove any suggestion that it was not practicable for the Acting Secretary of the Department of Premier and Cabinet to produce the documents sought.

The order for papers from the office of the former Minister for Finance and Services and Minister for the Illawarra took longer to resolve.

On 15 May the House passed a new order for papers with a longer timeframe for them to be provided.

In doing so the House rejected the failure of the Government to produce the

majority of the documents sought; asserted that it was not bound by the advice of the Solicitor General; noted that nevertheless the Solicitor General's advice, in the main, confirmed the power of the House to order the production of state papers; and indicated that the appropriate time to question the terms of any order, to negotiate its terms and to propose amendments to it was before the matter was resolved by the House and not after.

Committee orders for papers

As part of its inquiry into allegations of bullying in the WorkCover Authority of NSW, General Purpose Standing Committee No. 1 attempted to use its power to order certain documents from the executive. The Government refused to comply and so the papers were sought via the House under standing order 52.

In providing the documents to the House, the Department of Premier and Cabinet made a claim of privilege over one of the documents on the ground that it contained "personal information". The chairman, on behalf of the committee, disputed the claim of privilege, leading to the appointment of an independent legal arbiter as per the procedure set out in the standing order. The independent arbiter, the Honourable Keith Mason AC QC, did not uphold the claim of privilege.

On tabling the arbiter's report a committee member moved an unusual motion in the House to allow the committee to use the privileged document for the purposes of its inquiry. The House unanimously agreed this motion, indicating its confidence in the committee to deal appropriately with such a sensitive document.

WestConnex Business Case and the role of the independent legal arbiter

In July 2014 Dr Mehreen Faruqi MLC (Greens) disputed the claim of privilege on certain documents returned in response to an order for papers concerning the WestConnex Business Case, a major road infrastructure project. The disputed documents were released to the Hon Keith Mason AC QC who was appointed, for a second time, as the independent legal arbiter. In a report on the previous dispute (referred to above), Mr Mason considered the role of the arbiter and the principles which, as arbiter, he should observe when making recommendations to the House. He indicated that, should the opportunity arise, he would welcome submissions on his comments on the role of the arbiter. Consequently, in respect of the role of arbiter for the WestConnex dispute, the Clerk, at the suggestion of Mr Mason, invited members and others to make submissions about the role of the arbiter or the disputed claim of privilege. Submissions addressing the role of the arbiter were received from various members and officers. Mr Mason's report on the WestConnex papers included significant comment on the role of the arbiter and the approach taken

in assessing the validity of claims of privilege. The arbiter's report, including all submissions, is available on the Parliament's website.

Inquiry into recommendations of arbiter about VIP Gaming Management Agreement

In October 2014 the Legislative Council resolved that the Privileges Committee should inquire into and report on the implementation of recommendations of the independent legal arbiter, the Hon Keith Mason AC QC, in a report on papers about the VIP Gaming Management Agreement between the Independent Liquor and Gaming Authority (ILGA) and Crown Casino. The arbiter's recommendation was that information claimed by the executive to be commercially sensitive and confidential be published as the claim was not valid. The committee invited submissions from the member who had lodged the dispute and, through the Department of Premier and Cabinet, from Crown Resorts Limited and the ILGA. The committee reported that, having reviewed the matter and the submissions received, it supported the recommendation in Mr Mason's report; in turn the House resolved to publish the arbiter's report and the relevant information.

Committee inquiry into murders committed 23 years ago

In September 1990 and January 1991 three Aboriginal children from the community of Bowraville were murdered. A person was tried separately for two of the murders but not convicted.

In 2013 the House referred an inquiry to its Standing Committee on Law and Justice to provide an opportunity for the families of the murdered children to appear before the committee and detail the effect the murders, their investigations and the lack of a conviction has had on them and their community.

Before beginning its landmark inquiry the committee undertook training in Aboriginal cultural awareness. The committee's report was tabled in the House in November 2014 and immediately followed by a take-note debate. This was an historic occasion for the Council, witnessed by the families and friends of the three children murdered, who observed proceedings from the public and President's galleries.

Queensland Legislative Assembly

Party voting

On 11 February 2014 the House amended standing orders to introduce party voting in divisions. The procedures are based on those used in the Legislative Assembly of Victoria. Most divisions now require a "party vote" to be held rather than a personal vote. Personal votes will be rare and will generally occur

only on conscience issues.

Members remain in their seats and party members are counted as voting with the position of their party, unless they advise their whip otherwise.

From 2 June 2014 only whips for the government and official opposition report their votes directly to the House; members of minor parties and independents report to the Clerk, who reads out their votes to the House.

The introduction of party voting has seen a reduction in the average time spent on divisions, from seven to four minutes.

No confidence in the Attorney-General

On 1 April 2014 the Leader of the Opposition moved a motion of no confidence in the Attorney-General. The Leader of the Opposition noted that it was "an extraordinary step" to move such a motion and cited alleged failures of the Attorney. In particular, the Criminal Law Amendment (Public Interest Declarations) Amendment Act 2013 had been declared invalid by the Queensland Court of Appeal; criminal organisation laws were the subject of a High Court challenge; and concerns had been raised by lawyers about the Attorney-General's alleged breach of confidentiality in relation to judicial appointments. Those who raised concerns included a recently resigned solicitor-general and Tony Fitzgerald, who led a commission of inquiry into corruption in the late 1980s.

The motion was amended by the Premier, asserting total confidence in the Attorney-General. The amended motion was agreed by 67 to 10.

Budget estimates—reduction in hearing days

On 2 April 2014 the Leader of the House moved a motion to trial a new process for estimates hearings. In recent years estimates have been held over seven days, with only one committee meeting each day. The 2014 trial required all seven portfolio committees to meet concurrently on two days (15 and 17 July).

The changes required significant work behind the scenes to ensure that the process worked smoothly. Normally, internet broadcast of committee proceedings is possible from five rooms at the same time. The simultaneous hearings required two extra cameras and additional support, including by IT services. 13 committee office and library staff were trained in log noting of committee proceedings. 10 staff from the property services, library and communications areas were trained as camera operators. The simultaneous hearings meant that Hansard transcripts were produced with a slight delay, with videos of the hearings available in the meantime.

On 21 July 2014 the Premier announced that the trial of concurrent estimates hearings would not be repeated. This followed a poor result for the LNP in the Stafford by-election.

Electoral Reform Amendment Bill—donations and disclosure

On 21 November 2013 the Attorney-General and Minister for Justice introduced the Electoral Reform Amendment Bill. This bill: removed caps on donations and expenditure; increased the disclosure threshold to align with that of the Commonwealth; amended arrangements for entitlement to public funding; and required proof of identity at elections. The removal of donations thresholds received significant criticism during debates on the bill, particularly in light of revelations about political donations by the Independent Commission Against Corruption. Registered political parties are also eligible to receive a policy development payment each financial year. Non-government members objected to many parts of the bill.

The bill was passed on 22 May 2014 and assented to on 28 May 2014. There was a change in government following the state election on 31 January 2015. On 27 March 2015 the new government introduced legislation to repeal the changes made by the previous government and to backdate reporting requirements for gift and loan disclosures to before the changes were made by the previous government.

G20 leaders retreat

On 15 November 2014 Parliament House served as the venue for the G20 leaders retreat. The retreat was held in the former Council chamber and the leaders enjoyed a barbeque lunch on the Speaker's Green. Parliament's guest book has signatures and messages from every leader present; a display for the book is being prepared.

Victoria Legislative Assembly

Resignation of Speaker

Speaker Ken Smith resigned as Speaker of the Legislative Assembly of Victoria in February 2014. The Deputy Speaker, Hon. Christine Fyffe MP, was subsequently elected unopposed to the speakership.

General election

The Victorian state election was held on 29 November 2014. The election saw a change of government and, owing to a significant number of retiring members, 23 new members were elected to the Legislative Assembly.

The 58th Parliament of Victoria was officially opened on 23 December 2015.

CANADA

House of Commons

Pursuant to an order of reference passed by the House on 21 October 2013, the

Standing Committee on Procedure and House Affairs undertook a review of the Board of Internal Economy (BOIE). On 5 March 2014 the House agreed the third report of the committee, on the Board. While finding no reason to alter the structure, membership and general functioning of BOIE, the report made a number of substantive recommendations, including that the Members' Expenditures Report be enhanced by providing additional information. On the same day the House passed a motion calling on the BOIE to instruct House staff to begin posting each member's travel expenses incurred under the travel points system and each member's hospitality expenses on the Parliament of Canada website. This change was implemented on 1 April 2014.

On 10 April 2014 former Finance Minister Jim Flaherty, the longest-serving Finance Minister in Canadian history, died. The House adjourned early that day and the next, following tributes from various members. A state funeral for Mr Flaherty was held in Toronto the following week.

On 19 June 2014 Royal Assent was granted to Bill C-23, *An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts*. Among other changes to the Canada Elections Act and various regulations governing federal elections in Canada, the legislation sets new rules on party financing; creates a mandatory Voter Contact Registry for political parties who do mass calling; limits the power of the Chief Electoral Officer to allowing electors to exercise their right to vote and to allowing votes to be counted; imposes a term limit on the Chief Electoral Officer; eliminates the use of vouching and voter identification cards as proof of voter identification; repeals the ban on the premature transmission of election results; allows a member of Parliament whose election is being contested by the Chief Electoral Officer to continue sitting as a member until the dispute is resolved; and increases penalties for various offences under the Act.

On 21 October 2014 an independent member and a member of the New Democratic Party announced that they had formed a new political party, Forces et Démocratie. The two members now sit in the House as an unrecognised party.

On 22 October 2014, before the day's sitting had begun, a gunman fatally shot a ceremonial guard posted at the Tomb of the Unknown Soldier, situated near the Parliament Buildings. The gunman then entered Centre Block and exchanged fire with security personnel, injuring a House of Commons constable, before being fatally shot. The shootout took place in the Hall of Honour, with the Conservative and New Democratic Party caucuses meeting yards away. As it was not immediately clear how many gunmen there were and whether the threat had been neutralised, the day's sitting did not take place. The House resumed sitting the following day. Exceptionally, during prayers at the start of that day's sitting, the doors were opened to the public and proceedings were

televised. On 23 October 2014 the Speaker announced that he had requested a comprehensive review of security to identify possible areas for improvement. This led to the formation of a Joint Advisory Working Group on Security, jointly chaired by Speaker Andrew Scheer and Senator Vernon White. The Joint Advisory Working Group recommended a unified security force for the Senate and the House of Commons. On 16 February 2015 the House passed a motion to invite, in co-ordination with the Senate, the Royal Canadian Mounted Police to lead security throughout the parliamentary precinct. Discussions about implementing this arrangement are ongoing.

On 11 December 2014, following the adoption of a motion by unanimous consent, the House of Commons resolved itself into committee of the whole in order to thank the security personnel of the House of Commons for the professionalism demonstrated on 22 October. The Speaker presided and made remarks on behalf of the House.

Following allegations of personal misconduct by two members, the Board of Internal Economy met to discuss the issue of harassment complaints. The Board directed the Speaker to write to the Standing Committee on Procedure and House Affairs, inviting the committee to seek an order of reference. On 27 November 2014 the House ordered the Standing Committee on Procedure and House Affairs to examine options for addressing such complaints; to make recommendations about a code of conduct; and to make recommendations about a fair, impartial and confidential process for resolving complaints made under the code. A sub-committee on a Code of Conduct for Members was established and has begun to meet and hear witnesses.

The House of Commons Administration, in conjunction with Public Works and Government Services Canada, has continued to make progress on the Long-Term Vision and Plan to restore and rehabilitate the Parliament Buildings. Work on the West Block is ongoing and scheduled to finish in 2017; work on the West Pavilion of Centre Block is underway (with major renovations scheduled to begin in 2018); and work on the East Block is scheduled to begin in 2016. The Sir John A Macdonald Building and the Wellington Building are scheduled to re-open in 2015.

Senate

On 27 November 2014, two days before reaching the mandatory retirement age for Canadian senators (75), the Speaker, the Honourable Noël A Kinsella, resigned. His successor, the Honourable Pierre Claude Nolin, was officially introduced in the chamber as the new Speaker on the same day. Senator Nolin had previously been Speaker *pro tempore*, and was succeeded in that role by Senator Leo Housakos.

British Columbia Legislative Assembly

Guidelines for electronic devices

On 17 February 2014 the Speaker, the Hon. Linda Reid, issued updated guidelines on the use of electronic devices during parliamentary proceedings. New provisions allow electronic display monitors to be used in the chamber during budget debates. The Minister of Finance and the opposition critic may use the monitors when presenting or responding to the budget speech. Only textual and numerical information or graphics are permitted—audio, visual or other images cannot be used.

The use of electronic display monitors in the chamber was first permitted during the June 2013 budget debate and they were also used during the February 2014 budget debate.

New Leader of the Official Opposition

Adrian Dix, Leader of the Official Opposition, resigned as leader of the BC New Democratic Party with effect from May 2014. John Horgan, member of the Legislative Assembly for Juan de Fuca, was acclaimed Leader of the BC New Democratic Party and Leader of the Official Opposition on 1 May. Mr Horgan leads a caucus of 34 in the 85-member House.

Committee of Supply

On 26 May 2014 the House adopted a sessional order to provide for meetings of the Committee of Supply in three concurrent sessions to debate the estimates (Committee of Supply, Sections A and C) and bills (Section B). This practice was first used in 2012 and again in 2013 in order to facilitate the consideration of ministry estimates before the adjournment of the spring sitting. Previously the Committee of Supply typically sat in two concurrent sessions, a practice first established in 1993.

Apologies for historical events

The Legislative Assembly unanimously adopted an historic bipartisan motion on 15 May 2014, apologising for over 100 "laws, regulations and policies imposed by past provincial governments that discriminated against people of Chinese descent since 1871, when British Columbia joined Confederation, to 1947."

In a ministerial statement on 23 October 2014, Premier Christy Clark apologised on behalf of the government for the wrongful arrest, trial and hanging of six chiefs of the Tsilhqot'in First Nation in 1864. John Horgan, the Leader of the Official Opposition, supported the apology and expressed the hope that it would lead to reconciliation.

Legislative Assembly Management Committee

The Legislative Assembly Management Committee (LAMC) continues to implement reforms begun in 2012 to strengthen the Assembly's openness, transparency and accountability.

Below is a summary of some of the initiatives undertaken in 2014.

Accountability report

The Assembly's first Accountability report was released by the Speaker, as chair of LAMC, on 6 November 2014. It included the Assembly's first independently audited financial statements, accompanied by an unqualified audit opinion by the Auditor General of British Columbia. The report outlines changes made in 2013/14 to governance and decision-making in support of LAMC's work to strengthen accountability initiatives. The report also contains departmental performance reports, highlighting progress in support of the Assembly's key functions and goals.

LAMC continues to hold regular public meetings, including its first public consideration of options for the Assembly budget in January 2014. On 11 March 2014 the committee agreed that any documents discussed in public meetings would be publicly released following the conclusion of the committee's proceedings. On 27 May the committee agreed "that the package of materials prepared to support public deliberations of the … committee be released publicly prior to each LAMC meeting, including minutes of the Finance and Audit Committee." Certain documents are exempt from this decision, including documents on legal, commercial, personnel or security matters; decision notes prepared for the Finance and Audit Committee or LAMC; internal audit reports; and draft reports.

Accountability information disclosures

In March 2014, as part of an expanded routine disclosure process, LAMC agreed to work towards publication of Assembly quarterly financial operating and capital reports, including a capital projects update.

Constituency office expenses for all members for the last quarter of 2013/14 were posted on the Assembly website for the first time in May, fulfilling a commitment by LAMC as part of its work enhancing disclosure of members' expenses.

In August 2014 a new Accountability section was added to the Assembly's website, consolidating documents on the Assembly's accountability initiatives. In addition, Legislative Assembly Executive Staff travel expenses and parliamentary committees' staff travel expenses are now published quarterly on the website.

iPad project
LAMC approved an iPad pilot project in February 2014 to provide all members with a common IT platform to enable consistent electronic access to House and committee documents. Members access documents through PDF Expert, an application developed for iPads, and receive an email notification when new documents are available for viewing.

Security initiatives
In response to security concerns following the 22 October 2014 armed attack at the National War Memorial and Parliament in Ottawa, LAMC on 5 November 2014 approved new security measures for the Legislative Assembly, including: installing new metal detectors and x-ray equipment; personal safety training for members and staff; providing protective vests, uniforms and firearms as well as training for security personnel; and in principle creating a second controlled public access at the main entrance to the Parliament Buildings.

Manitoba Legislative Assembly

In 2014 there was the unprecedented situation of a sitting Manitoba Premier being challenged in the media over questions of leadership by five cabinet members. This culminated in the resignations of the five cabinet ministers and the Premier calling for a leadership contest to settle the matter, with the Premier running as a candidate. It was unprecedented in Manitoba's history for a sitting Premier to face a leadership contest and run as a candidate for the leadership.

Here is a short chronology of events:

3 November 2014—Cabinet ministers Jennifer Howard (Minister of Finance), Theresa Oswald (Minister of Jobs and the Economy), Erin Selby (Minister of Health), Andrew Swan (Minister of Justice and Attorney General) and Stan Struthers (Municipal Government) resign as ministers and move to the backbenches over leadership concerns about Premier Greg Selinger. This followed a number of days of questioning his leadership in the media.

8 November 2014—Premier Selinger asks the NDP executive to resolve the dispute by holding a leadership contest at the party's annual convention in March 2015. He announces he will stay on as Premier during the race.

18 December 2014—Theresa Oswald enters the leadership race.

22 December 2014—Steve Ashton resigns from cabinet and enters the leadership race.

2 January 2015—Premier Selinger enters the leadership race.

6–8 March 2015—Leadership convention.

8 March 2015—Premier Selinger wins the leadership contest on the second ballot by 33 votes and retains his position as Leader of the New Democratic Party and Premier of Manitoba.

Newfoundland and Labrador House of Assembly

The Premier, Kathy Dunderdale, resigned in January 2014 and was succeeded by the Hon. Tom Marshall, who indicated that he would stay on until a leadership convention could be held to elect a new Premier. The convention was scheduled with only one candidate putting themselves forward. Before the June convention the sole candidate withdrew. A convention was held in September at which the Hon. Paul Davis was elected leader of the governing party and sworn as 12th Premier of the province on 26 September. Section 3.1 of the House of Assembly Act provides that when the Premier resigns with more than one year left in the term of the Assembly a provincial general election must to be called within a year of the leader being sworn.

In September 2014 the Speaker resigned to accept a cabinet position. When the House opened in November 2014 for the autumn sitting the first order of business was the election of a new Speaker. The Hon. Wade Verge, who had previously been Deputy Speaker, was acclaimed as Speaker. This was the first time since 1994 that there was a change in speakership during an Assembly.

Prince Edward Island Legislative Assembly

It was announced in October 2014 that the Legislative Assembly of Prince Edward Island will vacate Province House, its home since 1847, early in 2015 in advance of extensive conservation work on the building. The work to conserve Province House is anticipated to last three to five years. The legislative chamber will relocate to the Coles Building, adjacent to Province House. Considerable effort has been expended to relocate staff and offices in advance of the spring 2015 sitting.

Québec National Assembly

Following the general election on 7 April 2014 discussions were held between the political parties represented in the Assembly in order to agree on the conduct of proceedings in the National Assembly and in parliamentary committees, and on parliamentary offices and budgetary matters for the 41st legislature. This agreement was followed by amendments to the standing orders of the National Assembly, the Rules for the Conduct of Proceedings and the Act respecting the National Assembly.

On parliamentary work, the agreement covers the distribution of measures

(business standing in the name of members in opposition, interpellations, debates upon adjournment and statements by members), oral questions and speaking times among the parliamentary groups while having regard to the presence of independent members. The agreement changes committee membership to provide fairer representation for parliamentary groups in the Assembly. It grants certain parliamentary functions to the second opposition group—namely a caucus chair, a deputy leader and second committee chair.

The agreement also provided for a committee to be established to take a longer-term look at ways of facilitating the setting up of a new legislature and the adjustments that must be made when the composition of the Assembly changes.

Saskatchewan Legisaltive Assembly

Dome rehabilitation project

The dome at the Saskatchewan legislative building is undergoing significant renovation. Substantial damage had occurred due to excess moisture. The rehabilitation began in January 2014 and includes replacing the 100-year old Tyndale stone and mortar, and installing new copper sheeting. The project is scheduled to finish by January 2016, with an estimated cost of at least $15 million.

Directives on members' expenses

The Board of Internal Economy in 2014 approved a number of amendments to the directives that govern members' expenses.

One amendment was about member advertising. An advertisement that indicates the member is a "sponsor" is no longer an eligible expense; sponsorship in whole or in part of an event is strictly prohibited. The new directive stipulates that costs incurred for advertising at community events shall not exceed $1,500 per event and the advertisements must include the member's contact information.

STATES OF GUERNSEY

Broadcasting

In 2014 the States of Deliberation agreed to remove the restrictions on broadcasting their meetings. Any media operation, wherever based, can now broadcast live transmissions of proceedings. Proceedings can now be streamed over the internet: it is expected that such streaming by a media operation will begin in mid-2015. Live television broadcasts are also now permitted, though no application to do so has yet been made.

Voting

The States' Assembly and Constitution Committee was obliged by a requête (private member's motion) to issue a report on the introduction of simultaneous electronic voting in the chamber. The committee recommended that it be not introduced; that recommendation was accepted.

INDIA

Rajya Sabha

There were significant amendments to the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha), including: changing the timings of Question Hour; reducing the limit on the number of questions for oral answers; increasing the number of questions for written answers; changing the timing of Calling Attention; and extending the normal time of the sittings of the House by one hour. The Question Hour, which used to be the first item of business, has been moved back by an hour so it is now held from 12 noon to 1 pm. Consequently, the first item of business, to be taken at 11 am, is the laying of papers and other formal business. It is followed by matters of urgent public importance to be raised with the permission of the chairman (popularly known as "zero-hour submissions"), with a maximum of 15 such matters, and, if time permits, Special Mentions (for raising matters of public importance) are taken up to 12 noon. The normal time of the sitting of the House has been extended by an hour. The House now sits from 11 am to 1 pm and from 2 pm to 6 pm, except on Fridays when the House reassembles after lunch at 2.30 pm.

Himachal Pradesh Legislative Assembly

The Himachal Pradesh Legislative Assembly became India's first high-tech Assembly by implementing the path-breaking e-governance solution e-Vidhan in 2014. e-Vidan facilitates verbatim reporting of House proceedings, recording them digitally. It has considerably reduced the use of paper.

NEW ZEALAND HOUSE OF REPRESENTATIVES

New Zealand hosts Commonwealth speakers conference

In January 2014 New Zealand hosted the 22nd Conference of Speakers and Presiding Officers of the Commonwealth. New Zealand's Speaker, the Rt Hon. David Carter, welcomed approximately 180 delegates, including more than 50 speakers and presiding officers from around the world.

The opening procession of Speakers, pōwhiri (official welcome) and all keynote addresses (except for the final closing address) were open to the public. There were addresses on how to keep parliaments relevant in the digital age,

the protections offered by parliamentary privilege, the challenges faced by small parliaments, and promoting openness and transparency in the operations of parliaments.

The conference occurs every two years. It will next be held in Malaysia in 2016.

Official electronic publication of legislation

Changes came into effect on 6 January 2014 which resulted in the New Zealand Legislation website (www.legislation.govt.nz) providing official electronic legislation. Previously only hard-copy legislation printed and published by the Parliamentary Counsel Office or the New Zealand Government was official. The change means that official and up-to-date legislation is now freely available online. A printout of an official PDF version of legislation is also official.

To extend official status to online legislation, the Parliamentary Counsel Office checked approximately 85,000 pages to confirm the accuracy of its legislative database.

Member of Parliament's resignation after trial for electoral offence

The Hon. John Banks, an electorate MP representing the ACT party, was tried in May 2014 for knowingly filing a false electoral return. The charge related to his unsuccessful campaign to be Mayor of Auckland in 2010, a year before he returned to Parliament. The New Zealand Police originally decided not to prosecute Mr Banks, but a member of the public initiated a private prosecution. After an initial finding in the District Court that there was sufficient evidence for Mr Banks to stand trial, the case was taken over by the Crown and the trial proceeded in the High Court. Mr Banks was found guilty of "transmitting a return of electoral expenses knowing that it is false in a material particular" in relation to three entries on his 2010 local electoral return. These entries concerned large donations to his campaign that were listed in the return as anonymous.

Under section 55 of the Electoral Act 1993 a member's seat becomes vacant if "he or she is convicted of an offence punishable by imprisonment for life or by two or more years' imprisonment." After giving the guilty verdict, the judge deferred the decision on whether to enter a conviction and sentencing until August 2014. Mr Banks could have remained a member until such time as he was convicted, but he resigned from Parliament.

Under section 131 of the Electoral Act 1993 the House can resolve (if the resolution is passed by a majority of 75% of all members) that a by-election to fill a vacancy not be held if the vacancy arises within six months of the date of the Parliament expiring, or if a general election is to be held within six months of the vacancy arising. The resignation was received on 13 June 2014,

six months and three days before the present Parliament would expire. Even though it was public knowledge that the general election would be held on 20 September, this had not been formally communicated to the House. The Prime Minister therefore presented a paper stating the appointed election date. The House then resolved unanimously that no by-election be held for Mr Banks' seat.

In November 2014 the Court of Appeal overturned Mr Banks' conviction and ordered a retrial. The case is currently pending.

Dissolution of 50th Parliament and re-election of National-led Government

The second half of 2014 saw the concluding phases of the 50th Parliament and the holding of a general election.

The 50th Parliament was dissolved when a proclamation from the Governor-General, Lt Gen. the Rt Hon. Sir Jerry Mateparae, GNZM, QSO, was read on the steps of Parliament House at 11 am on 14 August 2014. The Parliament had commenced on 21 December 2011, and included 227 sitting days, with only limited use of urgency, at 79 hours, and the increased use of extended sittings, at 110 hours ("extended sittings" are extra hours agreed by the House or Business Committee, usually for non-controversial business taken through only a single stage at a time). This amounted to 1,409 hours of sitting time, a decrease of approximately 15% from the previous Parliament.

During the 50th Parliament 346 bills received royal assent. Of these, 11 were members' bills (compared with two in the previous term), five local bills and four private bills. 2,776 questions for oral answer were asked in the House, not including supplementary questions. There was a significant decrease in the number of questions for written answer, with 38,297 questions lodged—48% lower than the previous Parliament (73,914). Select committees met 1,259 times for a total of 2,760 hours; they presented 1,007 reports to the House. This was a 5% decrease in the number of reports from the previous parliamentary term, and an eight per cent decrease in overall meeting hours.

The general election held on 20 September 2014 almost resulted in a single-party majority for the first time under the Mixed-Member Proportional voting system. The National Party, led by the Rt Hon. John Key, received 47% of votes, which entitled the party to 60 out of 121 seats. However, parties supporting the National Party in government dropped in support, with the Māori Party winning two seats, and ACT New Zealand and United Future one each.

The Labour Party suffered an historic low with 25% of the vote, giving it 32 seats. The Green Party received 10.7%, slightly lower than 2011 (11.1%), allowing it to maintain its 14 seats. The New Zealand First Party, led by the Rt Hon. Winston Peters, received 8.7% of votes, giving it 10 seats, two more than in 2011. The Internet Mana Party lost its single seat. Overall voter turnout

remained relatively low, with votes cast by only 78% of registered electors, despite a slight increase from 74% in 2011.

The National Party formed support agreements with the Māori Party, ACT New Zealand and United Future, which assured John Key a third successive term as Prime Minister.

A week after the election, the Hon. David Cunliffe resigned as leader of the Labour Party, triggering an internal leadership contest with four candidates. Andrew Little was elected as the new leader. Mr Little entered Parliament as a list member in 2011.

Opening of 51st Parliament of New Zealand and election of Speaker

The new Parliament was opened on 20 and 21 October 2014. To mark the centenary of the outbreak of the First World War, commemorative elements were incorporated into the ceremonies for the state opening. For example, when the Governor-General was accorded a royal salute, a fly-past of aircraft, including three replica WWI fighter planes, took place.

After the swearing-in of members the Speaker was elected. The Speaker at the end of the previous Parliament, the Rt Hon. David Carter, was nominated, as well as an opposition party nominee. A personal vote was held, which resulted in the re-election of David Carter.

After the Speech from the Throne the House appointed the other presiding officers. The Hon. Chester Borrows was appointed Deputy Speaker, and Lindsay Tisch and the Hon. Trevor Mallard (an opposition member) were appointed Assistant Speakers.

The House reinstated all bills and petitions that were before it at the end of the previous session. The 19-hour Address in Reply debate (during which maiden speeches by newly elected members take place) began soon after.

New Zealand Parliament hosts Fijian parliamentarians

In October the New Zealand Parliament hosted the first Fijian parliamentary delegation to travel outside Fiji since its recent general election, marking a resumption of official engagement between the two parliaments.

The delegation was led by the Deputy Speaker, the Hon. Ruveni Nadalo, and included whips from the government and opposition parties, as well as the Secretary-General of the Parliament of Fiji, Viniana Namosimalua. The visit was facilitated by the United Nations Development Programme (UNDP). Since January 2014 UNDP has supported the Parliament of Fiji through a project funded by the European Union and the governments of New Zealand, Australia and Japan.

The Speaker of the New Zealand House of Representatives said that the visit was an excellent first step in restoring the relationship and showed New

Zealand was committed to supporting parliamentary democracy in Fiji and the wider Pacific.

Parliamentary prayer

The parliamentary prayer is a perennial issue, which was again raised in submissions on the 2014 Review of Standing Orders. Sittings have begun with prayers since 1854, and the current wording was adopted in 1962. Submitters suggested that the prayer be broadened to be more inclusive, or omitted altogether. The Standing Orders Committee did not state a view on whether the prayer should be retained in its current form, but indicated that "the Speaker should consult members in the new Parliament about the prayer".

The Speaker began this consultation shortly after the opening of Parliament, asking members to choose between the current wording and an alternative proposal for a prayer that was precatory to God but not specifically Christian. The proposed new text continued to express similar values to the current prayer, but with updated language, and included some new elements reflecting Māori traditional practice. These included the acknowledgement of those who have died, and the acknowledgement of mana whenua, the close connection of Te Āti Awa, the local tribe, with the land on which Parliament meets.

In December the Speaker announced that there would be no change to the prayer. He reported that "A substantial majority of members expressed a view to retain the existing prayer and I intend to respect that wish".

Countering Terrorist Fighters Legislation Bill

The first bill introduced in the new Parliament was the Countering Terrorist Fighters Legislation Bill, which was introduced by the Government under urgency on 11 November 2014. The bill related to monitoring and investigating foreign terrorist fighters and other violent extremists, and restricting and disrupting their travel. The Government was anxious to pass the bill before the end of the year, but there was general agreement that the select committee process should not be dispensed with despite the tight timeline. The House referred the bill to the Foreign Affairs, Defence and Trade Committee with just one week to consider it. In spite of this the committee received hundreds of submissions and heard evidence from 63 submitters. Several amendments were recommended, and the incorporation of these meant that the bill was eventually passed with overwhelming support, though opposition parties continued to express frustration at the severe truncation of the select committee process.

Accessibility of services to Parliament

In December 2014 the Speaker responded to the recommendations of the Government Administration Committee in its inquiry into the accessibility of

services to Parliament. The Speaker supports the Office of the Clerk and the Parliamentary Service's commitment to providing accessibility to Parliament, compliant with the United Nations Convention on the Rights of Persons with Disabilities, and will continue to monitor and encourage progress in this area.

The report detailed progress thus far and future initiatives:

- The Parliamentary Service tours and educational visits were recently awarded the Be Accessible silver standard for accessibility.
- An audit of current services has been undertaken and will guide a multi-year work programme to improve accessibility.
- An accessibility reference group will be established and will be centrally involved in the work programme and policy development.
- New Zealand Sign Language interpreters are available on request for select committee hearings, parliamentary tours, meetings with members and parliamentary functions.
- The standing orders now recognise that members are entitled to address the House in New Zealand Sign Language.
- A major project to refresh the Parliament website, to make it more welcoming, and easier to search and navigate, is being undertaken by the Office of the Clerk and Parliamentary Service.
- Select committee online submissions will be easier to use with an audio alternative and phone contacts, allowing the user to engage with Parliament online without impediment.
- The Office of the Clerk has committed to provide live captioning on Parliament Television during the 51st Parliament.
- The Speaker's Directions for 2014 made provision for additional support for members who have a physical or sensory impairment beyond their control.

UNITED KINGDOM

House of Commons

Amendments to motion supporting the Queen's Speech

At the beginning of every session the House of Commons debates the contents of the Queen's Speech on a formulaic motion to thank Her Majesty for her Gracious Speech. The debate is an opportunity for the opposition to attack the Government's programme and for the Government to defend it. The debate usually lasts six days, with each day covering particular topics. In the distant past this debate could last for many more days and lots of amendments critical of the content of or omissions from the speech would be moved and decided in the course of the debate. Over time the number of amendments declined as a convention emerged that one amendment would be moved by the official

opposition on the penultimate day of debate on the motion and a further amendment would be moved on the final day. In 1979 a new standing order (No. 33) was created to provide for a further amendment to be called on the last day of debate in order to give the third largest party (or an alternative group of backbenchers) the opportunity to vote on a subject of their choosing.

At the opening of the third session of the 2010–15 Parliament a group of backbench members tabled an amendment to the motion, lamenting the Government's failure to announce a bill to allow for a referendum on membership of the European Union. This was a particularly hot topic at the time. The decision on how many and which amendments to select rested with the Speaker. In the event the Speaker interpreted standing order 33 as providing him with discretion to select any number of additional amendments to be voted on on the final day of debate. The Government considered that the Speaker's ruling ran counter to the established interpretation of standing order 33 and the issue for future years was referred to the Procedure Committee.

The Procedure Committee proposed a new formulation of the standing order that gave the Speaker power to select no more than four amendments over the course of the penultimate and final days of the debate. The new standing order was agreed by the House at the end of the 2013–14 session and so was available for use at the end of the Queen's Speech debate in session 2014–15. In the event, on the last day of the debate only two amendments had been tabled despite the Speaker's now clear power to select four amendments for division.

Further replacement of hard copy House documents with online publication

A new online system for publishing parliamentary questions and answers was introduced in September 2014. The system replaced the paper-based process for distributing written parliamentary questions to answering bodies and transmitting answers to MPs, Hansard and the Library. The system handles more than 50,000 parliamentary questions asked each year. Each of the 31 answering bodies, which include all government departments, can check the status of all questions asked of them and submit answers through the system. Written answers are sent to members electronically rather than in hard copy. Members have their own dedicated webpage where they can see and track all questions they have tabled and all answers provided. Written questions and answers are also published on the parliamentary website, enabling the public to search and filter questions and answers and set up alerts for questions on topics in which they have an interest. The rules relating to the content of questions and answers have not altered. However, it is much easier in the new system for answering bodies to attach additional documents, including complex tables, graphs, reports, maps and photographs. These attachments are available to

the public through the website and the system removes the requirement for additional material to be deposited in the Library. The new system provides answers to members more swiftly and enables the public to have greater access to parliamentary answers. The system removes the need to publish answers in hard copy in Hansard and so should provide significant cost savings.

House of Commons Governance Committee

On 10 September 2014 the House agreed a motion establishing a committee to "consider the governance of the House of Commons, including the future allocation of the responsibilities currently exercised by the Clerk of the House and Chief Executive", requiring it to report by 12 January 2015. The motion had been tabled following concern across the House about the process to appoint a Clerk of the House following the retirement of Sir Robert Rogers. The recruitment process for appointing a new Clerk had begun after Sir Robert's announcement in April 2014 of his planned retirement in August. On 1 September 2014, when the House returned from the summer recess, the Speaker announced that he had "paused" the process to appoint the new Clerk of the House. The establishment of the committee shortly afterwards enabled the House to consider not only the role of the Clerk of the House but wider governance issues.

The committee was conscious that the senior administration of the House was operating under temporary arrangements until the issues around the Clerk's appointment and the House's governance structures could be settled. The committee undertook a series of public oral evidence sessions and invited written submissions from Members of Parliament and staff at all levels. The committee received 91 written submissions, including 36 from staff of the House and 22 from members. Written evidence was submitted by each of the UK's devolved legislatures and seven European and Commonwealth parliaments. In oral evidence the committee heard from 59 witnesses, of whom 16 were staff of the House and 21 were Members of Parliament; the committee also met the Speaker, the three deputy speakers and the Lord Speaker. In addition, there were round-table discussions with groups of staff from all areas of the parliamentary service. The committee's open and inclusive approach to gathering the views of staff was well received.

The committee completed its work and published its report shortly before Christmas 2014. Much of the report focused on the complexity of the governance arrangements. It recommended streamlining the structures while introducing an element of external challenge and expertise through the appointment of non-executive, lay members to the House of Commons Commission. It recommended creating the post of Director General, who would be "responsible for the delivery of the resources needed to support the

House in its work, including its parliamentary and outward facing functions" while the Clerk "would retain responsibility for the quality of support for parliamentary functions, and for development of the skills, experience and expertise to maintain the professionalism of the parliamentary service". The Clerk "should continue to be the Head of the House service (and thus formally the line manager of the Director General …)" while "since delivery will be the responsibility of the Director General of the House of Commons, s/he should chair the Executive Committee." Both post-holders would be members of the House of Commons Commission. The report recommended that the previous recruitment exercise for the Clerk of the House should be abandoned and a new process initiated.

The report was well received and endorsed by the House early in 2015, with a clear appetite to have many of the recommendations implemented in time for the new Parliament in May 2015. The process for appointing a new Clerk was completed in March 2015.

House of Lords

House of Lords Reform Act 2014

For some years there had been pressure by some members of the House of Lords to introduce certain reforms to the composition of the House which stop short of introducing elected members. Private members' bills were introduced in successive sessions by Lord Steel of Aikwood (a former leader of the Liberal party) which would, *inter alia*, allow peers to retire from the House; expel those convicted of serious criminal offences; remove members who do not attend for a session; put the House of Lords Appointments Commission (which nominates independent Crossbench members and vets nominees of political parties for propriety) on a statutory footing; and end the system of by-elections to replace deceased hereditary members. These bills did not attract the support of successive governments, usually because a proposal for wholesale reform of the House was on the horizon.

Following the discontinuance of the coalition government's House of Lords Reform Bill in 2012 (which would have created an 80%-elected House: see volume 81 of *The Table* (2013), pp 18–39) pressure again grew for smaller, "tidying up" reforms of membership.

In June 2013 Dan Byles MP introduced as a private member's bill in the House of Commons the House of Lords Reform (No. 2) Bill. This bill incorporated three provisions from the "Steel bills": it allowed peers legally to retire from the House; it ceased the membership of a peer who did not attend the House for a session lasting six months or more; and it ceased the membership of a member who was convicted of a criminal offence and sentenced to more than one year in prison. The government came to support the bill, which was passed by the

Commons and then by the Lords unamended. It received royal assent as the House of Lords Reform Act 2014 in May 2014.

In consequence the House agreed to discontinue its voluntary retirement scheme (which only four peers had taken up); altered the arrangements for leave of absence; agreed certain access rights for retired members; and allowed members who have given notice of their intention to retire to make a valedictory speech in the chamber.

In the initial months after the Act commenced a small number of members retired. That number significantly increased around the dissolution of the 2010–15 Parliament.

Northern Ireland Assembly

On 15 September 2014 the Speaker of the Northern Ireland Assembly informed members that he was unable to perform his duties due to ill health. In the immediate term standing orders made provision for cover by rotating the three deputies in the usual way. However, this did not cover duties that had been performed to date only by the Speaker, such as making rulings on order in the chamber and selecting amendments, urgent oral questions and matters of the day. On 22 September the Principal Deputy Speaker informed the House that the Speaker had authorised him under standing order 5(2) to exercise all the Speaker's functions relating to proceedings of the Assembly. The letter provided useful clarification because, other than in nomenclature, standing orders do not differentiate between the Principal Deputy Speaker and the two deputy speakers. Now acting Speaker, the Principal Deputy Speaker decided to resign from Assembly committees and stopped tabling questions.

Two duties were excluded under this arrangement: chairing the Business Committee and the Assembly Commission. Under standing orders the Business Committee is chaired by the Speaker or, in the Speaker's absence, by one of two members of the committee who have been nominated by the Speaker to act as chairperson. The Assembly Commission is also chaired by the Speaker; in the Speaker's absence the Commission selects one of its members to act as chairperson. Both arrangements excluded the acting Speaker.

On 6 October 2014 the Speaker informed the House by letter that he would resign on 13 October 2014. On 7 October the Business Committee agreed to schedule an election for a new Speaker on 13 October, to proceed in accordance with standing orders. As the three deputy speakers were standing for election, the election was chaired by the oldest member present not standing for election. However, the Assembly was unable to select a Speaker. As the retired Speaker's resignation had now taken effect, the authorisation he had given the Principal Deputy Speaker was no longer valid. The three deputy speakers agreed a protocol whereby each would take it in turn to act as Speaker

for a week. Rotating in the order in which they were elected (standing order 6(2)), each deputy speaker made decisions on amendments, selected matters of the day and urgent oral questions, and carried out other duties arising during the week. This included chairing the Business Committee but not the Assembly Commission.

There were two exceptions to this approach. Each deputy speaker was given responsibility for certain bills and took decisions on those bills regardless of whether it was their turn to act as Speaker. In addition, when a procedural ruling was needed the three deputies conferred and produced a joint ruling on which they all agreed. This arrangement continued until the Assembly successfully elected a new Speaker in January 2015.

Scottish Parliament

Scottish Law Commission bills

In 2014 the Scottish Parliament passed the first bill (the Legal Writings (Counterparts and Delivery) (Scotland) Bill) to be considered under a new process for considering bills emanating from Scottish Law Commission (SLC) reports.

The SLC's task in making these reports is to recommend reforms to improve, simplify and update the law. The SLC makes an important contribution to maintaining and improving Scots law, and delays in implementing its recommendations could have a deleterious effect on the law. Provision for this new process was made in response to concerns about the low implementation rate of SLC reports.

The new process for implementing these reports originates from a working group comprising officials from the Scottish Parliament, Scottish Government and SLC who were asked to consider what factors were impeding implementation of SLC reports.

The group found that one of the main factors was the difficulty often experienced by the Parliament's subject committees in fitting scrutiny of such bills into their busy work schedules.

The group concluded that the Subordinate Legislation Committee (now known as the Delegated Powers and Law Reform Committee (DPLR Committee)) was best placed to take on the role of scrutinising bills arising from SLC reports. The working group recognised the committee's wide experience across the breadth of Scots law and its familiarity with dealing with complex primary and secondary legislation.

On the basis of the working group's recommendations and a subsequent report by the Parliament's Standards, Procedures and Public Appointments Committee, the Parliament agreed several changes to standing orders to allow certain SLC bills (i.e. bills to implement recommendations in SLC reports) to

be considered by the DPLR Committee.

A "Scottish Law Commission bill", as defined in standing orders, must meet certain criteria determined by the Presiding Officer. These criteria include there being a wide consensus amongst stakeholders on the measures in the bill, it not having significant financial implications and it not relating directly to criminal law. These criteria ensure that more contentious SLC bills are still considered by the relevant subject committee, which has expertise in the policy area.

The Scottish Government must write to the Parliament before the introduction of a Scottish Law Commission bill, setting out why it considers the bill complies with the criteria set out by the Presiding Officer. If on considering a bill an issue arises that leads the committee to conclude that the bill does not comply with the criteria, the committee is to refer the bill to the Parliamentary Bureau for further consideration.

Once the bill has been referred, the process thereafter is much like that for any other bill considered by the Parliament.

The Legal Writings (Counterparts and Delivery) (Scotland) Bill was welcomed by stakeholders, who were positive about the new process, noting that the bill may not have come forward so promptly had the process not existed. Given the success of the Parliament's consideration of the first SLC bill, it is expected that more such bills will follow in due course.

Vacancy in regional membership

The Parliament comprises 129 Members of the Scottish Parliament (MSPs), elected under the additional member system: 73 MSPs represent individual geographical constituencies elected by the "first past the post" system (constituency MSPs); and 56 are returned from eight regions, each electing seven MSPs (regional MSPs). Therefore each constituent is usually represented by one constituency MSP and seven regional MSPs.

Each voter may cast two votes: one for a candidate in his or her constituency, and one for a party or independent candidate standing in his or her region. Regional seats are allocated according to the number of second votes cast, but adjusted to take account of the number of constituency seats in the region each party has won. In this way parties that win relatively few constituency seats compared to their share of the vote are compensated with additional regional seats to make the overall result more proportional. Regional MSPs are determined according to lists compiled in advance by the parties—so where a party wins two regional seats in a region, its top two candidates in its regional list are returned.

Constituency MSPs and regional MSPs have equal status; constituents are free to contact any of the MSPs who represent their constituency or region. The different terms are used only to differentiate between the size of the

geographical areas they represent and the way in which they were elected.

The most recent Scottish parliamentary election was held on 5 May 2011. Margo MacDonald was returned as an independent member for Lothian region.

When Margo MacDonald died in April 2014 her seat was vacated because she was an independent member. Had she been a regional member elected from a party list, her seat would automatically have been filled by the next candidate on that list who was prepared to take up the post (without the need for a by-election). The seat therefore remains vacant until the next Scottish parliamentary election in May 2016.

Changes to membership since the election in 2011

The SNP formed a majority government following the election in May 2011. It had 69 MSPs, the other parties had 59 and there was one independent MSP. The new Parliament chose Tricia Marwick (elected as an SNP member) as its Presiding Officer, reducing the Government's majority (since presiding officers do not vote and, by convention, give up their party affiliation for the duration of their office).

By 2014 that majority had been reduced to just one. The SNP Government now has 64 MSPs, the other parties have 60, and there are three independents, all of whom were members of the SNP. Bill Walker, the member for Dunfermline, was expelled from the SNP in April 2012 and subsequently resigned his seat. A by-election took place on 24 October 2013 and Cara Hilton won the seat for the Scottish Labour Party.

Membership of the Parliamentary Bureau

Standing orders provide that the Parliamentary Bureau comprises the Presiding Officer, a representative of each political party with five or more MSPs and a representative of parties with fewer than five MSPs or MSPs from no political party (provided that the total number of MSPs so represented is five or more). This allows any five (or more) MSPs from small parties, or who are independents, to form a group and claim a place on the Bureau (there is no power of veto over the formation of such a group).

The role of the Bureau is set out in standing orders. It includes proposing the business programme of the Parliament and alterations to the daily business list (i.e. the detailed agenda for each day's chamber business).

In December 2012 three independent members (Margo MacDonald, Jean Urquhart, John Finnie) and the two members of the Scottish Green Party joined together to form a grouping on the Bureau. The Bureau therefore comprised—

- the Presiding Officer (as chair);
- the Minister for Parliamentary Business (Scottish National Party);

- a representative of the Scottish Labour Party;
- a representative of the Scottish Conservative and Unionist Party;
- a representative of the Scottish Liberal Democrats; and
- a representative of the "Independent/Green Group".

The formation of the group had implications for—

- non-government business: under standing orders, in proposing the business programme the Bureau is obliged to ensure that at least 16 half sitting days in each parliamentary year are for business chosen by non-government parties or groups;
- the management of debates in the chamber: by convention the parties and groups represented on the Bureau are given a degree of priority in the selection of amendments to motions and the distribution of speaking time;
- the definition of cross-party support: the necessary supporters for a final proposal for a member's bill or for ensuring that a motion is eligible for a "members' business" debate must include members from at least half the political parties or groups represented on the Bureau. The creation of the new group required members to seek support from three out of five parties/groups rather than two out of four, as previously.

As noted above, the formation of the group entitled the independent and Scottish Green Party MSPs to a share of the non-government business debates in the chamber—namely, one half sitting day each parliamentary year (this time can be used for one debate or split between two separate debates on motions lodged by an MSP in the group).

April 2014 marked the death of Margo MacDonald MSP. As the group then no longer had five members it could no longer remain on the Bureau. The loss of the group meant revisiting the calculations for allocating non-government business and the criteria for cross-party support for various business, as well as how the Presiding Officer decides on questions, amendments and allocating speaking time in debates.

However, John Wilson MSP resigned his SNP membership after the September 2014 independence referendum and subsequently joined the remaining four MSPs from the original group to form a new group, which then regained its seat on the Parliamentary Bureau. This revived the issues that had been considered in December 2012 and the calculations were again revisited.

National Assembly for Wales

Supreme Court judgment on legislative competence

A miscellaneous note in the last edition of *The Table* covered the judgment of the Supreme Court that the Agricultural Sector (Wales) Bill was within the legislative competence of the National Assembly for Wales (volume 82 (2014), pp 94–95). This was the second of three referrals of Assembly primary

legislation to the Supreme Court, under section 112(1) of the Government of Wales Act 2006 ("GOWA 2006").

Since then, the Supreme Court has issued judgment in the third case involving an Assembly bill—the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill. The court by a majority held that the bill was outside legislative competence. In judgment the justices made certain remarks that appear to deviate from the approach taken in the Agricultural Sector (Wales) Bill case. The Welsh devolution settlement can perhaps be said to have taken three steps forward and one step back, in terms of clarity and certainty, in the last 12 months.

Procedures for Legislative Consent Motions rejected by the Assembly

The practice was adopted in July 2013 of writing to the Clerk of the House of Commons and the Clerk of the Parliaments in the House of Lords to inform them of all Assembly decisions on Legislative Consent Motions (LCMs). This practice was in line with the recommendation of the McKay Commission on the Consequences of Devolution for the House of Commons, and mirrors procedures already adopted by the Scottish Parliament and the Northern Ireland Assembly. Following the Assembly's rejection of an LCM on the Anti-social Behaviour, Crime and Policing Bill, it became apparent that MPs and Lords were informed—via a note on the order paper—of only those LCMs that had been approved.

Following correspondence between the Assembly's Presiding Officer and the chair of the House of Commons Select Committee on Procedure in 2014, the procedure committees of both Houses separately considered this issue. Agreement was reached that a decision of a devolved institution on a legislative consent motion should be noted on the order papers of the House of Commons and House of Lords, indicating whether the motion had been passed or rejected.

COMPARATIVE STUDY: VOTING IN THE CHAMBER

This year's comparative study asked, "What are the procedures for voting (or otherwise taking decisions) in your chamber? If your chamber uses electronic voting, was this a recent decision? If so, what prompted the change and how has the transition worked? If your chamber does not use electronic voting, are you considering doing so? If so, what factors are relevant?"

AUSTRALIA

House of Representatives

Current procedures for determining questions

The House of Representatives chamber does not use electronic voting. All questions in the House are determined by a majority of votes other than that of the Speaker, who has a casting vote when the numbers are equal, but otherwise does not vote. A question may be determined on the voices, by division or, very occasionally, by ballot. When debate upon a motion has concluded, the chair puts the question on the motion and states whether, in his or her opinion, the majority of voices is for the "ayes" or "noes". If more than one member challenges this opinion, the question must be decided by a division.

Once a division has been called for and the call accepted by the chair, the clerk causes the division bells to be rung for four minutes, following which the doors to the chamber are locked at the direction of the chair. When successive divisions (within three minutes of the last division) are held, the bells for ensuing divisions are rung for one minute only. After the doors are locked no member may enter or leave the chamber until after the division. When the doors have been locked and all members are present in their places, the chair re-states the question to the House and directs the "ayes" to pass to the right of the chair and the "noes" to the left.

If there are four or fewer members on one side after the doors are locked, the chair declares the decision of the House immediately without completing the count; the names of members in the minority are recorded in the Votes and Proceedings.

Voting does not commence until tellers are appointed by the chair. Once tellers are appointed, no member may move from his or her place until the result of the division is announced. Recent practice is that two tellers are appointed for each side. Standing orders require the tellers to record the name of each member voting, count the total number of members voting, sign their records and present them to the Speaker, who declares the result to the House.

Lists of divisions are recorded in the Votes and Proceedings and in Hansard.

Electronic voting

From time to time there are proposals to change the procedures for divisions. These have included proposals for electronic voting, to save time and to enable members to vote without leaving their seats. In 1996 the House Standing Committee on Procedure examined the conduct of divisions but deferred consideration of electronic voting as an option. The committee considered that the costs involved precluded it at that time. In 2003 the Procedure Committee declined to recommend the introduction of electronic voting and reported its view that the general principles of electronic voting should be considered by the House before the technological options and costs were examined in detail.

In 2013 the Procedure Committee conducted a short inquiry into electronic voting. The committee noted a number of procedural and contextual issues that may affect the process of divisions and the traditional operation of the chamber, including:

- the importance of visibility in the way members vote;
- the provision for a "cooling off" period in the current method of voting;
- the current opportunity for discussion with colleagues, particularly ministers, during divisions; and
- the possibility of more divisions being called because of the ease of voting.

The Procedure Committee commended a more in-depth inquiry to a future Procedure Committee, including consideration of the cost of implementing and maintaining a system of electronic voting and implications for the design of the chamber. Like its predecessor committee, the Procedure Committee noted that the ultimate decision on introducing electronic voting should be for the House.

Senate

In the Senate questions are decided by a majority. Votes are determined in the following ways.

On the voices

Most votes in the Senate are determined on the voices. The President puts the question, senators vote by calling "aye" or "no" in turn, and the President declares the result based on an assessment of whether the "ayes" or "noes" are in the majority.

By division

The President's call may be challenged by senators calling for a division.

If two or more senators declared by the President to be in the minority challenge the President's call, the President informs the chamber that a division is required and orders that the bells be rung. The bells are rung for four minutes to enable senators to assemble in the chamber. The doors are then locked and

the President repeats the question, inviting those voting for the motion to sit to the right of the President and those voting against the motion to the left.

All senators in the chamber must vote except for the President or the Chairman of Committees or, in practice, any temporary chair, who may choose not to vote when in the chair. Other senators have the option of abstaining by not attending the division.

The President appoints tellers to count the vote, one for each side. Tellers are usually party whips. The vote is recorded by the clerks at the table, who cross off senators' names on a list as they are called by the tellers. The Clerk records the "ayes", the Deputy Clerk the "noes". When all names have been recorded the tellers and clerks cross-check the results, which are then announced by the President. Lists of senators voting for and against a motion are reproduced in the Journals of the Senate and in Hansard.

By leave, a group of senators voting against a motion may have their votes recorded, as an alternative to a division.

One-minute divisions

If divisions are held successively, without intervening debate, the bells are rung for one minute for each successive division, rather than the usual four minutes.

Equality of votes

When the votes for each side are the same, the question is lost.

The President of the Senate has a deliberative vote on all questions, as does every other senator; the President does not have a casting vote.

Electronic voting

The Senate does not use electronic voting. There are no immediate plans to adopt it.

On 9 May 1990 the President, pursuant to a resolution of the Senate, tabled a paper on electronic voting. It found that:

- little time would be saved because four of the approximately seven minutes spent on each division consists of the time taken to ring the bells to summon senators to the chamber;
- it would remove part of a pause in proceedings, which is often convenient;
- activities which now take place during the count may be transferred to other components of the time spent on divisions, so that little time would in fact be saved;
- the current practice of senators sitting to the right or left of the President has some advantages which would be lost—in particular, it makes the act of voting immediately visible and public;
- more divisions may be called;

- electronic voting is generally an advantage only with large houses of approximately 300 or more members.

The paper was referred to the Procedure Committee, which recommended that the Senate should not take a decision on electronic voting at that time. The matter has not been further considered by the Senate, although the paper was updated in 2004 at the request of senators.

Australian Capital Territory Legislative Assembly

All questions arising at a meeting of the Assembly must be decided by a majority of the members present and voting. The chair has a deliberative vote only; if the votes on a question are equal the question "shall pass in the negative".

The vast majority of decisions taken by the Assembly are determined on the voices. Should the opinion of the chair be challenged when he or she determines that the "ayes" or "noes" have it, standing orders provide for a vote of the Assembly.

A vote is known as a call of the Assembly. Any member may challenge the chair's opinion by requesting a call of the Assembly. He or she must do so as soon as possible; it is usually done by stating the contrary case.

The clerk calls the names of members in alphabetical order. Each member, on being called, must vote by saying "aye" or "no".

The Assembly does not have electronic voting. Were electronic voting to be proposed, a factor would be that the Legislative Assembly is small: there are 17 members, which will increase to 25 in 2016.

Northern Territory Legislative Assembly

There has been no consideration of electronic voting. Voting occurs either on the voices or by a division.

New South Wales Legislative Assembly

The Assembly chamber does not have electronic voting. There are no current plans for it.

A division is conducted if the Speaker's expressed opinion on whether the "ayes" or "noes" have it is challenged by a member. The call for a division must be made before any new motion is proposed or other proceedings commenced.

The division bells are then rung and the timer activated by one of the clerks at the table. At the end of the time allowed after the ringing of the division bells (four minutes) the doors are locked and the Speaker restates the question. Every member present once the doors are locked must vote: "ayes" to the right and "noes" to the left of the chair.

The Speaker appoints two tellers from each side; by recent tradition they are the whips and their deputies. The names of the members present are recorded

by the tellers on lists handed to them by the Speaker. The endorsed lists are entered into the Votes and Proceedings and Hansard. Pairs are recognised in the standing orders (SO 186).

When it is evident that there are five or fewer members on one side in a division, the chair declares the question at once and the names of those members opposing the majority are recorded in the Votes and Proceedings (SO 181).

New South Wales Legislative Council

Section 22I of the Constitution Act 1902 provides that all questions in the Legislative Council shall be decided by a majority of the votes of the members present other than the President or other member presiding; and when the votes are equal the President or other member presiding shall have a casting vote.

When debate on a motion has concluded the chair puts the question on the motion and declares, in the opinion of the chair, whether the majority of the voices are for the "ayes" or the "noes". If there is no challenge, the chair declares that the "ayes" or "noes" have it. In this case the question has been decided "on the voices".

Where the members declared by the chair to be in the minority dispute the result they may call for a division. In order to call for a division members must have clearly expressed their view on the voices. A division may be held only if two or more members call for it. If only one member calls for a division he or she may ask for his or her vote to be recorded in the minutes of proceedings.

When a division has been called the division bells are rung for five minutes; simultaneously a minute glass is turned by one of the clerks at the table. When successive divisions are taken and there is limited or no intervening debate, the chair may direct that the bells be rung for one minute, if no member objects. On expiry of the time for ringing the division bells, the chair orders that the doors be locked. No member is then permitted to enter or leave the chamber.

Once the doors have been locked the chair again states the question and directs members present to take their seats: the "ayes" to the right and the "noes" to the left of the chair. Every member then present must vote in accordance with the member's vote by voice.

The chair appoints two tellers from each side, who record the names and total number of members voting on each side, sign their respective lists and present them to the chair. The chair declares the result of the division to the House. The list of members voting in a division is recorded in the minutes of proceedings and in Hansard. In the case of an equality of votes, the chair must give a casting vote. Any reasons given for a casting vote by the chair are recorded in the minutes of proceedings.

The standing orders do not require members who have voted with their voice to remain in the chamber to vote in a division on the same question, even if a

member had been part of the call for a division.

If it appears that there is only one member voting on one side in a division, the chair declares the question at once.

A member speaking to a point of order during a division must remain seated. To attract the attention of the chair in such cases it is the practice for a member to place something on their head, such as a piece of paper.

If the number or names of members voting in a division are incorrectly reported the House, on being informed of the error, may order the record to be corrected.

The NSW Legislative Council has not considered the use of electronic voting.

Queensland Legislative Assembly

What are the procedures for voting (or otherwise taking decisions) in your chamber?

On 11 February 2014 the Legislative Assembly amended the standing rules and orders by replacing the chapter on divisions to reflect the change to party voting procedures (see the miscellaneous note above). Standing order 106 provides the procedure for a party vote:

"106. Procedure for a party vote

(1) When the bars have been closed, the Speaker shall state the question to the House.

(2) To cast their votes, members must sit in their allocated places in the chamber. Unless they have advised their whip that they intend to cast a contrary vote, each member of the parties that make up the government or official opposition are deemed to be voting to support the response of their party members given at the time the Speaker originally put the question.

(3) Members of the parties that make up the government or official opposition that intend casting a contrary vote must advise their whip. These members must then also advise the clerk of their intention to cast a contrary vote and indicate whether they are voting for the "ayes" or "noes".

(4) Members of minor parties, recognised parties or independents must sign a tally sheet provided by the clerk indicating whether they are voting for the "ayes" or "noes".

(5) The Government Whip, Opposition Whip and clerk will report the number of "ayes" or "noes". The report must only relate to votes cast by members present in the chamber and every member present must vote. The votes will be reported in the following order:

(i) The Speaker asks the Government Whip, to report the government party's votes.

(ii) The Speaker asks the Opposition Whip, to report the official opposition

party's vote.

(iii) The Speaker asks the clerk, to report the votes of other members that have reported to the clerk in accordance with (3) or (4) above. The clerk will report the votes by party or electorate.

(6) Any member may before the result of the vote is announced by the Speaker, challenge the report of votes reported by the Government Whip, Opposition Whip or the clerk. If a report is challenged, the Speaker may direct that report stand, be corrected or that the matter be resolved by a personal vote.

(7) The Speaker announces the result to the House.

(8) The Government Whip and Opposition Whip will immediately provide the clerk the names of those members of their party that were not present for the vote.

(9) The clerk will record the result of the vote and the names of those members voting "aye" and "no" and publish those details in the Record of Proceedings.

(10) If fewer than five members vote with either the "ayes" or the "noes", the clerk will record whether the question was agreed to or not in the Record of Proceedings but the result of the vote and the names of members voting will not be recorded in accordance with (9) above.

(11) If an error occurs in any record of result, the error shall be reported to the House by the Speaker at the earliest practical time and the Record of Proceeding altered.

(12) In this standing order a reference to Government Whip, Opposition Whip or the clerk includes a reference to their delegates."

If your chamber does not use electronic voting, are you considering doing so? If so, what factors are relevant?

The Legislative Assembly of Queensland does not use electronic voting. The implementation of electronic voting was considered and rejected before the amendment of the standing orders on party voting procedures in February 2014, as quoted from above.

A factor when considering whether to introduce electronic voting was the cost, including the ongoing cost of maintaining such a system. A cost analysis from the Scottish Parliament (which has 129 members) indicated that its system cost around £250,000 (approx. A$414,000 in October 2013) to install and £20,000 (approx. A$33,000 in October 2013) per annum to maintain.

Advantages considered by the Assembly included the time saved by the House; the immediacy of results and statistical information; and the ability to display the question before the House on screens.

Disadvantages considered by the Assembly were the need for security

measures to ensure absent members were not included in votes; possible confusion for members not following proceedings as to how their party is voting; and the impact of installing such a system on the heritage of the chamber.

It was decided not to use electronic voting in the Queensland Parliament. While there may be a greater advantage for larger parliaments that have many divisions each year, the cost of implementation and ongoing maintenance in the Queensland Parliament would likely outweigh the time and analytical advantages.

South Australia House of Assembly

Decisions in the House of Assembly are taken on the voices. Where a division is called for the bells ring for three minutes; at the conclusion of such time the doors to the chamber are locked. Members are then directed to the left or right of the chair, whereupon a teller is appointed for each side.

To date there has been no consideration of introducing electronic voting.

Victoria Legislative Assembly

Under standing orders the Legislative Assembly resolves the majority of questions using the party vote system.

All members in the chamber must be in their designated seats to vote. Members in favour of the vote their party gave on the voices cast their vote by sitting in their seat. If a member wants to vote against their party, they must tell their party whip.

The chair then asks the clerk to record the votes. The clerk asks the whip of each party to report the party's vote. Parties report votes in order of the size of their parliamentary membership. Each whip gives the number of "ayes" or "noes" for members of their party. After the whips have reported the votes any member who told their whip they want to vote differently from their party can do so.

Once the chair has announced the result the whips must immediately give the clerk the names of the members of their party who were not present. This is so the names of the voting members can be published in the Votes and Proceedings (minutes) and in Hansard.

At this stage there is no intention to introduce electronic voting in the Legislative Assembly.

Victoria Legislative Council

Voting in the Victorian Legislative Council is undertaken in a traditional way. Under standing orders a question is initially resolved on the voices.

Standing Order 7.01 covers putting a question:

"(1) When a motion has been moved, the question will be proposed to the

Council by the President in the form "That the motion be agreed to".

(2) When the debate on a question is concluded, the President will put the question to the Council and will, if requested by a member, again state it to the Council.

(3) A question will be agreed to or negatived by the majority of voices "aye" or "no".

(4) The President will state, whether in his or her opinion, the "ayes" or the "noes" have it and, if challenged, the question will be determined by a division."

Standing Order 16.02 details the procedure for a division:

"(1) Immediately a division has been demanded, the clerk will ring the bells for three minutes and the doors will not be closed until that time. When successive divisions are taken, and there is no intervening debate, the bells for the ensuing divisions will be rung for one minute only.

(2) At the expiration of three minutes the doors will be closed and locked, and no member will enter or leave the chamber until after the result of the division has been declared.

(3) Every member present in the chamber when the question is put with the doors locked will be required to vote.

(4) When the doors have been locked and all the members are in their places the President will put the question, and will—

(a) direct the "ayes" to the right side of the chamber, and the "noes" to the left side of the chamber; and

(b) appoint two tellers for the "ayes" and two tellers for the "noes".

(5) The clerk or other table officer will report the numbers to the President, who will declare the result to the Council."

At this stage there is no intention to introduce electronic voting.

Western Australia Legislative Assembly

All questions put to the House must be resolved in the affirmative or negative. When the debate has concluded the Speaker will put the question that the motion be agreed to and will declare the result "on the voices", meaning the Speaker will say whether the "ayes" or "noes" have the majority. Any member may call a division on the result of a vote declared on the voices to test the decision of the Speaker. If a member calls a division he or she may not leave the House until the division is complete and is required to vote with the minority.

When a division is called the clerks ring the bells for two minutes before the direction is given by the Speaker to "lock the doors". The Speaker then directs members to assemble to the right of the chair to vote in the affirmative and to the left of the chair to vote in the negative, and appoints the tellers for both sides. Once the total of votes is agreed between the tellers and the clerks the

results are passed to the Speaker to announce to the House.

If there is an equality of votes only the Speaker may issue a casting vote. The Deputy and Acting Speakers must declare their vote at the time the tellers are appointed.

The Legislative Assembly is not currently considering electronic voting.

Western Australia Legislative Council

Votes are taken on the voices unless a division is called for. Members physically move to either side of the chair (in the chamber) when a division is called. A teller is appointed for each side to confirm the numbers.

In 2010 the chamber was refurbished and capacity for electronic voting was installed. A major review of the standing orders was conducted in 2011 but the introduction of electronic voting was not raised nor considered by members during that review.

CANADA

House of Commons

When debate collapses, or when a time limit for debate has been reached, the Speaker reads the motion and asks, "Is it the pleasure of the House to adopt the motion?" In the absence of a dissenting voice he or she will declare the motion carried. If the Speaker hears a dissenting voice he or she says, "All those in favour of the motion will please say 'yea'"; and then, "All those opposed will please say 'nay'". The Speaker listens to both responses, judges the number of voices and states his or her opinion on whether more members said "yea" or "nay". If there is no objection the Speaker declares the motion carried or negatived, as the case may be. Members may call out, "On division." This ensures that the Journals record that the motion was not carried or lost unanimously, but does not require a recorded vote. However, if five or more members rise, a recorded vote must take place. The division bells are then rung throughout the parliamentary precinct. During this period, and the vote that follows, neither points of order nor questions of privilege may be raised. Depending on the type of motion being debated and the timing of the vote, the bells ring for a maximum of either 15 or 30 minutes. When their respective members are ready to vote the whips of the government and of the official opposition enter the chamber together, proceed up the aisle towards the chair, bow to the Speaker and to each other, and resume their seats.

The Speaker reads the question to the House, adding, "The question is on the main motion [or on the amendment or sub-amendment]. All those in favour of the motion [or of the amendment or sub-amendment] will please rise". Votes in favour are recorded first. As each member rises his or her name is called

by the table officers recording the votes. Members resume their seats after casting their votes. The Speaker then says, "All those opposed to the motion [or to the amendment or sub-amendment] will please rise". Votes against are cast in the same manner. Typically members will rise to vote on a recorded division on an item of government business party by party, and on an item of private members' business row by row. When the votes have been recorded and counted, the clerk rises and reports the result to the Speaker. The Speaker then declares the motion (or amendment) carried or negatived.

Unless the Speaker has interrupted debate pursuant to a standing order or special order, a recorded division on a debatable motion may be deferred to a later time. After a recorded division has been demanded and the division bells have begun ringing, the Chief Government Whip may, with the agreement of the whips of all recognised parties, approach the chair and ask the Speaker to defer the division to an agreed date and time. Recorded divisions on debatable motions on a Friday are automatically deferred until the ordinary hour of adjournment at the next sitting day. Similarly, a recorded division deferred to a Friday is automatically further deferred to the next sitting day.

The practice of deferring votes often results in multiple votes being held in succession. In such cases the House proceeds to the next question immediately after deciding the first. The results of one vote may then be applied to others. The Chief Government Whip must request the unanimous consent of the House to have the results of one vote applied directly—or on occasion in reverse—to subsequent divisions and recorded separately. The whips of the other parties and members without party affiliation usually rise to indicate their agreement. The Speaker then declares the motions as being either carried or negatived. Alternatively, the Chief Government Whip may rise to request unanimous consent for the names of members who voted on the previous motion to be recorded as having voted on the next motion as well, specifying whether government members wish to be recorded under the "yeas" or "nays". The whips of the other parties then rise and declare how their parties wish to be recorded as having voted on the motion. Finally, members without party affiliation indicate how they wish to be recorded. Any member wishing to vote differently from his or her party may rise on a point of order to indicate this.

Proposals to introduce electronic voting have been made from time to time since the 1950s. In 2003 the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons recommended the approval, in principle, of electronic voting in the House; and further recommended that the necessary technology be installed in the chamber during the extensive renovations planned for the summer of 2004. The appropriate technology was installed, but the House did not consider the committee's recommendations. Members have cited as relevant factors for maintaining the

current practice: questions of efficiency and accuracy; respect for tradition; and the potential for confusion. Members have also noted that a great deal of time has already been saved by the practice of applying votes, as described above.

Senate

The Constitution Act 1867 outlines the basic principles behind voting in the Senate: all decisions of the Senate are decided by a majority vote by its members; the Speaker has the right to vote in all cases; and when there is a tie the motion is rejected. A senator may vote in favour of a motion, against it or abstain.

Depending on the level of agreement there are a number of ways to determine the will of the Senate. In order, they are:

a) a unanimous decision with no dissenting voice;

b) a majority decision with only one or a few senators calling out "on division" to register their dissent;

c) a voice vote, in which the Speaker asks for the "yeas" and the "nays" and then determines which side prevails—a voice vote is always "on division" when recorded in the Journals; and

d) a standing vote, in which the names of all senators present are called out and recorded as either being in favour or opposed to the motion, or abstaining—the names are recorded in the Journals and the Debates.

The Speaker has a deliberative vote rather than a casting vote. The Speaker has no role in breaking a tie. When there is a tie the motion is defeated. The Speaker may vote on all questions and does so first with the "yeas" or "nays", before all other senators. Historically, the Speaker did not usually vote, but this now tends to depend on the relative balance between the government and the opposition.

In most cases, when a standing vote on a motion has been requested, the bells calling the senators for a vote will ring for 60 minutes, unless there is leave (unanimous agreement) to have a shorter bell, with the shorter time being proposed by the government and opposition whips and then agreed by the Senate.

As a general rule a standing vote on a debatable motion may be deferred to the next sitting day, while a standing vote on a non-debatable motion may not be deferred. Deferral of a vote is at the request of the government or opposition whip. There are exceptions, with votes on debatable motions not being deferrable, or the vote being automatically deferred.

The Senate of Canada does not use electronic voting and is not considering doing so in the near future.

Alberta Legislative Assembly

When voting the Legislative Assembly of Alberta uses a traditional voice vote (the chair asks for all those in favour and all those opposed) and the chair

determines the result based on what he or she hears. If three or more members rise on hearing the outcome of a voice vote, a division (or standing vote) is held. The division bells are rung. The chair asks members to stand or otherwise signify their vote. A table officer calls each member's name, the votes are tallied and the results of the standing vote are announced in the chamber.

The Legislative Assembly of Alberta does not use electronic voting and is not currently considering its use.

British Columbia Legislative Assembly

The procedures for voting in the Legislative Assembly of British Columbia are outlined in standing order 16 and in practice recommendation 1.

The stages leading to a division in the British Columbia House include:

1. The Speaker puts the question.
2. A voice vote is taken.
3. The result as heard by the Speaker is announced: "The ayes have it"; or "The nays have it."
4. A division is called for by a member.
5. The division bells are rung.
6. Members have between two and five minutes to take their seats.
7. After five minutes (or such shorter time as the House, by unanimous consent, may agree to) the doors to the chamber are locked.
8. The question is put again by the Speaker.
9. The Speaker asks "ayes" and "nays" to rise and be counted.
10. Members take their seats.
11. The clerk announces the names of members who voted in the affirmative, followed by those who voted in the negative.
12. The Speaker announces the result of the division.

When a division is called in the chamber the division bells are rung three times. Once a division has been called it cannot be withdrawn unless the House gives leave as such.

While the division bells are ringing the presiding officer remains in the chair waiting for members to assemble. Proceedings in the House are suspended: no member may raise a matter of debate on the question before the House. Matters of privilege cannot be raised during a division; however, the Assembly has permitted points of order.

Once the doors to the chamber are locked members may not enter or leave and all members present must vote. The vote proceeds when the chair announces, "All those in favour please stand". All members in favour stand in unison to be counted by the table officers. The chair then announces, "All those opposed please stand" and all members opposed stand, again to be counted by the table officers. The clerk announces the numerical result of the vote and reads the

names of all those voting in favour, followed by all those opposed. The chair then announces the result of the vote (e.g. "The amendment fails"). Members remain seated until that result is announced. Once taken, a vote stands as a decision of the House and cannot be changed. However, standing order 86 permits a bill that has passed third reading to be recommitted.

A member whose name has been missed or incorrectly called may correct the error immediately after the vote.

If a division is requested during private members' time, it is automatically deferred until 30 minutes before the ordinary adjournment of the House on the Monday.

The Speaker casts a vote only if there is a tie. Any reasons given by the Speaker for the casting vote are entered in the Journal.

In 1984–85 a committee was mandated to examine the standing orders. Rather than amending them it opted to enshrine certain practices in "practice recommendations". One of the committee's practice recommendations was that the record should show that a vote had both "yeas" and "nays" without actually calling for a formal division. Members of the Legislative Assembly may now request that the Votes and Proceedings show that any motion was carried (or defeated) "on division" without actually calling for a formal division.

The Legislative Assembly of British Columbia does not use electronic voting and is not currently considering doing so.

Manitoba Legislative Assembly

The Manitoba Legislative Assembly does not use electronic voting.

Newfoundland and Labrador House of Assembly

The "ayes" and "nays" are called for and a voice vote taken. The Speaker states his or her opinion of the result. If three or more members request a recorded vote the members are called in and a standing vote is taken, during which the individual votes are recorded and the number of votes on each side is announced by the clerk. The vote of each member is recorded in the minutes.

The matter of electronic voting has not been considered.

Ontario Legislative Assembly

The Speaker will put the question. If the Speaker does not hear any member say "no", the Speaker will declare the motion carried. This is known as a voice vote—the names of members voting for or against the question are not recorded.

The declaration of the Speaker that the "ayes" or "nays" have it can be challenged by any five members standing in their places. This means that a formal, roll-call recorded vote—known as a division—is required. In a recorded division each member's individual vote is recorded in the Votes and Proceedings

and Hansard. Members may abstain from voting on any question, but no abstentions are recorded.

The Legislative Assembly of Ontario is not currently contemplating electronic voting.

Prince Edward Island Legislative Assembly

There are a number of rules that describe the procedures for voting in the Prince Edward Island chamber.

Rule 40—All questions shall be decided by a majority of voices.

Rule 41—The Speaker shall, when the voices are heard, state whether in his or her opinion the "yeas" or the "nays" have it; and, unless the entering of names is demanded by any member, shall declare the motion carried or lost.

Rule 42(1)—When a division is called for, either before the question is put or after the voices have been given, the Speaker shall direct the Sergeant-at-Arms to call in the members.

Rule 42(2)—No debate shall be permitted after the question has been put by the Speaker or after the Sergeant-at-Arms has been directed to call in the members.

Rule 42(3)—The Speaker shall, no more than five minutes after directing that the members be called in, direct the clerk to read the question and call upon those voting in the negative to rise, and their names shall be entered in the daily journal.

Rule 42(4)—Then, the Speaker shall call upon those voting in the affirmative to rise and their names shall be entered in the daily journal.

Rule 43—When there is an equality of votes on a division, the Speaker shall cast the deciding vote and any reasons stated by the Speaker shall be entered in the daily journal.

Electronic voting is not used in Prince Edward Island, and it is not under consideration. The procedures for voice votes and for recorded divisions are clear and are well-accepted by members.

Québec National Assembly

Voting is carried out by a show of hands or a division.

Show of hands

A vote by a show of hands does not require members actually to raise their hands. Once a motion has been read the chair asks whether it is carried. If there is no oral opposition the chair declares the motion carried. If opposition is expressed, the chair decides whether the "yeas" or the "nays" are in the majority, and immediately declares the motion carried or negatived. In practice, the House leaders or their deputies inform the chair whether the parliamentary

groups they represent support the motion.

A vote by a show of hands can be considered an anonymous vote, since the names of members for and against are not recorded in the Votes and Proceedings of the Assembly. However, there is a seldom-used procedure that allows any member to require that his or her abstention or dissent, or the absence of unanimity, be recorded in the Votes and Proceedings.

Recorded divisions

For a recorded division to take place five members must request it. If the request is made by the House leader or deputy House leader of a parliamentary group, it is traditionally assumed to enjoy the support of five of the members of that group who are present. If the request is made by an independent member, the current practice is for the chair to accept the request if there are five independent members present who agree to it.

The vote is announced by division bells sounded throughout the precinct of the Assembly, at which point any committee proceedings are suspended.

The chair calls the vote when of the opinion that sufficient time has elapsed. A tradition is that no vote is held as long as one of the whips remains standing—an indication that his or her group is not ready to vote. Nonetheless the chair may put a motion to a vote whenever he or she judges that sufficient time has elapsed.

For a division to be taken members must be in their seats. The chair reads the motion aloud and has the "yeas", then the "nays" then the abstainers rise in their places, in a specific voting order. A Table officer calls out the member's last name and the name of his or her riding as each one rises.

Members present in the House must vote in one of the three ways provided for in the standing orders (yeas, nays and abstentions), but there is no sanction for failing to do so. Members who do not wish to express an opinion may leave the House before a motion is put to a vote—that is, before the motion has been fully read.

During a recorded division members may not enter the House after the question on the motion has been put nor leave the House before the result is announced. By custom, however, members who arrive late may participate in the vote with the unanimous consent of the Assembly.

Members may not speak during a division except to raise a point of order or privilege, and must remain seated until the result of the vote is announced.

When all members have voted the Secretary General communicates the result to the chair, who proclaims it to the House. Once the result is announced the chair may not change it without the unanimous consent of members. The names of members are recorded in the Votes and Proceedings, along with how they voted.

At the Government House Leader's request the chair may defer a division to a later time in the sitting or to the Routine Proceedings of the next sitting. Deferred divisions during Routine Proceedings take place immediately following Question Period, when most of members are present. Five minutes before the vote is to be taken, the division bells are sounded.

Electronic voting

There are no discussions underway in the Assembly about the possibility of using electronic voting.

Saskatchewan Legislative Assembly

Under rule 70 when there is a division the "yeas" and "nays" shall not be entered in the Votes and Proceedings unless that is requested by two members. To request a recorded division two members must stand in their places.

When the Speaker has put the question on a motion and a recorded division is requested, the bells sound for not more than 30 minutes on a debatable motion or not more than 10 minutes on a non-debatable motion.

Members are called individually by a clerk at the table, who records and reports to the Speaker the will of members.

The Legislative Assembly of Saskatchewan does not use electronic voting and is not currently considering doing so.

Yukon Legislative Assembly

Section 28 of the Legislative Assembly Act provides, "Questions arising in the Legislative Assembly shall be decided by a majority of votes cast". There are two exceptions.

Section 2 of the Ombudsman Act provides that the "recommendation of the Legislative Assembly" on the appointment or reappointment of an ombudsman shall be "made by at least two-thirds of the members of the Legislative Assembly." Section 18(4) of the Conflict of Interest (Members and Ministers) Act provides, "a resolution of the Legislative Assembly for the appointment or removal of a member of the [conflict of interest] commission must be supported in a recorded vote by at least two-thirds of the members present for the vote."

Once debate on a question has concluded the Speaker will ask members if they are "prepared for the question." Once they indicate that they are, the Speaker will ask if they agree or disagree with the question. The question will be decided by a voice vote, unless a division is called for. A division may be called in two ways. The first is for two members to rise in their places and say "division". The second is for the Speaker to call for a division on his or her own authority, if he or she "is unable to ascertain the count from the voice vote." In either case, once a division is called for "the Speaker shall immediately ring the

division bells", at which point "no further debate shall be permitted."

The rules on divisions are as follows. The bells must ring for at least two minutes, even if all members are present. This two-minute period allows members who do not wish to vote to leave the chamber. This is necessary because abstentions are not permitted. Standing order 25(6) states, "Each member present shall vote unless he or she has a direct pecuniary interest." If all members are present after two minutes the bells are shut off and the division taken. If not, the bells continue to ring until all members are present or until five minutes have elapsed. After five minutes the division is taken regardless of how many members are in the House.

The rules are not always strictly followed. It is a common practice for the division bells to be shut off and the vote taken once the House leaders have indicated to the Speaker that all caucuses are ready for the vote.

The senior clerk at the table conducts the division by calling out the name of each member in turn, beginning with the Premier and then all other members on the government side of the House, starting with the front row and then the back row. The clerk then begins with the Leader of the Official Opposition and proceeds through the official opposition caucus, the leader of the third party, the rest of the third party caucus and finally independent members (if any).

In order to vote members must be in their places once the bells have been shut off and before the division begins. They must remain in their places until the Speaker announces the result of the division. There have been instances where members have entered the chamber during a division. These members were allowed to vote so long as they were in their places by the time the clerk called their name. They received a reminder from the Speaker about proper procedure for a division, particularly the need to ensure that members at the end of the roll call are not given more time than members who are called first.

There have been instances where the clerk has not called the name of a member who was not in his or her assigned place. Some members have protested about this to the Speaker, but the Speaker has upheld the actions of the clerk and reminded the member about the proper procedure.

The Yukon Legislative Assembly does not use electronic voting and has not to date considered introducing it.

CAYMAN ISLANDS LEGISLATIVE ASSEMBLY

The Cayman Islands Legislative Assembly does not have electronic voting. Each member's name is called by the clerk and a vote is recorded on paper by the clerk.

CYPRUS HOUSE OF REPRESENTATIVES

Voting is by show of hands in the Cyprus House of Representatives.

An electronic voting system has been acquired for the chamber but has not yet been used, as there are ongoing discussions about its compatibility and adaptability amongst the leaders of the political parties in the House.

GUERNSEY STATES OF DELIBERATION

As explained in a miscellaneous note above, in 2014 the States of Deliberation rejected a proposal to introduce simultaneous electronic voting. Voting therefore continues to be by the following methods.

"De vive voix" (orally)—unless a specific request for a recorded vote (appel nominal) has been made in advance of the vote or at its announcement, the Presiding Officer will ask those in favour of the motion to call out "pour" all at once, then those against it to call out "contre" all at once. He will determine which side was in the majority and announce the result. If he is unsure or a member asks, an appel nominal will then be held.

"Appel nominal" (by roll call)—the other method of voting is by a roll call. The Greffier (clerk) will call out the name of each member in turn and the member will state "pour", "contre" or "je ne vote pas" accordingly. The Greffier will tally the results and pass them to the Presiding Officer to read out and announce. A few days later details of how each member voted are published on the Assembly's section of the States' website.

The names are called out by electoral district. The member who polled the most votes in that district is called first, the second-placed member second, and so on. Districts are called in anti-clockwise order going round the island. However, each month the voting starts with the next district in turn.

A result can be challenged by a member. If so, a fresh division takes place.

There is no proxy voting system. There is no system of bells or other method of announcing that a division is to take place. If a member is not present when the vote begins he is unable to vote.

Voting on elections to posts on committees is held in one of two ways. If the position is uncontested, confirmation of the appointment will be sought using the "de vive voix" method.

If the position is contested then members will vote using slips with their names on. Those are counted outside the chamber by the clerk, then the Presiding Officer is given the figures to announce the result. A few days later a list of how each member voted is published on the website. If the election resulted in a vacancy on a committee, for example because an ordinary member became the chairman, then publication of the result is delayed until that other post has been filled.

INDIA

Lok Sabha

There are three methods of holding a division in the Lok Sabha: (i) by the automatic vote recorder; (ii) by distributing "ayes" and "noes" slips in the House; (iii) by members going into the lobbies. However, the method of recording votes in lobbies has become obsolete since the installation of the automatic vote recording equipment.

Automatic vote recording

The automatic vote recording system has been in use since 1957. The system has been upgraded from time to time, the latest being in 2014.

Each member casts his or her vote from his or her allotted seat by pressing a button. There are buttons for "ayes", "noes", "abstain" and "present", together with a "vote initiation" switch.

When the chair orders a division to be held the Secretary General, on whose table is a touch screen for operating the automatic vote recording equipment, presses the "start" button. An audio alarm signals to members to cast their votes. Each member has to press the "vote initiation" switch with one hand and press one of the three buttons with the other hand. The button and the "vote initiation" switch must be kept pressed simultaneously until the audio alarm sounds for a second time after 10 seconds. An error in voting may be corrected by pressing the correct button simultaneously with the "vote initiation" switch, before the second audio alarm sounds. A light by each seat indicates that the vote has been recorded.

There are four result-display plasma screens in the chamber. Coloured lights on the screens indicate how each member is voting. After ten seconds have elapsed an audio alarm sounds and the results are displayed on the screens. Then the chair announces the result. Any corrections recorded by members are added to or subtracted from the result before it is announced by the chair only if the result is very close. In other cases the chair announces the result, subject to corrections, as it appears on the display screens and the corrections indicated by members are in due course incorporated in the printed Debates.

A print out of every division result, together with the corrections given by members to division clerks, is put on the notice board in the Outer Lobby as soon as possible to enable members to check that their votes have been correctly recorded. Any discrepancy noticed by a member in the print out is required to be reported to the Secretary-General in writing without delay.

A member who is not able to record his or her vote by pressing a button due to any reason considered sufficient may, with the permission of the chair, have his or her vote recorded before the result of the division is announced. If

a member finds that he or she has pressed the wrong button or voted from the wrong seat, the member may correct the mistake, provided he or she brings it to the notice of the chair before the result of the division is announced.

Any secret votes follow the same procedure except that the lights on the result-display screens do not indicate how each member voted.

Distributing slips

The method of recording votes by distributing slips is generally used when there has been a sudden failure in the working of the automatic vote recording equipment; or at the commencement of a new Lok Sabha, before seats and division numbers have been allotted to members.

Physical count of members in their places

If, in the opinion of the chair, a division is unnecessarily claimed, the chair may ask members who are for "aye" and those for "no" respectively to rise in their places and, after a count is taken, may declare the determination of the House. In such cases the particulars of voting of members are not recorded.

Casting vote

If in a division the number of "ayes" and "noes" is equal, the question is decided by the casting vote of the chair.

Under the constitution the Speaker or the person acting as such cannot vote in a division; he or she has only a casting vote which must be exercised if there is an equality of votes.

Rajya Sabha

Rules 252, 253 and 254 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha) provide the following four methods of voting:

(i) voice vote;
(ii) counting;
(iii) division by automatic vote recorder; and
(iv) division by going into the lobbies.

Under the first two methods votes are not recorded, while under the remaining two votes are recorded and become a permanent record. The Rajya Sabha has used an automatic vote recorder (electronic voting) system since 1957 for voting in the House.

Chhattisgarh Legislative Assembly

Voting in the chamber is normally taken by voices; a division is taken if any member so desires. The Speaker determines the method of taking votes by

division. The result of the division—i.e. the total numbers of "ayes" and "noes" on the question—is then announced by the Speaker. Electronic voting has not been adopted and there is no proposal under consideration for it.

Himachal Pradesh Legislative Assembly

Electronic voting has been introduced in the Himachal Pradesh Legislative Assembly.

Kerala Legislative Assembly

There are two procedures for voting in the Kerala Legislative Assembly: voice vote or electronic vote. Electronic voting is by a computer-controlled system called the Digital Congress Network (DCN) system. This is an integrated, computer-controlled, conference cum electronic voting cum simultaneous translation system. The operator, under direction from the chair, initiates a voting session. There is an intercom link between the operator and the chair.

A voting control switch on each member's desk must be pressed and held down in order to make the voting keys functional. There are voting keys for "present", "no", "abstain" and "yes". Members have to first register attendance by pressing the "present" key. After that the LEDs above the other three keys start flashing. After a vote has been cast, the LED above the key remains lit and the other LEDs go off. A member can change his vote and press a different key while voting is underway.

If there is "open voting" a geographic display shows the voting status of each member. Another display shows the results of voting. It may also be used to display messages to members.

An advantage of the electronic voting system over the conventional system is that the results are fast and accurate. It displays the correct number of votes in favour of the motion and against the motion, and those who abstained. Display lights indicate whether a vote has been polled correctly. The system is very user-friendly and convenient. The process is complete in minutes so that numerous votes can be held without difficulty.

Meghalaya Legislative Assembly

Voting in the Meghalaya Legislative Assembly chamber is by a voice vote, a head count of members, a division of members into "yes" and "noes" lobbies, or a secret ballot. The Assembly has not decided to have electronic voting.

Uttar Pradesh Legislative Assembly

The procedures for voting in the Uttar Pradesh Legislative Assembly are by shows of hands or writing. Electronic voting is not used and is not under consideration.

STATES OF JERSEY

Voting in the States chamber in Jersey takes place in one of two ways. For uncontroversial matters voting is by a standing vote where the Presiding Officer calls on those in favour to stand in their places before calling on those against to stand. All significant votes are nevertheless taken using the electronic voting system that was introduced in 2003.

Before the introduction of electronic voting recorded votes were taken through the "appel nominal", where the Greffier of the States (clerk) read out the names of members in order of seniority and members replied "pour" (in favour) or "contre" (against), or abstained from voting. The decision to introduce electronic voting was taken partly because the "appel nominal" was time-consuming when there were several votes but, more importantly, because members could theoretically be influenced by those who had already voted. Electronic voting overcame this potential risk by requiring all members to push a voting button simultaneously.

Members must be in their designated seat to vote and the Presiding Officer will allow a very brief period after a vote is called for members to return to their seats. Once voting is opened by the Greffier members must press the appropriate button to record their vote. During this time a member can still push an alternative button if he or she has inadvertently pressed the wrong button or has a last-minute change of mind. After approximately 30 seconds the Presiding Officer asks the Greffier to close the vote; at this point the votes are recorded and it is too late for members to change their votes.

When the system was introduced there was some concern that the public nature of votes being called out under the old "appel nominal" would be lost under the new system. As a result standing orders were amended to allow any member to ask for the names of those voting to be read out by the Greffier after the Presiding Officer had announced the numerical totals. By convention members will normally ask only for either those voting for or against to be read out although members can, and occasionally do, ask for all names to be read out. The full results are recorded in the States minutes and in Hansard. In order to preserve the French-speaking heritage of the Assembly the voting buttons on members' desks are labelled "P" (pour), "C" (contre) and "A" (abstentions). In addition, although members' names are no longer called out, the electronic voting is still known by members as the "appel".

The system is normally reliable from a technical point of view. There have been only two occasions since 2003 when a technical fault has caused voting to revert to the old "appel nominal" system.

MAURITIUS NATIONAL ASSEMBLY

Decisions in the Assembly are taken by a vote on questions proposed by the

chair. Votes are determined by a majority of the members present and voting.

Where votes are taken by division, the division bells ring for two minutes. The division is taken by the clerk by asking each member separately, beginning with the member who is last in the order of precedence. A member may state that he declines to vote and in such case the clerk records his name as such. The result of the division is declared by the Speaker or the Chairperson of Committees of the whole Assembly.

The Assembly does not use electronic voting and it is not on the agenda for the time being.

NEW ZEALAND HOUSE OF REPRESENTATIVES

The standing orders provide for three procedures for voting: voice vote, party vote and personal vote.

At the end of a debate the Speaker states the question for the House and asks if the House agrees to the motion. All questions put to the House are decided by a majority of votes in favour of, or against, the question. Exceptions to this rule are changes to certain provisions of the Electoral Act 1993 and proposals for legislative provisions to be entrenched. There is no casting vote for the presiding officer; in general, if a vote is tied the question is lost.

The House votes initially by a voice vote. The Speaker determines on the voices whether the "ayes" or "noes" have a majority.

The putative minority, if not satisfied with the declared result of a voice vote, may call for a further vote to be held. Unless it is a conscience issue, the subsequent vote is a party vote.

The party vote procedure was introduced in 1996, based on a system used in the Netherlands. Votes are cast as a block by party representatives, usually the whips, on behalf of each of the parties recognised in the House. The Clerk of the House calculates the total "ayes", "noes" and abstentions, and hands the list to the Speaker, who declares the result to the House.

When a party vote is called any member present on the parliamentary precincts may automatically be included in the vote total cast for that party; members do not need to give their whip specific authority to vote on their behalf. Members attending select committee meetings outside the precincts or who are overseas on official inter-parliamentary business are regarded as "present" for this purpose. In addition to members present on the precincts, a party may include proxies in its total vote. Proxy votes may not exceed 25% of a party's membership in the House, although this limit does not include members who have been given leave of absence by the Speaker to attend public business or on account of illness or other family cause of a personal nature (for example, parental leave or compassionate leave).

Since 2005 parties have had the right to cast split-party votes. This means

that parties may distribute their votes over the three options of aye, no and abstention, if their members do not all wish to vote the same way. However, party voting has not removed the ultimate right of members to cast their votes themselves, rather than having them cast by a whip, if they wish to vote differently to their party.

The number of votes cast for each party in a party vote are recorded in the Journals and in Hansard. The votes of independent members and members voting contrary to their parties are listed by name. Where a party casts a split-party vote, it must immediately submit a list of the names of its members voting in the various categories for the record.

If a vote is judged to be on conscience issue, a personal vote is held. The decision to grant a personal vote rests with the Speaker, but such matters are invariably discussed by the Business Committee beforehand. This pre-warning enables members to arrange proxy votes as necessary.

The personal vote is held as a division of the House, with members physically moving to the ayes or noes lobbies. Those abstaining go to the clerk at the Table, in front of the Speaker. On a personal vote members are bound to vote in the same way as they indicated orally when the question was put to the House at the conclusion of the debate. A personal vote is complete when the Speaker announces the result to the House.

The results of all personal votes, with the names of members voting or abstaining, are recorded in the Journals. The vote lists show if a vote or abstention was cast by proxy. There is no limit on proxies for a personal vote, although a minimum of 20 members must participate if the vote is to have effect.

Electronic voting is not currently under consideration.

UNITED KINGDOM

House of Commons

A question to be voted on is put from the chair, by the Speaker or a Deputy Speaker, or by the occupant of the chair in committee of the whole House, in the form:

"The question is […]. As many as are of that opinion, say "aye". [pause …]
Of the contrary, "no". [pause …] I think the ayes/noes have it. [If no dissent:]
The ayes/noes have it."

If, however, there are continued calls from the other side, the chair calls out: "Division! Clear the lobby".

Most questions put from the chair are decided by the voices of members in the chamber.

However, if there is dissent and a division is called, the bells ring throughout the Commons part of the parliamentary estate, with an indication of a division

in the Commons appearing on House of Lords annunciators (annunciators are television screens on the parliamentary estate which display a caption about business in either House). It is now less common for division bells to be in houses or restaurants near to the Houses of Parliament.

Before a division takes place those voting "aye" or "no" must each appoint two members as tellers, whose job it is to count the members and report the result of the vote to the House. (Most divisions are called by the front benches and the tellers are then government and opposition whips.) After the bells have rung for two minutes the chair puts the question again and if the chair's decision ("The ayes/noes have it") continues to be challenged, the chair then says:

> "Tellers for the ayes [name of member] and [name of member]; tellers for the noes [name of member] and [name of member]."

The tellers take their places at exit doors of the two division lobbies in order to count members leaving the lobbies. One teller from each side goes to each lobby. The exit doors are locked during this time, except to admit three division clerks.

As members walk through the lobby (divided into three alphabetical groups) the clerks mark their names against a list. They then go past the tellers. One of the tellers counts out loud (periodically making a note of the number reached on a piece of card, when there are pauses in the members coming through) and the other checks them.

After eight minutes (or occasionally longer) the chair says "Lock the doors", and the doorkeepers lock the three entrances to each lobby. Any member who has not returned to the chamber by this point will be unable to vote. The last occupant of each lobby, usually a whip, calls "all out". By this point members have returned to the chamber. The tellers must then return too.

A division must therefore take at least eight minutes, but it rarely takes less than 10 minutes and sometimes more than 15 minutes. Often whips remind their members which way (if any) their party is voting.

When the numbers have been counted, the tellers line by the table in front of the chair, with the tellers for the majority to the chair's left. They walk forward and bow to the chair. The teller standing near the opposition despatch box announces the numbers who have voted aye and no. A clerk standing by the despatch box takes the written figures to the chair, who reads the figures again, and then announces, "So the ayes/noes have it". The result is displayed on the annunciators and the Speaker moves on to the next business.

Most votes on a motion take place immediately after the end of the debate on that motion. For some votes, a system of "deferred division" is used. This system was introduced on an experimental basis in the 2000–01 session and became permanent in October 2004. It involves deferring the vote on an issue to a specified time (between 11.30 am and 2 pm) on the following Wednesday

on which the House sits, as a largely paper-based exercise. Deferred divisions originated from proposals by the Modernisation Committee in 2000. They may not be used for certain types of business, including divisions during proceedings on bills, divisions on motions which may be made without notice and divisions on motions to which amendments are moved.

On the Wednesday on which there is a deferred division, a ballot paper is circulated in the Vote bundle listing the questions to be decided. Each question will have an "aye" or "no" box printed against it, and members are asked to sign the paper and print their name. Three division clerks are on duty in the "no" lobby to collect ballot papers from members and mark them as having voted. There are no tellers; the Clerk of Divisions is responsible for counting votes on the division lists (although the counting is done electronically by Hansard using software that reads the result from scanned division sheets). The Speaker announces the result in the chamber at a convenient moment.

No decision has yet been taken to use electronic voting in the House of Commons. In its 1st report of session 2012–13 on *Sitting hours and the Parliamentary calendar* (HC 330), the Procedure Committee announced that it intended to look in more detail at the issue of voting, including whether to introduce electronic voting, in a later inquiry. No such inquiry has been undertaken, or planned, since the change in the chairmanship of the committee shortly after that report was published.

The Select Committee on Modernisation of the House of Commons outlined a number of possible options for electronic voting in its 5th report of session 1997–98. In its 6th report of that session the committee reviewed the results of a questionnaire it had issued to members, concluding that no single alternative to the present system commanded any great support and that all of them were regarded as unacceptable by between 46% and 65% of respondents. By contrast the present system was preferred by an absolute majority (53%) and was acceptable to 70%.

In the light of these clear findings the committee decided to pursue the matter no further, except for two detailed points:

- The Clerk of the House was asked to investigate means of modernising the method of marking names by division clerks with a view to speeding up production of the marked list. Photocopies of the division sheets are made immediately after the division and are sometimes collected by the whips or the media. Hansard usually produces a report for internal use on how members voted within 40 minutes of the division by scanning the marked-up division sheets and using specific software. The names appear in the "rolling" online Hansard about three hours after the vote and in the printed Hansard the next morning.
- The committee's other proposal—that an appropriate method be introduced

to give members the option of recording an abstention—which had received strong or general support from a majority of respondents, has not been pursued.

The Speaker's Commission on Digital Democracy which reported in January 2015 displayed a shaky understanding of the current voting system in suggesting that "Votes need to be counted at the end of a division". In fact, as the tellers count each member as he or she emerges from the lobby, the total is immediately obtained when the last member leaves the lobby. The Commission recommended that in the 2015–16 session the House of Commons should move to recording votes using MPs' smart identity cards but retain the tradition of walking through division lobbies. No decision has yet been made on implementing this recommendation, although experience in the House of Lords with the division clerks using electronic tablets instead of pen-and-paper is being followed with interest. Meanwhile the raw data from Commons divisions are being published in JSON and HTML formats to enable developers to use or combine the data in any way they wish.

House of Lords

In the House of Lords most motions or amendments are decided by the Lord Speaker taking the voices of members present. If there are voices both for and against, but it is clear that there are more voices on one side, the Lord Speaker will say "I think the contents [or not contents] have it." If the decision continues to be challenged a division is called.

During a division members have eight minutes to enter the chamber and file into the content or not-content lobby. After three minutes the Lord Speaker puts the question again, and there must be at least one voice calling "content" and one "non content" for the division to proceed. If there are not, or if two tellers are not appointed for each side, the division does not proceed and the question is decided in favour of the side who did call after three minutes or who appointed tellers.

Division clerks in the lobbies record members' names, with the tellers recording numbers. Members may vote in the chamber, usually on the ground of disability. They may correct a mistaken vote in the wrong lobby. Voting in both lobbies disregards a member's vote. The Lord Speaker is expected not to vote, but her deputies may vote like any other member.

The Lord on the Woolsack has no casting vote. If there is a tie the division is decided in accordance with a standing order, which in summary provides that a motion on a stage of a bill or to approve a statutory instrument is agreed to, but most amendments and other motions are disagreed to.

The House has trialled and (at the time of writing) is about to introduce a system for electronically recording members' votes. The paper division lists

used by clerks in the division lobbies will be replaced by tablet devices, with the clerks recording members' names on touch screens.

The move to electronically recording members' votes was prompted in large part by the increasing time taken to record divisions, caused by the increasing number of members voting in them. In 2008–09 an average of 206 members voted in a division; in 2013–14 it was 394.

Electronic recording will slightly speed up the time taken to record a division, as the clerks will no longer have to count the number of names crossed off on sheets. Instead the figure will be available as soon as the last member has walked through the lobby. It will make the electronic record of a division available soon after it has finished, including on the parliamentary website. Previously the clerks' sheets were scanned and checked before the data were electronically recorded.

Northern Ireland Assembly

The Assembly does not use a fully electronic voting system. It operates a hybrid process whereby the Assembly still divides and members cast their votes by moving through two lobbies. However, votes are set up electronically through the Business Office AIMS system, counted and processed electronically in the lobbies, with results shown in real time and processed electronically at the Table. The system calculates results for both cross-community and simple majority votes, and produces a script which allows the result to be read into the record from the Table.

The possibility of moving to fully electronic voting has been considered; however no change has been made to date. The decision not to proceed has been based primarily on the cost of implementation and because there is no real dissatisfaction with current arrangements.

Scottish Parliament

The Scottish Parliament has used electronic voting in the chamber since its establishment in 1999. There are yes, no and abstain buttons on consoles on each member's desk. Voting usually takes 1 minute or 30 seconds. Most voting takes place at "Decision Time" towards the end of a sitting, but for some items (particularly votes on amendments to bills) votes are taken immediately at the relevant point in proceedings. The standing orders provide for roll-call voting (or an alternative method) to be used in the event of a failure in the electronic voting system.

National Assembly for Wales

The Assembly has used electronic voting in the debating chamber since it was established in 1999. Standing order 12.43 provides:

"The Presiding Officer must put a motion or an amendment to a vote by electronic means; or failing that, either:

(i) if the Presiding Officer so decides, by show of hands, provided no more than two members object to the Presiding Officer's decision; or

(ii) by roll call, in alphabetical order, of the membership."

When the Assembly is required to take a decision on an item of business members are invited to agree that business. If no member objects the business is deemed agreed. If any member objects the business must be put to an electronic vote. Members may be asked to vote immediately or, more commonly, at a designated "Voting Time". Voting Time appears as an item on the plenary agenda, when all votes which have been deferred are taken. Its timing is decided by the Government in the case of government business and by the Business Committee for non-government business. Normally it will be after the last item of business on a Tuesday and before the Short Debate on a Wednesday. During consideration of legislation voting on amendments happens during the course of the debate, rather than being deferred. Before a vote is taken, when at least three members so request, the bell must be rung. Five minutes after the bell begins ringing, the vote or votes must be held.

Each member has a desk in the chamber with a voting panel and a slot for an identification card. If necessary members can move seats in the chamber and insert their identification card into a different voting panel. In doing so, the voting software recognises which member has cast the vote.

A member's voting panel has three buttons: green to vote in favour; white to abstain; red to vote against.

The voting software is run by a member of the clerking team. When members are required to vote, the Presiding Officer calls "open the vote" and a message appears on members' computer screens detailing the motion/amendment they are being asked to vote on. At that point members press the button of their choice.

When members have cast their votes a message appears on individual screens to show which way they have voted. Once the Presiding Officer calls "close the vote" it is not possible to change the vote cast. If the votes are equal the Presiding Officer will cast his or her own vote electronically. Once the result of a vote has been announced by the Presiding Officer it is displayed on video screens around the chamber.

Decisions taken during plenary are published as soon as possible after the meeting; in accordance with standing order 12.49 this includes a vote summary containing full details of how each member voted.

There have been very few technical issues with the electronic voting software over the last 15 years. On occasions when a member's voting card has failed the vote has been postponed, re-run or the member has declared their vote

orally. In April and May 2014 proceedings were suspended at Voting Time due to a technical fault. On the first occasion the problem was resolved in time for the votes to be conducted electronically. On the second occasion members agreed to the Deputy Presiding Officer conducting the vote by show of hands in accordance with standing order 12.43; the only time this has had to be done.

There are two specific circumstances where votes would not be conducted electronically. If there was a contested election for the post of Presiding Officer or Deputy Presiding Officer, members would vote in a secret ballot. If there were more than one nomination for the post of First Minister, the election would be conducted by roll-call.

PRIVILEGE

AUSTRALIA

House of Representatives

On 24 February 2014 the House referred to the House of Representatives Committee of Privileges and Members' Interests the following matter:

> "whether in the course of his statement of 21 May 2012, and having regard to the findings of the Melbourne Magistrates Court on 18 February 2014 in relation to Mr Thomson, the former member for Dobell, Mr Craig Thomson, deliberately misled the House."

On 21 May 2012 the then member for Dobell made a statement to the House on allegations about his conduct during his employment before he became a member. Although precedence was not given to refer a matter of privilege, following this statement the House referred to the Committee of Privileges and Members' Interests the matter of whether, in the course of his statement to the House, the member had deliberately misled the House. In February 2013 the member was charged with a number of criminal offences, so the *sub judice* convention was engaged and the committee suspended its inquiry. Upon the dissolution of the House of Representatives on 5 August 2013, before a general election, the inquiry lapsed. On 18 February 2014 Mr Thomson was found guilty of some of the offences and a fine was imposed.

Senate

CCTV surveillance and the rights of senators

Any conduct may constitute an offence against a House (i.e. a contempt) if it "amounts to, or is intended or likely to amount to, an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member".[1] In its 160th report the Senate Privileges Committee considered allegations of improper interference arising from the use of CCTV material in Parliament House.

In February 2014 the Department of Parliamentary Services (DPS), investigating a staffing matter, used footage from the Parliament's CCTV system to try to establish the movements of one of its employees in the Senate wing of Parliament House. A question of privilege arose when it emerged, in an estimates hearing of the Finance and Public Administration Legislation Committee in May, that the footage included images showing the employee placing an envelope under the door of a senator's office.

[1] Section 4 of the Parliamentary Privileges Act 1987.

Two matters associated with this incident were referred to the Privileges Committee.

Possible improper interference with senators' duties

The first matter focused on a concern that people might be deterred from providing senators with information if they thought they were being monitored, thus limiting the information available to senators and, in particular, constraining their committee work. Separate from the general concern about such deterrence, the committee recognised the potential for interference with parliamentary oversight of DPS itself. The committee noted other factors that might contribute to apprehensions, including media reports in 2011 alleging that DPS had used security cameras to try to identify departmental whistle-blowers providing information to the same senator.

DPS made three main arguments here:

- that DPS officers could not have known the interaction caught on camera was connected to parliamentary business and so could not have known they might be obstructing it—whatever the merits of that case, documents provided to the committee demonstrated the opposite;
- that the senator had not been hampered in his ability to gather information—DPS cited the fact that the employee apparently returned to the senator with concerns about the investigation, but did not address the likelihood of others being deterred from providing information (which had been the main complaint raised);
- that there could be no improper interference where the use of CCTV footage "was authorised under, and in accordance with, procedures approved by the Presiding Officers"—in this case, a CCTV code of practice. The committee dismissed this argument, finding it inconsistent with well-established principles about the primacy of the powers and immunities of the Houses and their members. In any case, the committee found that the particular use of CCTV footage was not authorised by the code of practice, and that the provisions of the code had not been adhered to.

The committee found that DPS had used the CCTV system without proper authorisation and with a lack of accountability to the Presiding Officers, on whose behalf they manage the system, and to the Parliament itself. The committee concluded that action was required to remove any apprehension that the system might continue to be used in an unauthorised manner (see below).

Disciplinary action

The other matter raised was the question of whether disciplinary action was taken against the employee in connection with her providing information to a senator. Inflicting a penalty upon a person because he or she provided

information to a senator may be a contempt, if there is a sufficient connection to parliamentary business.[2]

DPS argued that the disciplinary proceedings could not have been initiated as a result of the provision of information to Senator Faulkner—the timing didn't allow it. The committee accepted this, but noted that it was impossible to establish whether subsequent stages of the investigation and later decisions affecting the employee were influenced by information gained from the unauthorised use of the CCTV system. If any such action was taken against the employee in connection with the provision of information to the senator, it would be open to the Senate to deal with that action as a contempt.

Although the committee made no finding here, it noted that the adverse inferences drawn by DPS officers in response to the discovery of the contentious footage demonstrated the inherent risk in allowing access to CCTV material of this kind for such purposes.

Misleading and contradictory evidence

The DPS Secretary told the estimates hearing in May 2014 that the matters referred to the Privileges Committee had come to her attention only as questions were asked that morning. However, the DPS submission and additional documents demonstrated that the Secretary had been informed of events as they transpired three months earlier. The committee was unable to reconcile this contradictory evidence and resolved to draw it to the attention of the legislation committee. The committee concluded that the legislation committee had been misled about the Secretary's knowledge of events, and that the misleading of the legislation committee in these circumstances was a serious breach of accountability and probity.

Recommendations

The Senate's contempt jurisdiction is intended to protect the Senate, its committees and its members against improper interference in their work.[3] This involves an assessment of what action may be required "to provide reasonable protection for the Senate and its committees and for senators against acts tending substantially to obstruct them in the performance of their functions".

In this case, rather than recommending a contempt be found, the committee recognised that remedial action lay in the hands of the Presiding Officers, under

[2] See also Committee of Privileges, *Parliamentary privilege: Precedents, procedure and practice in the Australian Senate 1966–2005* (125th report), at paragraphs 4.79 to 4.84.

[3] This is reflected in the statutory definition of contempt in section 4 of the Parliamentary Privileges Act 1987 and in Senate resolutions guiding the consideration of contempt matters. See in particular resolutions 3, 4 and 6 of the Senate's privilege resolutions adopted on 25 February 1988.

whose authority the CCTV system is operated, and recommended a wide-ranging review of its administration. The committee cited concerns about the lack of external accountability in the use of the CCTV system, and noted that it had "similar concerns arising from the disregard for the powers, privileges and immunities of the parliament which [had] been on display during the investigation of this matter." The committee recommended that senior officers in the Department of Parliamentary Services undergo structured training to acquaint themselves with the principles of parliamentary privilege.

Australian Capital Territory Legislative Assembly

A matter of privilege was raised in which it was alleged that a minister had knowledge of private deliberations of an Assembly committee prior to a report being tabled in the Assembly. The motion to establish a select committee on privileges was defeated on 13 May 2014 and the Assembly, on 15 May 2014, referred the operation of standing order 241 (disclosure of proceedings, evidence and documents) to the Standing Committee on Administration and Procedure for inquiry and report, with particular reference to the practice of the New Zealand Parliament.

New South Wales Legislative Council

Disputes during pre-election non-sitting period

In November 2014 the House passed a resolution delegating the power to publish documents which are the subject of a disputed claim of privilege to the Privileges Committee; the role is usually performed by the House. As the House would not sit again before the election this mechanism allowed consideration of the publication of documents where a claim for privilege was not upheld by the arbiter.

In December 2014 the claim of privilege on documents returned to the order for papers relating to Byron Central Hospital and Maitland Hospital was disputed. In accordance with the resolution the report of the independent legal arbiter was referred to the Privileges Committee, which authorised publication as per the recommendations of the arbiter.

Queensland Legislative Assembly

Alleged intimidation of a member by a law firm

The matter related to a letter from a law firm to the Leader of the Opposition. The law firm was acting for the former chief executive officer of the Department of Transport and Main Roads, who had been referred to the Ethics Committee for allegedly deliberately misleading an estimates committee.

The letter in part insisted that the Leader of the Opposition "not repeat any such allegations or statements in any forum". The committee reported on 6

March 2014 and concluded that the letter was threatening or intimidating in relation to the Leader of the Opposition's conduct in the House. However, the committee found that there was insufficient evidence to conclude that the words in the letter were intended or were likely to amount to an improper interference with the member's duties.

The committee made some recommendations to create greater awareness in the legal fraternity of the powers, rights and immunities of Parliament, including by publishing information in the *Queensland Law Society Journal*.

Alleged failure to declare interest to the House

The matter concerned an allegation that the member for South Brisbane failed to declare an interest to the House during divisions on the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill. The Ethics Committee reported on 22 May 2014.

Standing order 260 requires members to declare any pecuniary interest that they or a related person has, if that interest is greater than the interest held in common with subjects of the Crown or members of the House generally. Members must make the declaration at the beginning of their speech or as soon as practicable after a division has been called, if they intend to vote in the division.

The member's register of interests included an interest in a trust that had an interest in a law firm. The member's husband had a direct legal interest in the same law firm. That law firm acts for various organisations, including employers, insurers and self-insurers.

The committee's view was that the member had an indirect pecuniary interest in the firm, via the trust and by virtue of her husband.

After applying precedents and guidance from Queensland and New Zealand, the committee found that the member's pecuniary interest was not greater than subjects of the Crown or members generally. Therefore the member was not required to make a declaration.

However, the committee suggested that the standing order be reviewed and that "a member should be required to declare a pecuniary interest in a matter where a person with knowledge of the relevant facts would reasonably regard the interest as so significant that it might influence a member's vote or speech on the matter in question".

Select Committee on Ethics—suspension of inquiry into evidence of acting chair of Crime and Misconduct Commission to Parliamentary Crime and Misconduct Committee

It was reported in the 2014 edition of *The Table* that the acting chair of the Crime and Misconduct Commission (CMC) had possibly misled the

Parliamentary Crime and Misconduct Committee (PCMC) (see volume 82, pp 69–72). A select committee was established on 21 November 2013 to consider the evidence given by the acting chair of the CMC. A select committee was established because the PCMC and the Ethics Committee had five members in common.

On 11 April 2014 the committee received correspondence from the member for Rockhampton. The member advised that he had written to the police commissioner, asking the commissioner to investigate the acting chair of the CMC for a possible offence against section 57 of the Criminal Code. Section 57 relates to giving false evidence before Parliament. Knowingly giving false evidence to the Assembly or a committee carries a maximum penalty of seven years' imprisonment.

The committee considered whether it should suspend its inquiry, given that it may interfere with or prejudice a police investigation. In doing so, the committee followed tests outlined in Ethics Committee interim reports 134 and 136. The committee wrote to the police commissioner. The view of the Queensland Police Service (QPS) was that the committee should suspend its inquiry until the QPS concluded its investigation, to "avoid any suggestion of double jeopardy adversely affecting a just outcome".

In February 2015 the QPS announced that it had concluded its investigation and charges were under final consideration. On 27 March 2015 the Legislative Assembly referred the select committee's inquiry (which had lapsed at the dissolution of Parliament) to the Ethics Committee.

Alleged failure to register interests

This matter concerned an allegation that the member for Barron River knowingly failed to register his shareholdings in and directorships of a number of companies and a voluntary organisation in the Members' Register of Interests. On becoming aware of the omission of his directorship of the voluntary organisation, the member sought advice and updated the register.

The Ethics Committee reported on 16 October 2014. The committee found that the member was required to register his interests in all but one of the companies referred to in the allegation. The committee concluded, however, that the member did not knowingly fail to register the interests, as he acted under the false assumption that his accountant had acted on his instructions to deregister the relevant companies. The committee, therefore, found no contempt.

The committee recommended that the member apologise for failing to register his interests. The committee reminded all members of their responsibility conscientiously to comply with the requirement to register interests, to seek advice and to correct inadvertent errors as soon as they come to their attention.

The committee also reminded members that they should not seek to delegate their responsibilities to accountants or financial advisers.

Alleged attempt improperly to influence conduct of a member

This matter concerned an allegation that an individual attempted improperly to influence the member for Gympie in his conduct as a member of Parliament by way of a bribe or threat.

On 22 May 2014 the Ethics Committee suspended its consideration of the matter until after the Queensland Police Service concluded its investigation of a related matter. The committee recommenced its consideration on 11 September 2014, after being advised that the police had closed their investigation.

The committee reported on 30 October 2014. It found that while the member for Gympie felt intimidated by the individual's actions, there was no evidence of any direct attempt to threaten or intimidate the member.

The committee considered whether there was a link between the individual's actions and the member's free performance of his duties as a member. The committee considered that theoretically there could have been a link to a potential disallowance motion of subordinate legislation. However, in reality there was no evidence of such a link. The committee also found no evidence of any public mischief, corruption or breach of trust. The committee recommended no further action be taken.

South Australia House of Assembly

The following question of privilege (with merit) was addressed by the Speaker in 2014.

Impact of Independent Commission Against Corruption Act on parliamentary committees

The Speaker of the House of Assembly provided the following response to a query from a member of a parliamentary committee who indicated that a witness had declined to answer questions on the understanding that he would contravene the Independent Commission Against Corruption Act (ICAC Act) if he provided answers.

Parliamentary privilege is not affected by provisions in statutes that create criminal offences about disclosure of information. In this instance this point was reinforced by section 6 of the ICAC Act, which states that nothing in the Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees and members. State statutory provisions that create criminal offences about disclosure of information do not prevent disclosure to a House of the Parliament or to a parliamentary committee in the course of an inquiry. They have no effect on the powers of the Houses and

their committees to conduct inquiries and do not prevent committees seeking information nor persons who have information providing it to committees. The basis of this principle is that parliamentary privilege provides absolute immunity to the giving of evidence before a House or a committee. In South Australia the law of parliamentary privilege is covered by section 38 of the Constitution Act 1934 and is derived from article 9 of the Bill of Rights 1689.

Victoria Legislative Assembly

A member of the Legislative Assembly, Mr Shaw, was found to have misused his parliamentary entitlements. However, after a lengthy investigation he was not found to be in contempt of Parliament.

The Privileges Committee found that Mr Shaw had enabled his car to be used for commercial purposes and that he used his parliamentary fuel card to purchase fuel for his private vehicle. The committee found that these actions were in breach of the members of parliament code of conduct. The code is set out in the Members of Parliament (Register of Interests) Act 1978. The code provides that members shall "accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests" and "ensure that their conduct as members must not be such as to bring discredit upon the Parliament" (section 3(1)(a) of the 1978 Act).

The committee considered whether Mr Shaw, in breaching the code, was in contempt of Parliament. The Act provides that "any wilful contravention of any of the requirements of this Act by any person shall be a contempt of the Parliament" and allows for a fine of up to $2,000 (section 9). The committee received legal advice on the definition of "wilful" and on the standard of proof that should be used. The advice was included in the final report tabled by the committee. The committee agreed to use a high civil standard of proof—that is, as "determined on the balance of probabilities, but, given the seriousness of the allegations, requiring proof of a very high order". The committee found that Mr Shaw was not in contempt of parliament as it was "unable to be satisfied to the requisite standard".

A minority report from the opposition members on the committee was tabled with the report. The minority report concluded that Mr Shaw's conduct constituted wilfulness and that he should be found in contempt of Parliament.

The matter was referred to the Privileges Committee in an interesting way. A whistle-blower contacted the Speaker, who referred the matter to the Ombudsman for investigation. Unusually, the Speaker announced the referral in the House. Normally no-one is aware that a whistle-blower investigation is taking place. In this instance there had already been a lot of attention in the media and in the chamber. It had also been reported that the Premier had asked

the Speaker to investigate.

The Ombudsman found that Mr Shaw had used, and allowed others to use, his parliamentary vehicle for commercial purposes and that he had used his fuel card to buy fuel for his private vehicle. The Ombudsman recommended that the Assembly refer the matter to the Privileges Committee.

CANADA

House of Commons

Contempt of the House

On 6 February 2014 Brad Butt (Mississauga—Streetsville) made a comment in the chamber claiming that he had personally witnessed the inappropriate use of voter notification cards in the last general election. On 24 February 2014 Mr Butt rose on a point of order to correct those comments and to state that he had not personally witnessed the events to which he had referred. On 25 February 2014 Nathan Cullen (Skeena—Bulkley Valley) rose on a question of privilege about the statements made in the chamber by Mr Butt on 6 February 2014. He argued that Mr Butt's statements had been demonstrably and intentionally misleading, and asked that the Speaker find a *prima facie* case of contempt and allow him to move the appropriate motion referring the matter to a committee. Several members spoke to the question of privilege and Mr Butt rose on a point of order to withdraw his comments on 6 February 2014, to apologise to Canadians and to the House, and to state that it had not been his intention to mislead the House. In response, Mr Cullen stated that it had been clearly demonstrated that Mr Butt had not corrected the record upon examination of the informal record of debate from 24 February 2014, as he claimed he had done. Mr Cullen repeated that it had been proven that the statements were misleading; that it had been established that the member making them knew at the time that they were incorrect; and that he had intended to mislead the House.

On 3 March 2014 the Speaker ruled on the question of privilege. Noting that "the House continues to be seized of completely contradictory statements", the Speaker concluded that the matter merited further consideration and invited Mr Cullen to move the appropriate motion. Mr Cullen moved that the question of privilege be referred to the Standing Committee on Procedure and House Affairs. Debate ensued and Peter Van Loan (Leader of the Government in the House of Commons) gave notice of his intention to move for closure, which was moved and agreed to the following day. When debate continued, Philip Toone (Gaspésie—Îles-de-la-Madeleine) then moved an amendment to Mr Cullen's motion: that the proceedings related to this order of reference be held in public. Following the allotted time for debate, the question was put on the

amendment and it was negatived. The question was put on the main motion and it was also negatived.

Access to the parliamentary precinct

On 25 September 2014 Yvon Godin (Acadie—Bathurst) rose on a question of privilege about his being denied access to the House of Commons by a Royal Canadian Mounted Police (RCMP) officer earlier that day because of a visit by a foreign dignitary. Mr Godin alleged that this had constituted a breach of parliamentary privilege in that he had been prevented from carrying out his functions as an elected member of the House of Commons. Several members rose to address the issue.

In his ruling on the matter later that day, the Speaker stated that "… the denial of access by members to the precinct is a serious matter, particularly on a day when votes are taking place. There are many precedents to be found regarding incidents of this kind, including my own ruling of 15 March 2012. In view of that strong body of jurisprudence and given the information shared with the House by the numerous members who have made interventions, I am satisfied that there are sufficient grounds for finding a *prima facie* matter of privilege in this case." The Speaker then invited the member to move the appropriate motion; whereupon Mr Godin moved that the matter be referred to the Standing Committee on Procedure and House Affairs. Following debate, the motion was agreed to.

The Standing Committee on Procedure and House Affairs met on 21 October 2014 and called a range of witnesses from the House of Commons Security Service, as well as national and local police services. The Commissioner of the RCMP and the Chief of the Ottawa Police Service made statements and the Sergeant-at-Arms, the Assistant Commissioner of the RCMP and the Deputy Commissioner answered questions. The committee resumed its inquiry on 30 October 2014. Four meetings were held in February and March 2015; at the time of writing the matter was still before the committee.

Criminal conviction of a sitting member

On 3 November 2014 Peter Julian (House Leader of the Official Opposition) rose on a question of privilege about the recent conviction by the Ontario Court of Justice of Dean Del Mastro (Peterborough) of several offences under the Canada Elections Act in relation to the 2008 general election. Mr Julian urged the Speaker to find that the matter constituted a *prima facie* case of privilege. He expressed the intention, in that event, of proposing a motion immediately depriving Mr Del Mastro of the rights to sit, vote, and receive salary and benefits. Peter Van Loan (Leader of the Government in the House of Commons) spoke to the question of privilege. He asked that the Speaker hear

him on a separate question of privilege on the same matter. He expressed his intention of moving a motion referring the matter to the Standing Committee on Procedure and House Affairs with the instruction that it report to the House with its recommendations on the appropriateness of suspension without pay, expulsion, pension and benefits, staff and offices, and any other related issue.

On 4 November 2014 the Speaker ruled on the question of privilege. He stated that it was evident to him that it was a *prima facie* case of privilege and that it merited immediate consideration by the House. He went on to say that given "… the rare and exceptional nature of the circumstances, I will leave it to the House to determine the nature of the remedies it wishes to explore." In accordance with common practice, and given that two members had raised the same question of privilege, he turned to the member who was first to raise it, Mr Julian, to move his motion. Mr Julian did so and debate ensued.

On 5 November 2014, in conformity with standing order 20 which permits a member to make a statement if a question touches upon their conduct, election or right to hold a seat, Mr Del Mastro made a statement in the House in which he announced his resignation as a member of Parliament. The Speaker announced that in light of the statement any further proceedings on the motion concerning the member for Peterborough were unnecessary. Accordingly, the order for consideration of the motion was dropped from the order paper and the matter was considered resolved.

Manitoba Legislative Assembly

Immediately following the prayer on 9 April 2014, the member for Morden-Winkler raised a matter of privilege, stating that the Minister of Finance misled the House by knowingly putting false and erroneous information on the record during oral questions on 8 April 2014. On that day the minister answered questions about a Manitoba Ombudsman's report released the previous week, quoting part of the report. The member raising the matter of privilege claimed that the minister misled the House, because she indicated in her response that she was citing the finding of the Ombudsman's report, while she was instead quoting a section of the report containing the position of Department of Finance.

In his ruling Speaker Reid first reminded the House that to allege that a member has misled the House is a matter of order rather than privilege. Secondly, it had been ruled by several Manitoba Speakers that a member raising such an allegation as a matter of privilege must provide proof of intent. Previous rulings stated that a burden of proof existed that required more than speculation or conjecture and involved providing absolute proof, including a statement of intent by the member involved that the stated goal was intentionally to mislead the House. When the Minister of Finance spoke on the

point of order she acknowledged that she made a mistake while paraphrasing the report, but this statement was not an admission of deliberately misleading the House. Therefore, the Speaker ruled that a *prima facie* case of privilege was not established in this case.

Prince Edward Island Legislative Assembly

On 2 April 2014 the Leader of the Opposition raised a question of privilege about inconsistencies in financial documents presented to the Legislative Assembly by the Minister of Finance, Energy and Municipal Affairs. He stated, "A member of the House [the Minister of Finance, Energy and Municipal Affairs] made two statements. Those statements contradicted each other so they could not both be true." His assertion was based on an inconsistency in the manner in which funds paid to the province by the Canadian federal government were reported over two fiscal years. In support of his claim, the Leader of the Opposition offered the following. (1) The provincial budget was presented on 27 March 2013. It included a $25 million payment for Harmonized Sales Tax (HST) transition funding in the 2012–13 fiscal year. (2) The public accounts of the province for the year ended 31 March 2013 were tabled on 31 January 2014. The $25 million payment was not shown as revenue for the 2012–13 fiscal year. Therefore the two documents provided to the Legislative Assembly offered two differing views of the 2012–13 fiscal year.

The Minister of Finance, Energy and Municipal Affairs explained that the provincial Auditor General recommended that the $25 million payment from the Government of Canada should be accounted for in the year that the HST was implemented—that is, the fiscal year beginning 1 April 2013—and not in year the enabling legislation was passed by the House—that is, 2012.

In preparing her ruling, Speaker Bertram reviewed relevant documents about the payment of $25 million. She consulted the Auditor General.

On 15 April 2014 Speaker Bertram delivered her ruling, pointing out that the matter was a dispute as to an allegation of fact—not the fact that the $25 million was accounted for in one fiscal year, and then changed to be accounted for in a subsequent fiscal year. There was agreement on that point. The disagreement was about whether the Minister of Finance and Municipal Affairs deliberately misstated the amount in the 2012–13 estimates of revenues due from the Government of Canada. Consistent with past Speakers of the Legislative Assembly of Prince Edward Island, she agreed that a dispute as to an allegation of fact did not constitute a question of privilege. In the Canadian House of Commons Speaker Jerome in 1975 ruled, "a dispute as to facts, a dispute as to opinions and a dispute as to conclusions to be drawn from an allegation of fact is a matter of debate and not a question of privilege" (Debates, 4 June 1975, p 6431). Members were referred to *Beauchesne* (6th edition), citation 31: "A

dispute arising between two members, as to allegations of facts, does not fulfill the conditions of parliamentary privilege." In conclusion, Speaker Bertram said, "The point of privilege directed to me for a ruling by the Honourable Leader of the Opposition does not fulfill the requirements for a *prima facie* case of privilege. For that reason, and pursuant to rule 45(3) of the Rules of the Legislative Assembly of Prince Edward Island, I cannot allow the motion proposed by the Leader of the Opposition to proceed."

Québec National Assembly

The chair of the Assembly was called to rule on two points of privilege in 2014.

Threatening or intimidating a member

In a notice sent to the President an independent member claimed that a government member had approached her on the floor of the House about recent comments she had made on an issue concerning territory located in the government member's riding. The government member allegedly used threatening language and intimidated her by his actions.

The President began by stating that when a situation involved actions that he did not witness he must take the word of the member who claimed to have been threatened.

He then recalled that the Act respecting the National Assembly established the distinctiveness of the office of member and provided that members enjoyed complete independence in the exercise of their duties. To ensure the observance of parliamentary privileges the Assembly had power to take action against contempt, which parliamentary law defined as any act or omission which obstructed or impeded the work of the Assembly or of its members, or which called into question its authority and dignity. The Act respecting the National Assembly provided that no person may breach the privileges of the Assembly and specified various acts that constituted breaches of those privileges. Among those were assaulting, interfering with, bullying or threatening members in the carrying out of their parliamentary duties; and attempting to influence the vote, opinion, judgment or action of a member by means of deceit, threats or undue pressure.

The President recalled that it was of the essence of a parliamentary institution to be a forum for discussion and exchange, that opposing viewpoints may be heard and that, though debates may at times be heated, they must not be to the detriment of the most basic respect that parliamentarians owe each other.

The rules governing the Assembly debates were written with this in mind: the standing orders of the National Assembly state that no member speaking shall use language that is violent, abusive or insulting, nor shall he threaten another member. The President then tied this in with the obligation provided

in the Code of Ethics and Conduct of the Members of the National Assembly, adopted in 2010, which stipulates that the "conduct of Members must be characterised by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice".

In the case at hand, though the member's comments were not made as part of a parliamentary debate, the chair could not accept that threatening words or behaviour may have taken place in the chamber. It was a matter of respect for the dignity of the Assembly.

For these reasons, the independent member's point of privilege was declared admissible at first glance. However, as she did not indicate an intention to move a motion impugning the conduct of the member, there was no follow-up to the matter. The accused member subsequently sent a letter to the President in which he explained his side of the story and expressed his apologies to the independent member.

Releasing content of a bill before it is introduced to the Assembly

In a notice sent to the President the Official Opposition House Leader alleged that the Minister of Municipal Affairs and Land Occupancy had been in contempt of Parliament by releasing the content of a bill before it was introduced to the Assembly. She argued that there were similarities between certain provisions in the bill and an article published in a newspaper. She asked the President to postpone the introduction of the bill until the ruling on the matter of privilege was given.

The President began by recalling that a ruling on whether a point of privilege was receivable could not affect the introduction of a bill to the Assembly. The introduction of a bill and a point of privilege were distinct elements and had no impact on each other. It was not for the chair to prevent the Assembly from carrying out its legislative function. The Assembly alone must decide on the advisability of introducing a bill. The chair must encourage parliamentary debate rather than prevent it.

As regards disclosure of the content of the bill before its introduction, it seemed obvious that the journalist had access to information that allowed him to write his article. However, no formal communication disclosing the content of the bill had been made by the minister. On reading the bill the chair was unable to conclude that the published article was based on the text as introduced to the Assembly. In other words, the chair could not conclude that the text of the bill introduced by the minister had been disclosed to a third party before its introduction to the Assembly.

Certain elements of the bill were, however, referred to in the article, which was not insignificant. On the other hand, it was impossible to state that the final version of the bill had been disclosed before its introduction. For this reason,

the chair was unable to conclude that the minister was *prima facie* in contempt of parliament.

Despite this conclusion the chair took the opportunity to issue an important reminder: everyone must be aware of the essential role of Parliament in considering bills. Ministers and others involved in the process leading up to the introduction of a bill must bear in mind that members are mandated by the people to legislate. Only members have the legitimacy to assess whether the content of a bill is in the public interest.

In conclusion, though the content of a bill might not be entirely revealed, the chair hoped that elements of a bill would not be released a little at a time before its introduction. This would do indirectly that which is not permitted directly. It was a matter of respect for the fundamental role played by members in Québec's parliamentary democracy.

INDIA

Rajya Sabha

In 2014 a matter of breach of privilege arising out of premature disclosure of a report of the Comptroller and Auditor-General of India in the press before its laying on the Table of the House was referred to the Committee of Privileges, Rajya Sabha, for consideration and report. The matter is currently under consideration by the committee.

Kerala Legislative Assembly

An alleged breach of privilege was committed by Shri K Sureshkumar, former IT Secretary and Secretary, Personnel and Administrative Reforms (Official Language) Department, in disclosing the proceedings of the special legislature committee to the media on the day he appeared as witness before the committee and also for casting reflections on the decisions and working of the chairman of the committee.

A special legislature committee under the chairmanship of Shri VD Satheeshan MLA was constituted by the Hon Speaker to examine and report on the allegations raised in the House by Shri PC Vishnunath MLA against Shri VS Achutanandan, the Leader of Opposition. While examining the case, Shri K Sureshkumar IAS, former IT Secretary and Secretary, Personnel and Administrative Reforms Department (Official Language), was summoned before the special legislature committee on 23 November 2011 as a witness. After the examination of the witness it was alleged that he had disclosed to the media the statements made by him to the committee during its examination. The chairman of the committee gave notice of a breach of privilege against Shri K Sureshkumar to the Hon Speaker on 16 December 2011. The Hon Speaker

on 23 December 2011 referred the notice to the Committee of Privileges and Ethics for examination and report. The Secretary in his explanation to the Committee of Privileges and Ethics cast reflections on decisions taken by the chairman of the special legislature committee and about his workings. This was treated as another breach of privilege and referred to the Committee of Privileges and Ethics for its recommendations and report.

The findings, conclusions and recommendations of the committee were:

1. The committee after careful examination observed that the action of Shri K Sureshkumar in disclosing to the media the statements made by him as a witness before the special legislature committee was undesirable and improper.
2. The committee opined that in no circumstances should statements made by a witness to the committee be disclosed to the media.
3. The committee opined that it was inappropriate and undesirable for the secretary to cast reflections on the decisions of the chairman of the special legislature committee, which was appointed by the Hon Speaker. Such action amounted to defaming the committee and the Assembly as a whole.
4. Shri K Sureshkumar tendered his apology to the Committee of Privileges and Ethics on the above matters.
5. The committee recommended that no further action was necessary as he had apologised.

The report of the committee was tabled on 27 January 2014. It was considered and approved by the House the next day.

NEW ZEALAND HOUSE OF REPRESENTATIVES

Parliamentary Privilege Act 2014

The most significant development in parliamentary privilege in New Zealand in 2014 the enactment of the Parliamentary Privilege Act 2014. The passing of this bill and its implications are discussed earlier in this volume in an article by Debra Angus, Deputy Clerk of the House.

Parliamentary information protocol

In July 2014 the Privileges Committee published its final report on the *Question of privilege regarding use of intrusive powers within the parliamentary precinct*, which recommended that the House adopt the *Protocol for the release of information from the parliamentary information, communication and security systems*.

The question of privilege arose from the release of information held on parliamentary information systems to a ministerial inquiry. The incident drew attention to significant gaps in the policies and principles guiding the

Parliamentary Service in relation to the information it holds.[4]

The overarching purpose of the protocol is preserving the independence of Parliament to ensure a functioning legislature. The protocol is grounded in protecting the privileges and immunities of the House, including the freedom of speech of members and the ability of Parliament to maintain control within its precincts, while protecting the freedom of the press.

The protocol attempts to balance openness and transparency with parliamentary independence. It features several key principles that should guide the release of information:

- There should be a presumption that information held on parliamentary information and security systems should not be released.
- Individual members should retain complete control over the release of any information that relates to them. Material relating to individual members should be released only if that member specifically agrees to its release.
- Journalists working on the parliamentary precinct should retain complete control over the release of information that relates to them. Material relating to a journalist or group of journalists who work on the parliamentary precinct should be released only with their specific authorisation.
- For information requests that do not relate to an individual member, the Speaker of the House of Representatives should be the ultimate decision-maker.

The report, featuring the protocol, was debated by the House in July 2014. The House resolved that the protocol would be adopted and brought into effect at a time determined by the Speaker.

UNITED KINGDOM

House of Commons

On 4 March 2014 the Privileges Committee reported on a case arising from the issue of a Police Information Notice (PIN) dated 4 September 2013 by Sussex Police to the member for East Worthing and Shoreham. A PIN is an "extra statutory" device developed by the police that warns the recipient that there has been a complaint of harassment and that, if the conduct alleged continues, action could be taken. The PIN was issued to the member as a result of his sending of a copy of Hansard to a constituent with whom the member was in dispute. The copy of Hansard included a speech in which the member referred to the constituent. The Committee of Privileges found that the PIN should not

[4] Privileges Committee, *Question of privilege regarding use of intrusive powers within the parliamentary precinct*, July 2014, I.17C, p 9.

have been issued and that the police had failed to understand the protections provided by the Parliamentary Papers Act 1840. While the committee did not find this case constituted a breach of privilege it stated that it "would regard future attempts restrict members' freedom of speech in the House through PINs as a serious contempt".

STANDING ORDERS

AUSTRALIA

House of Representatives

On 13 February 2014 standing orders were amended to extend the periods for members' 90-second statements. Previously these statements took place in the House for 15 minutes on Mondays, Wednesdays and Thursdays. They may now also take place on Tuesdays and the time allotted has been extended to 30 minutes each sitting day. Standing orders were also amended to enable members' 90-second statements to take place in the Federation Chamber for 45 minutes on Mondays.

On 19 March 2014 standing orders were amended to place a time limit on successive divisions so that if a division is called within three minutes of a preceding division ending, the bells are rung for one minute. Previously, if there had been intervening debate, irrespective of the time between divisions, standing orders required the bells to be rung for the usual four minutes.

Also on 19 March, standing orders were amended to set maximum speaking times for debates on motions to suspend standing orders about programming of government business. A new standing order provides for a maximum of 25 minutes for debate on such motions, with a maximum of 15 minutes for the mover, 10 minutes for the member next speaking and 5 minutes for any other member.

Senate

Some significant changes to standing orders were made or adopted on a trial basis in 2014.

The role and powers of the Scrutiny of Bills Committee were clarified and strengthened, including by a new requirement on legislation committees to take into account any comments published by the Scrutiny of Bills Committee on bills being examined by legislation committees. This provision enhances the ability of the Senate to draw on the technical and policy scrutiny of bills by its committees.

Measures to strengthen the rights of the minority during the triannual estimates hearings was agreed before the new Senate began on 1 July 2014. Senators may now continue to ask questions about particular expenditure programmes until they are satisfied with the answers, and there is a new right to require additional hearings. These changes were seen as a reaction to somewhat arbitrary imposition of time limits in some government-controlled estimates committees. They were accompanied by resolutions reiterating the expectations of senators about the accountability obligations of ministers and public servants, and requiring information about unanswered questions taken

on notice at previous hearings to be produced before the following round.

The Senate Procedure Committee continued to consider changes to the routine of business. Ad hoc tabling and consideration of various types of documents (including government reports, Auditor-General's reports and responses to resolutions of the Senate) and reports from committees has proliferated over recent decades and caused senators some confusion about their rights to speak. For a trial period previously structured opportunities and ad hoc practices have been combined to provide a single opportunity for each category (reports from committees; and documents from all other sources) to be presented and debated on three days in each four-day sitting week. Practices have been simplified and confusion over whether senators have the right to speak or must seek leave has been eliminated. The success of the trial will be evaluated in the middle of 2015. Enhanced opportunities for senators to speak on the adjournment debate are also being tested, along with procedures to streamline the authorisation by the Senate of certain committee operations.

Australian Capital Territory Legislative Assembly

Changes to Assembly standing orders on committees

On 20 March 2014 the Speaker presented a report from the Standing Committee on Administration and Procedure on standing orders relating to the consideration by committees of draft reports. The committee made three recommendations:

- if a committee cannot agree on which draft report to consider, the chair's draft will have precedence;
- at the conclusion of the consideration and any reconsideration of a draft report selected by the committee the chair shall move, "That the report [as amended] be agreed to"; and
- if the committee is unable to agree a report, the chair must present a written statement to that effect, along with the minutes of proceedings.

These new standing orders were adopted by the Assembly.

On 25 September 2014 the Speaker presented a report from the Standing Committee on Administration and Procedure about its inquiry into standing order 241—disclosure of proceedings, evidence and documents of committees. The committee recommended the inclusion of the following new sub-paragraph in standing order 241:

> "241(ba) Members of the committee may discuss a committee report with other members on a confidential basis in the time between the substantial conclusion of the committee's deliberations on the report and its presentation to the Assembly."

The recommendation was adopted by the Assembly.

New South Wales Legislative Council

Government responses to petitions

Following a recommendation by the Procedure Committee, on 12 August 2014 the House varied standing order 68 (on petitions) to require a minister to table a response within 35 calendar days of a petition being received by the House if the petition has been signed by 500 or more persons. A similar provision has existed for some time in the Legislative Assembly. Since the standing order was amended by the Legislative Council six petitions have met the threshold. Government responses were received to all six petitions and made available on the Parliament's website.

Victoria Legislative Council

The following table lists the main changes to standing orders made following the Legislative Council Procedure Committee's *Review of the Standing Orders* in October 2014. The table does not include changes that are simply to recognise the make-up of the House (i.e. independents, minor parties), are consequential to other changes or are simply clarifying language.

Current standing order	Proposed standing order	Description
1.10(2)	1.10(2)	Special Business included as business that takes precedence over debate on the Address in Reply. Reference to motions of urgent public importance omitted as this falls under Special Business.
N/A	4.05	Recognises regional sittings of the Council, including provision for the President to invite certain local persons to address the House.
4.10	4.11	Amends adjournment debate provisions to: remove the once per week limitation imposed on members speaking to the question; require members to seek a specific action; and clarify that matters may be raised for the consideration of a single minister only.

Current standing order	Proposed standing order	Description
5.02(2)	5.02(2) and (3)	Amends routine of business on Wednesdays to provide for the automatic interruption of business at 6.30 pm to proceed to the adjournment; and introduces an automatic routine of business to apply when a joint sitting is scheduled for 6.15 pm.
5.03	5.03	Incorporates current sessional order 3 with further amendments, including: time limits for the new mechanism for giving reasons when granting leave; altering categories of lead speakers to account for future Parliaments where the House may have more than four parties, independent members etc.; and ensuring equitable time limits as a result.
N/A	5.10	Introduces new mechanism allowing party leaders and independent members briefly to explain their reasons when granting leave.
6.10(2)	6.10(2)	Provides that the President must, where reasonable, give at least one hour's notice of a motion of urgent public importance before it is debated.
9.10(1)	9.10(1)	Permits notice of a statement on a report or paper to be given in formal business on the same day as statements on reports and papers are conducted.
N/A	12.06	Enshrines principle that President should have regard to the political representation in the House when allocating speaking rights.
N/A	12.20	Allows Council members of the Dispute Resolution Committee to report to the House on deliberations of that committee.
14.01	14.01	Removes requirement to give notice of a bill before introduction to the House.

Current standing order	Proposed standing order	Description
14.08	14.08	Provides that adjournment of debate on second reading to a day other than a future day may be done only by leave, instead of by order, of the Council.
N/A	14.15	New provisions about how the Council considers suggested amendments to bills in accordance with section 64(2) of the Constitution Act 1975.
N/A	15.04	Provides that a member may assist a minister at the Table during committee of the whole; and allows parliamentary secretaries to answer questions in committee, by leave.
N/A	23.16(5)	Allows for members to participate in committee meetings by audio or audio-visual link and be counted towards the quorum.
23.21	23.21	Provide that committees must publicise inquiries on the Parliament of Victoria website.
N/A	23.22(5)	Provides that committees may take evidence in private but use it as public evidence.
N/A	23.30	Provides that where a committee's report includes a recommendation that the government take a particular action, a government response must be provided to the Council within six months of the report being presented.

Western Australia Legislative Assembly

The Legislative Assembly made two changes to its standing orders in June 2014, both in response to recommendations from the Procedure and Privileges Committee.

The first was to amend standing order 74, which provides that notices of motion which have sat unmoved on the notice paper for 30 sitting days will be removed, unless the sponsoring member writes to the Clerk asking to renew

the notice. There may be one such renewal. Notices of motions to disallow subsidiary legislation under section 42 of the Interpretation Act 1984 may not be renewed under this standing order because a renewal would not fall within the 14-day period specified in the Act. To prevent such notices dropping off the notice paper after a relatively short period, since 2005 the House had adopted temporary standing orders providing that, for the remainder of a (varying) stipulated period, standing order 74 would not apply to these notices of motion. On three occasions the Procedure and Privileges Committee has recommended that the House introduce a permanent remedy and on 26 June 2014 the House adopted the following sub-order to standing order 74:

> "(2) If a notice of motion is for disallowance in accordance with section 42 of the Interpretation Act 1984 or any other Act, it may remain on the notice paper for 60 sitting days without being moved. On the final day, the Speaker will announce it will be removed from the notice paper on the next sitting day."

The second amendment of June 2014 was to pass a new standing order aimed at protecting journalists from being compelled to disclose the identity of their sources during parliamentary proceedings. This followed a government election pledge to introduce "journalist shield" laws which would also bind the Parliament. While the bill implementing the Government's broad commitment was amended to preserve exclusive cognisance, both Houses amended their standing orders to reflect the principle of "journalist shield" laws. The new standing order is:

> "Disclosure of the identity of journalists' informants
> 314. If the Assembly is considering whether to require a journalist to disclose an informant's identity it shall have regard to the public interest of having a free press when it does so."

Western Australia Legislative Council

The House adopted a temporary standing order for the first six months of 2015 trialling new sitting hours, with the aim of sitting only one evening per three-day sitting week (until 10.25 pm), instead of the current two evenings per sitting week.

CANADA

House of Commons

The standing orders were not amended in 2014. However, as part of its continuing mandate to review and report on the standing orders, in December 2014 the Standing Committee on Procedure and House Affairs recommended numerous changes to the standing orders, many of which are minor adjustments

to language or translation issues. The substantive changes include:

- re-naming the post of Deputy Chair of Committees of the Whole as Assistant Deputy Speaker and Deputy Chair of Committees of the Whole;
- renaming the post of Assistant Deputy Chair of Committees of the Whole as Assistant Deputy Speaker and Assistant Deputy Chair of Committees of the Whole;
- allowing items of private members' business dropped from the order paper because they require a Ways and Means motion or because they have been ruled out of order by the Speaker to be replaced on the order of precedence with another item by the sponsor;
- extending the deadline for the report on pre-budget consultations by the Standing Committee on Finance from the 10th to the third sitting day before the last sitting day in December;
- shortening the time between speeches by candidates and the secret ballot during the election of a Speaker;
- eliminating the requirement for new membership reports by the Standing Committee on Procedure and House Affairs after every summer recess;
- automatically referring departmental plans and priorities reports to the appropriate standing committees as soon as they are tabled in the House;
- adding an explicit reference to the Commissioner of Lobbying as an office covered by the mandate of the Standing Committee on Access to Information, Privacy and Ethics;
- omitting provisions on borrowing authority bills (which were made obsolete in 2007).

These amendments were adopted by the House on 4 February 2015 and will come into effect at the beginning of the 42nd Parliament.

In 2014 the Standing Committee on Procedure and House Affairs also studied private members' motions, which would amend the standing orders on the election of a Speaker and the election of committee chairs, in order to allow preferential balloting. No recommendations have yet been considered by the House.

The committee also studied a private members' motion which would amend the standing orders governing petitions in order to allow them to be submitted electronically. The committee recommended allowing electronic petitions and proposed provisional amendments to the standing orders to implement such a change. The House approved the amendments on 11 March 2015; they will come into effect at the beginning of the 42nd Parliament and will remain provisional until the committee has evaluated their success.

Senate

There were three amendments to the Rules of the Senate in 2014.

First, a provision was added that can be used to prevent adjournment of the Senate if Royal Assent by written declaration is anticipated. There are two procedures for Royal Assent in Canada—a traditional ceremony and a written declaration—and the previous provision had covered only the case where Royal Assent by a traditional ceremony was expected.

Secondly, a provision was added to limit how many times senators can adjourn debate in their own name once they have started speaking.

Finally, the definitions of a sponsor and critic of a bill were clarified.

Alberta Legislative Assembly

In March 2014 the Assembly amended the standing orders. Most of the changes related to the appointment of committees and the manner in which the Assembly considers main estimates. Significant changes included:

- the number of members on the Assembly's standing committees was reduced;
- resolutions to appoint members would be debatable and amendable;
- the time allocated for considering main estimates for each ministry was amended to a maximum of three hours (consideration of the main estimates of the Executive Council remained at a maximum of two hours); and
- the speaking rotation during consideration of the main estimates was expanded to include members who represent parties other than the parties officially recognised by the Assembly and independent members.

British Columbia Legislative Assembly

Timing of Oral Question Period

On 13 February and 9 October 2014 the House passed sessional orders, on division, amending standing orders 25 and 47a, to move the 30-minute Oral Question Period from afternoons to mornings on Tuesdays and Thursdays. In introducing the amendment in February, the Government House Leader explained that the change was on a trial basis and might allow for better time management for members. The Opposition House Leader countered that moving Oral Question Period to mornings would limit the opposition's ability to raise issues in the House in a timely manner.

The daily set of six members' statements were also moved to Tuesday and Thursday mornings, just before Oral Question Period, in consequence.

Adjournment time

The Legislative Assembly amended its standing orders to change the adjournment time to 7 pm on Wednesdays and 6 pm on Thursdays. This change, which was unanimously agreed on 12 February 2014, permanently implements a practice the House has used since 2009 and which had previously

been authorised by sessional order.

GUERNSEY STATES OF DELIBERATION

A thorough review of the Rules of Procedure of the States of Deliberation was undertaken and various proposed changes will be considered by the States at the end of March 2015.

INDIA

Lok Sabha

The Rules of Procedure and Conduct of Business in Lok Sabha and the Directions by the Speaker which govern the business in the House and its committees were made gender neutral with effect from 13 February 2014. This exercise was perhaps the first of its kind in India and was part of an effort to promote gender equality.

Direction 115B(1) of the Directions by the Speaker was amended with effect from 17 February 2014 so that three Indian languages (Maithili, Manipuri and Nepali) were added to the list of languages in which a speech will be simultaneously interpreted into Hindi and English.

Rules 160, 164(1), 167 and 169 of the Rules of Procedure and Conduct of Business and direction 38(3) of the Directions of the Speaker on reporting petitions in the House were amended. A provision about a petition being reported by the Secretary-General in the House had become redundant, having not been used for decades, so was omitted.

A comprehensive review of the Rules of Procedure and Conduct of Business is in progress to bridge the gaps between the rules/directions and actual practice and to frame rules/directions on matters which are governed by convention only.

Rajya Sabha

The 13th report of the Committee on Rules, recommending amendments to the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha), was presented to the Rajya Sabha on 25 November 2014. It was adopted by the House on 26 November 2014 and made the following amendments to the rules:

- Rule 38 was amended to change the time of the Question Hour from 11 am to 12 noon, to 12 noon to 1 pm. As the Question Hour had been frequently disrupted in the past few years the General Purposes Committee of Rajya Sabha had proposed to reschedule it as set out above, thereby enabling members to raise matters of urgent public importance before the Question

Hour. The Committee on Rules unanimously agreed to the proposal.
- Rule 51A was amended to reduce the number of questions for oral answer from 20 to 15 and to increase the number of questions for written answer from 155 to 160, while retaining the overall limit of 175 questions per day.
- Rule 180(5) was amended to move the taking up of Calling Attention to 2 pm from 12 noon.

These amendments were effected during the 233rd session of the Rajya Sabha, held in November and December 2014.

Uttar Pradesh Legislative Assembly

A new Panchayatiraj Committee was established with effect from 1 January 2014, with consequential changes made to the rules of procedure. The committee will examine certain audit reports on the Village Panchayats, Kshettra Panchayats and District Panchayats. It will comprise no more than eight members, plus two co-opted members of the Legislative Council.

NEW ZEALAND HOUSE OF REPRESENTATIVES

The Standing Orders Committee conducted its triennial review of the standing orders and reported on 21 July 2014.

The committee recommended that provision be made for the Business Committee, after receiving a proposal from the Prime Minister, to make arrangements for what will be known as "state occasions". These will be events at which Parliament marks occasions of special significance, such as speeches by foreign leaders. These events may be part of Parliament's proceedings and could occur in the former Legislative Council chamber. There will be further consultation about how they might appropriately involve the Governor-General.

The right of members to address the House in New Zealand Sign Language is now recognised, since by law it is an official language alongside English and Māori. At this stage members who wish to communicate in New Zealand Sign Language will need to contact the Speaker beforehand so that an interpretation service can be arranged.

The report includes discussion about legislative quality, and in particular looks at the House's consideration of whether bills are consistent with the New Zealand Bill of Rights Act 1990. Under the Act, the legislature is enjoined to subject individual rights and freedoms only to such reasonable limitations as may be justified in a free and democratic society (section 5). The existing mechanism is for the Attorney-General to present a report on a bill if, on its introduction, it contains a provision that appears inconsistent with the Act. A number of submissions on the review complained that insufficient attention is paid to such papers, and the committee recommended that the standing orders

be amended so that a paper will now be formally referred for consideration to the select committee that will examine the bill. Further measures were proposed by the Clerk and the Attorney-General, particularly relating to apparent inconsistencies arising from amendments proposed during the passage of bills. While the committee did not reach agreement on including these further formal Bill of Rights mechanisms in the standing orders, the report sets out a strong expectation that there will be good information for members when they decide whether significant limitations of rights and freedoms are justified.

Revision bills will start to appear in the new Parliament. These are special bills that are intended to express laws more clearly without significantly changing their meaning; they will be certified as such by an eminent legal panel before being introduced. There will be rules to ensure that revision bills do not take up much House time, so the Government will not be deterred from progressing them, as it is in the public interest for the statute book to be easier to use and to understand. In particular, the bills will not be debated at their first and third reading, and it is likely that the Business Committee will consider truncating the second reading debate and any committee of the whole House stage.

Financial scrutiny will be rationalised, so that examination of spending plans and the performance of agencies may be arranged according to themes or sector-groupings. The Finance and Expenditure Committee will be able to suggest such groupings when using its existing power to allocate financial scrutiny to other committees. This should flow through to a more thematic arrangement of scrutiny debates in the House. To encourage this, the estimates debate is being lengthened, with some time reallocated from the annual debate on the Prime Minister's statement. Henceforth financial reviews will be known as "annual reviews".

Following the reporting back of the Parliamentary Privilege Bill, the committee recommended a small change to the standing orders to ensure they reflect the bill's language. A new paragraph in standing order 3 will provide that, whenever proceedings are published, circulated or made available to the public under the standing orders, or otherwise by order of the House, the communication of those proceedings is under the House's or a committee's authority. This reflected the wording of the bill, now the Parliamentary Privilege Act 2014, and is intended to ensure that the dissemination of proceedings is protected.

The report endorses more extensive webcasting of select committee hearings. Select committees are encouraged to ask the Business Committee to arrange set-topic debates, so that committee reports and other matters of interest can be debated, for example during extended sittings.

There are amendments to provisions on the Register of Pecuniary and Other Specified Interests of Members of Parliament. A new clause sets out the purpose of the register and other provisions clarify what members are expected

to declare.

The committee rejected some proposals made in submissions. One of these was for the election of the Speaker to be conducted by secret ballot. The committee considered that moving to a secret ballot system would not have enough of a radical effect on the political character of the process to justify such a removal of transparency. The committee also did not support the establishment of a human rights committee. Aside from the difficulty of maintaining the membership of such a committee, in principle the committee considered that this proposal could potentially marginalise important matters that already seem too confined to legal and academic circles. Instead, Bill of Rights scrutiny should remain part of a mainstream discussion about legislative quality that takes place in all subject select committees and is applied in all policy contexts.

Finally, the committee acknowledged that in the future the public could be able to engage more extensively with their representatives via electronic channels. For example, an online petition process might support the introduction of a member's bill or the holding of a debate sponsored by a member. Such engagement was preferable to the time-consuming and costly process for non-binding referenda under the Citizens Initiated Referenda Act 1993.

The committee's recommendations were debated and adopted as amendments to the standing orders on 30 July. The amendments came into effect on 15 August, the day after the dissolution of the 50th Parliament.

UNITED KINGDOM

House of Commons

On 8 May 2014 the House agreed to repeal standing order 33 (calling of amendments at the end of debate) and created a new standing order entitled "Amendments to address in answer to the Queen's Speech". The new standing order relates to amendments that might be moved to the motion for an address in answer to the Queen's speech, which is delivered at the state opening of a new session and sets out the Government's legislative programme. The new standing order:

- allows for the selection of up to four amendments;
- prohibits any amendment being selected before the penultimate day of debate on the motion (the debate usually lasts five days); and
- provides for any questions on amendments selected by the Speaker to be put forthwith, if the question on an amendment proposed by the Leader of the Opposition has been disposed of.

In 2013 the then Clerk of the House initiated a revision of the standing orders with the intention of "tidying up" where prevailing practice had overtaken standing

orders and removing arcane, confusing or unnecessary language. Towards the end of 2014 the Procedure Committee began reviewing the proposed changes with a view to endorsing a package of changes to recommend to the House before the 2015 general election.

Northern Ireland Assembly

One significant amendment was made to the standing orders in 2014. That was the introduction of an "Exceptional Further Consideration Stage" for public bills.

The amendment was introduced following a procedural review which considered options for dealing with competence issues identified after Further Consideration Stage.

The Speaker took the view that an amendment to the Justice Bill [NIA Bill 01/10] at Further Consideration Stage had caused certain provisions of the bill to fall outside legislative competence of the Assembly. It was clear that the Assembly had been unaware of this effect of the amendment when debate took place and that no procedure was available to enable the correction of the defect at that stage. Given the imminent dissolution of the Assembly, the Speaker used his discretion to hold an "Exceptional Further Consideration Stage" to enable the House to debate a single amendment to bring the bill back within the Assembly's legislative competence. This required the House to agree to suspend related standing orders.[1]

The matter was considered by the Committee on Procedures during the current mandate. The committee concluded that taking such action on an ad hoc basis was not desirable and that a narrowly defined standing order should be introduced to cover this situation should it arise in future. The standing order has been drafted in such a way that the Exceptional Further Consideration Stage will be selected only if the Speaker is satisfied that it is intended (i) to bring the bill within the legislative competence of the Assembly, or (ii) to correct any serious technical defect.

Scottish Parliament

A new rule was introduced to allow for the appointment of a temporary Deputy Presiding Officer. This rule could be used, for example, in the event of the illness of the Presiding Officer or one of the the two deputy presiding officers.

[1] SO 39(1): "After the completion of the Further Consideration Stage of a bill, the bill shall be set down on the list pending future business until the date of its Final Stage is determined"; and SO 42(1): "There shall be a minimum interval of five working days between each stage of a bill, save in the following cases—(a) between Second Stage and Committee Stage; and (b) where a bill is subject to accelerated passage procedure in accordance with paragraph (2) or (4)."

The new rule was made possible by an amendment to the Scotland Act 1998 made by the Scotland Act 2012.

The Standards, Procedures and Public Appointments Committee is undertaking an inquiry into the effectiveness of legislative procedures in the Parliament. This inquiry is expected to lead to changes to the standing orders in 2015.

National Assembly for Wales

Standing order 26, on Acts of the Assembly, was revised to require a member in charge of a bill to lay a revised explanatory memorandum after stage 2 (the amending stage in committee) and after stage 3 (the amending stage in plenary) if the bill is to be considered at report stage, unless the relevant committee or the Assembly agrees otherwise. The standing order was also amended to make it the norm that there is a minimum one-week pause between the final amending stage of a bill and consideration of a motion that it be passed. Previously a motion to pass a bill had normally been taken without notice at the end of the stage 3 debate. This can still happen with the Presiding Officer's consent. The change was agreed in plenary on 1 October 2014.

SITTING DAYS

Figures are for full sittings of each legislature in 2014. Sittings in that year only are shown. An asterisk indicates that sittings were interrupted by an election in 2014.

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Aus HR	0	7	12	0	7	12	5	3	9	10	7	4	76
Aus Senate	0	3	12	0	3	8	8	3	9	6	11	0	63
Aus Australian Capital Territory	0	3	3	3	6	3	0	6	6	6	3	2	41
Aus Northern Territory													34
Aus New South Wales LA	1	3	9	0	9	3	1	6	6	6	9	0	53
Aus New South Wales LC	1	0	9	0	9	3	1	3	6	6	9	0	47
Aus Queensland LA	0	3	6	3	6	4	0	6	3	6	3	0	40
Aus South Australia HA	0	0	0	0	6	6	4	3	6	6	6	3	40
Aus Victoria LA	0	6	6	3	6	6	0	6	6	3	0	1	43
Aus Victoria LC	0	6	6	3	6	6	0	6	6	3	0	1	43
Aus Western Australia LA	0	6	6	6	6	9	0	6	9	6	9	0	63
Aus Western Australia LC	0	6	6	6	6	6	0	6	9	6	6	2	59
Can HC	5	15	11	12	16	15	0	0	11	17	15	10	127
Can Senate	3	9	6	9	10	11	0	0	6	10	9	10	83
Can Alberta	0	0	12	11	4	0	0	0	0	0	8	7	42
Can British Columbia	0	11	13	10	13	0	0	0	0	12	12	0	71
Can Manitoba	0	0	15	14	12	8	0	0	0	0	7	4	60
Can Newfoundland and Labrador	0	0	10	10	19	4	0	0	0	0	8	10	61
Can Ontario*	0	7	13	14	1	0	14	0	0	8	12	8	77
Can Prince Edward Island	0	0	0	15	8	0	0	0	0	0	10	0	33
Can Québec*	0	6	0	0	7	10	1	0	7	11	13	4	59

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	TOTAL
Can Saskatchewan	0	0	17	14	9	0	0	0	0	6	14	5	65
Can Yukon	0	0	4	17	9	0	0	0	0	5	13	12	60
Cayman Islands	3	3	3	0	3	4	0	0	5	3	2	1	27
Cyprus	3	4	5	2	3	4	4	0	2	5	5	5	42
Guernsey	3	1	4	5	2	1	6	0	3	3	3	2	33
India LS*	0	12	0	0	0	6	17	10	0	0	5	17	67
India RS*	0	12	0	0	0	3	17	10	0	0	5	17	64
India Chhattisgarh													31
India Himachal Pradesh	0	14	0	0	0	0	0	5	0	0	0	7	26
India Kerala													58
India Meghalaya													22
India Uttar Pradesh	0	6	0	0	0	13	0	0	0	0	5	0	24
Jersey	3	2	3	3	8	6	10	0	6	0	6	1	48
Mauritius*	0	0	1	3	0	0	4	0	0	0	0	1	9
New Zealand HR*	3	6	9	6	12	6	9	0	0	7	6	5	68
UK Commons	18	12	17	10	7	15	13	0	11	14	17	13	147
UK Lords	18	12	18	6	6	16	19	0	1	13	16	13	138
UK Northern Ireland	6	9	9	5	5	9	1	0	8	6	8	4	70
UK Scotland	12	9	12	8	12	12	0	9	4	8	12	9	107
UK Wales	6	6	8	4	6	8	6	0	5	6	8	4	67

UNPARLIAMENTARY EXPRESSIONS

AUSTRALIA

House of Representatives

I attach myself to the genuine and heartfelt remarks of … and the remarks made by ...	11 February
Socialist	26 February
Madam Asbestos	26 February
So the princess from Adelaide says, “Grow up!”	26 February
Just let me clarify this: there are no rules on answers under your Speakership—not a rule at all?	27 February
What emerged further last night was just how close this cosy little relationship was between the Prime Minister, the assistant health minister’s former chief of staff and the announcement of $16 million for Cadbury.	27 February
Rumpole	27 February
We now know that he was given as a reward a promotion to sit in the Assistant Minister for Health’s office, to whisper in her ear, to get more deals done.	27 February
To have the ridicule from the chair is unwise.	18 March
You promised 64; in six years you only delivered 27.	19 March
You will be named if you do not be careful!	19 March
The member for Grayndler … thinks it is hilarious that Andrew Zaf was stabbed—in his home and hit with a piece of wood last weekend.	20 March
You misled the House yesterday.	20 March
The Leader of the Opposition is the Mr Potato Head of Australian politics.	24 March
Madam Speaker, on a point of order: you are casting this House into disrepute when you allow the Minister for Education to carry on.	24 March
Execute him!	26 March
I said “desist”. If you do not know the meaning of it, look it up.	27 March
If only he had the class of his mother-in-law, that is all I can say.	27 March
He has leaked false Treasury analysis.	26 May
He should stop writing references for drug runners in Villawood.	26 May
Monkeys	26 May
If he is concerned about a stinking carcass, he only needs to look in front of him at the Leader of the Opposition.	27 May
Would you shut up and listen!	27 May
When the creepy little collection over there shuts up	28 May
Crap	2 June
Prime Minister’s misogyny	2 June
Bob-each-way Bill	17 June
Take your medication. Go to sleep.	17 June
The organ grinder	18 June

The Minister for Agriculture just said that Eden-Monaro is on the top of his hit list.	19 June
The only bows the member for Grayndler is interested in are the ones that carry arrows into the back of the Leader of the Opposition, unfortunately.	23 June
Bill the Knife	24 June
They were taking money directly from criminal activities to prop up their dodgy budget bottom line	24 June
The purported environment minister	24 June
Terminators	25 June
I think he's got irritable Bill syndrome.	25 June
You are still the suppository of all wisdom!	25 June
If we want to have a free-for-all, we are up for it. We are up for it, but we will have it.	26 June
I came across this photograph of the member for Grayndler associating with notorious criminal Craig Thomson … We have the member for Watson, who likes to holiday in Eddie Obeid's alpine lodge … We have the member for Wills, who was actually a referee for Tony Mokbel.	26 June
Just how low can you go?	26 June
The government do not like any worker.	14 July
Better than hearing another Truss answer.	17 July
You could not even put out a fire in your stables!	17 July
You went off to try and fix a problem and put pink batts into roofs, and you killed people.	17 July
I await with interest the English translation of that contribution from the member for Shortland.	17 July
Galahs	26 August
Three stooges	2 September
Bulldust?	4 September
Scooter	25 September
Backstabbing Bill	25 September
Mensa	30 September
The Prime Minister allows his backbenchers to tell the community that it is okay to hurl racist insults, and that hate speech must be permitted in our society.	2 October
You have got to get your facts right, sweetheart!	28 October
The failure of the former member for Corangamite to serve with integrity when he ran a very dishonest campaign	28 October
Bowser bandit	29 October
"Electricity" Bill	29 October
The captain of "Team Idiot" over there … Here is the lieutenant of Team Idiot.	29 October
Union Bill	26 November
Most biased Speaker ever!	27 November

You are appalling … You are a real piece of work.	27 November
The member for Ballarat … misappropriated … money that was in the portfolio responsibility that she had at the time.	1 December

Australian Capital Territory Legislative Assembly

Canberra Liberals equated to Nazi regime [*quote repeated in chamber*]	25 February
Meaner and nastier	27 February
I hope that she would be a little more honest	19 March
Pinocchio, your nose is growing and growing	9 April
Sanctimonious	14 May
Conned	7 August
Salaciously	12 August
Corruption	13 August
Cow	13 August
Pseudologist	28 August
Amateur hour	24 September
Book burnings	22 October
Bent over and said, “We will cop it. We will take it.”	23 October
Hypocrisy	28 October
Wally	26 November

Northern Territory Legislative Assembly

You look like an absolute bloody idiot.	11 February
Stupidity	12 February
Fool	13 February
Snitch	13 February
Apart from standing around after she has eaten a bag of lemons with that sour look on her face, carping.	18 February
Desperate Delia	18 March
She carps, whines and sucks those lemons and has a sour approach.	18 March
They have nothing to offer other than deceit.	20 March
The member … said F off you C	20 March
Buggered	25 March
Carping and whining	25 March
I note the Treasurer cannot stand being in here and listening because he would want to run away from the truth.	26 March
This is a dodgy deal you have done.	26 March
Bullshit radar	27 March
For the record, the Shadow Minister for Central Australia was yawning at a 6,000 word statement about Central Australia.	8 May
It is quite clear the members opposite are just not listening or are too stupid to understand.	15 May
Coward	15 May
The member for Blain, quite rightly, walks out	15 May

You sit here and pontificate and the holier than thou, sanctimonious approach by you and the rest of this rabble over the other side—as for this liar right here—is unbelievable.	15 May

New South Wales Legislative Assembly

This Government has strengthened the economy; it has injected a rocket full of Viagra up the backside of the New South Wales economy.	19 November

New South Wales Legislative Council

Koala killer	16 September
Hypocrite	11 October

Queensland Legislative Assembly

As we saw three years ago when six LNP members had to be assisted to walk in here and vote because they were that blind drunk.	11 February
It is my belief that the member for … is too lazy to read the amendments. He must have had his head in a chaff bag to not have even considered this.	12 February
Why on earth did the seven dopey dwarfs of the Labor party's parliamentary political wing vote for them?	4 March
The Premier is weak and gutless, just like his health minister.	21 March
Like bloody hell!	1 April
Today we see the maturation of that bloody idea.	6 May
It is always interesting following the female fascist from Nanango.	6 May
My view is this: if you lie down with corrupt dogs, you get up with corrupt fleas.	7 May
Maggot!	8 May
Finally someone's got the balls to take a stand and do something.	21 May
This is exactly what we see from the bullying, thuggish government that we have. They make Hitler look like an angel.	22 May
Can I first recognise the abject cowardice and weak-kneed …	22 May
No wonder they did not take any notice of the nerdy Premier of Queensland trying to put on a performance.	4 June
I put the bloody thing on.	5 August
You've got the commissioner to do your grubby work for you!	6 August
You're the one that buggered it up … you're a hypocrite.	9 September
You tiny general and the so-called leader of this House.	9 September
Even though some of the halfwits up the back corner there …	9 September
He has a bit of trouble with his medication at times.	9 September
After all those years of telling porky pies.	15 October
Thinks that climate change is complete crap.	28 October

Victoria Legislative Council

Bully	12 March
Muppet	11 June

CANADA

House of Commons

Mr Speaker, today, I will focus on the reaction of my constituents to this non-budget tabled by the "sinister" Minister of Finance.	13 February
However, Canadians have been fucked over by the government so often that many are living in poverty.	1 April
That is one of the many reasons why Canadians understand one does not have to have ever been in power to be a hypocrite that big.	2 April
Pigheaded	30 April
Mr Speaker, here is the perfect example of an idiot.	29 May
Strategically stupid	11 June
Oh, shut up.	16 June
Since the government is proudly planning to leave that crap behind …	16 June
Isn't she disgusting?	29 September
That is the fact that the NDP appeared to be very lazy.	30 October
In the ultimate show of cowardice, he not only fled his responsibilities, he fled the country.	1 December
Never have people been so little supportive of the NDP that actually had to rob parliamentary funds to pay for its own party.	2 December

British Columbia Legislative Assembly

Cronyism	13 May

Manitoba Legislative Assembly

The policies of the Filmon–Pallister combo	11 March
Speaking out of both sides of his mouth is the member opposite	24 April
The Selinger government abused its power	28 April

Prince Edward Island Legislative Assembly

Arrogant	2 May
It almost looked like he was sucking up to the Premier	14 November
Guts	20 November
Bluffing	20 November

Québec National Assembly

Everything's just hunky-dory [*according to Madam Premier*]	12 February
Cover up this matter	20 February
Conflict of interest	8 October
Hide [*this deficit*]	30 October
Bobbsey twins [*speaking of two members*]	13 November
Tweedledee and Tweedledum [*speaking of ministers*]	13 November
Dirty business	18 November
Crazy	28 November
Moron	28 November
Contemptuous [manner] [*speaking of a member*]	3 December

Petty	3 December
Despise	4 December

INDIA

Lok Sabha

Gabble	19 February
Loot	11 July
Chicanery	18 July
Corrupt	21 July
Inefficient government	21 July
Illiterate	22 July
Rotten	24 July
Violent stroke	24 July
Shameless	4 August
Pig	4 August
Complicity	6 August
Communal base	13 August
Pretender	13 August
Rioters	14 August
The pot calling the kettle black	26 November
Birds of a feather flock together	26 November
Cheat	27 November
Jokers	11 December
Sycophants	11 December
Thief	12 December
Middleman	15 December
Terrorist	15 December

Rajya Sabha

Bossing around	5 February
Abuse of power	13 February
This is nothing but bribery. This is bribery at the expense of common man.	13 February
Betrayal	21 February
Paralysed government	21 February
Traitor	10 June
Shame	10 June
Farce	11 June
Collusion	11 June
Satan	11 June
Bulldoze	9 July
Patriotism	9 July
Nonsense	15 July
Looting	18 July
Plunderer	18 July

The Table 2015

They were collaborators in the war	21 July
Shameful	21 July
Conspiracy	22 July
Deaf and dumb	24 July
Cunning	30 July
Accused	31 July
Kicked	31 July
Rejected goods	31 July
Dishonour	4 August
Bad intention	5 August
Humiliation	8 August
Deserter	8 August
Bastard	8 August
Barbarian	11 August
Futile and vain	11 August
In bits	11 August
Hate speeches	11 August
Communal and corrupt	11 August
Beware of one's limits	11 August
Fascist	11 August
Killed Mahatma Gandhi	11 August
Ruined	11 August
Rubbish	13 August
Bluff master	26 November
Trickery	26 November
Profiteering	26 November
Hoodwinked	26 November
Evil deeds	2 December
Terrorist	3 December
Curse	3 December
Rascal	3 December
Scams	5 December
Flop show	5 December
Bogus	8 December
Make a mess	9 December
Coffin scam	11 December
A weak, helpless and spineless government	11 December
Nathuram Godse	11 December
Madness	11 December
Forgery	11 December
Communist terrorist	17 December
Anarchist	17 December
Contemptuously and arrogantly	19 December

Chhattisgarh Legislative Assembly

Dodge	8 January
Crocodile tears	8 January
Shame	8 January
Collar	8 January
Cheating	8 January
Waste fellow	9 January
Useless fellow	9 January
Stupid fellow	9 January
Scoundrel	3 February
Guilty	3 February
Compared with a character who always dreams big and does nothing	4 February
A person who doesn't care for others and does whatever he feels right	5 February
Birds of a feather flock together	10 February
During ancient days people lived happily, but under your governance the public is misusing government facilities.	13 February
Officers have become mice and are destroying everything.	13 February
Even very low-lying people knew the bad behaviour of a person	14 February
Buttering	14 February
Nobody cares	18 February
The place is not liveable for human beings	19 February
A person can manage with thieves but not with a cheater	20 February
Distributing the things according to their own, by leaving aside the entitled one.	20 February
Screwball	21 February
Commission	24 February
Squeamishly	24 February
Person who plays drama	16 December

Himachal Pradesh Legislative Assembly

Lest they may become mad and start dancing in the open market	4 February
If they want to be rascals we can be super rascals	5 February
We can also say that they are thieves	5 February
They are keeping mum like Mauni Babas	5 February
Honourable members have been made chefs and cooks	5 February
Their time will come; I doubt this will boomerang and cost them heavily	5 February
You are an absconder and corrupt	10 December
Transfers are being ordered at the instance of a person who was involved in a call-girl racket a few years back in Shimla.	11 December

STATES OF JERSEY

But like a card sharp the Senator has slipped in through the back door	22 January
But the point is the States needs to get ... I am sorry, I was going to use an unparliamentary expression about digits and what he should do with them.	16 July

It is what is termed in the vernacular a “cock up”	9 September
There is a Frank Zappa quote, which is probably not parliamentary. It says that if you want to get laid go to university; if you want to get educated then go to a library.	7 November

MAURITIUS NATIONAL ASSEMBLY

This Government is pissing off the taxpayers’ money down the drain.	1 April

NEW ZEALAND HOUSE OF REPRESENTATIVES

Racist	5 March
Tell the truth about your boyfriend	20 May
He does not have a vertebrae	21 May
You stupid woman	23 July
Pleasantville Phil	10 December

UNITED KINGDOM

National Assembly for Wales

Bleeding obvious	17 September
Green crap	25 June
Put her back in her cupboard	5 March

BOOKS ON PARLIAMENT IN 2014

AUSTRALIA

44th Parliament—Parliamentary Handbook of the Commonwealth of Australia, Parliamentary Library, Department of Parliamentary Services, ISSN 0813541X

This volume is a comprehensive reference work on the 44th Commonwealth Parliament. It sets out the parliamentary service and political careers of senators and members of the 44th Commonwealth Parliament, and provides details of parliamentary committees and elections up to and including that of September 2013.

Papers on Parliament No. 60: Lectures in the Senate Occasional Lecture Series, and Other Papers, Department of the Senate, Australia, ISSN 1031976X

Contains lectures on parliamentary issues and other papers including: "Canberra and the Parliament: An Increasingly Uncomfortable Marriage" by Jack Waterford; "Dysfunctional Politics in the United States: Origins and Consequences" by James P Pfiffner; "Political Engagement among the Young in Australia" by Aaron Martin; "Women in Federal Parliament: Past, Present and Future" by Rosemary Crowley, Amanda Vanstone and Laura Tingle; "Re-imagining the Capital" by Robyn Archer; "International Election Observation: Coming Ready or Not" by Michael Maley; and "Williams v. Commonwealth: A Turning Point for Parliamentary Accountability and Federalism in Australia?" by Glenn Ryall.

Papers on Parliament No. 62: Lectures in the Senate Occasional Lecture Series, and Other Papers, Department of the Senate, Australia, ISSN 1031976X

Contains lectures on parliamentary issues and other papers including: "Is It Time for a Fundamental Review of the Senate's Electoral System?" by Antony Green; "Are Australians Disenchanted with Democracy?" by Alex Oliver; "Trust in the Australian Political System" by Andrew Markus; "The Senate and Public Sector Performance" by Stephen Bartos; "The Impact of Social Media on Political Journalism" by Judith Ireland and Greg Jericho; "Competing Notions of Constitutional 'Recognition'" by Megan Davis; and "'Abolition Difficult, Reform Impossible, Status Quo Unacceptable': Can Canada Fix Its Senate?" by Linda Trimble.

The Independent Member for Lyne: A Memoir, by Robert Oakeshott, Allen & Unwin, ISBN 9781743319314

Autobiography about the service of Rob Oakeshott as National Party member and independent in the New South Wales Legislative Assembly (1996–2008) and as an independent in the House of Representatives (2008–2013).

CANADA

Duffy: Stardom to Senate to Scandal, by Dan Leger, Nimbus Publishing Ltd

Majority-Preferential Two-Round Electoral Formula: A Balanced Value-Driven Model for Canada, by Shahin Esmaeilpour Fadakar, Lambert Academic Publishing

Our Scandalous Senate, by Patrick Boyer, Dundurn Press

Parliamentary Treasures: A Glimpse Inside the Archives of the Senate of Canada, Senate of Canada

Tragedy in the Commons: Former Members of Parliament Speak Out About Canada's Failing Democracy, by Alison Loat and Michael MacMillan, Random House Canada

Les gouvernements minoritaires à l'Assemblée nationale du Québec : entre collaboration et confrontation, Isabelle Giroux

INDIA

The Indian Parliament: a critical appraisal, by Sudha Pai and Avinash Kumar (eds), Orient BlackSwan, Rs. 775/-, ISBN 9788125056164

The Indian Parliament: the changing landscape, by BD Dua, Manohar, Rs. 1210/-, ISBN 9789350980514

International Parliamentary Functions, by NK Singh, Advance Learner Press, Rs. 1250/-, ISBN 9788130931034

Indian Democracy in Application: XV Indian Parliament & Parliamentarian Performance, by KV Narendra, Rezorce Research Foundation, Rs. 1250/-, ISBN 9781500610821

Legislative Drafting, by BR Atre, Universal Law Publishing Co, Rs. 550/-, ISBN 9789350354810

How India Votes: Election Laws, Practice and Procedure (3rd edition), by SK Mendiratta, Lexis Nexis, Rs. 1995/-, ISBN 9789351436322

Party Competition in Indian States: Electoral Politics in Post-Congress Polity, by Suhas Palshikar (ed.), Oxford University Press, Rs. 1445/-, ISBN 0198099177

UNITED KINGDOM

Following the money: comparing Parliamentary public accounts committees, by Rick Stapenhurst, Riccardo Pelizzo and Kerry Jacobs, Pluto Press, £45, ISBN 9780745334363.00.

House of Lords Reform: A History: Volume 3: 1960–1969: reforms attempted, by Peter Raina, Peter Lang, £100, ISBN 9783034317641

Parliament: the biography: volume 1: Ancestral voices, by Chris Bryant, Doubleday, £25, ISBN 9780857520685

Parliament: the biography: volume 2: Reform, by Chris Bryant, Doubleday, £25, ISBN 9780857522245

The political costs of the 2009 British MPs' expenses scandal, by Jennifer Van Heerde-Hudson (ed.), Palgrave Macmillan, £68, ISBN 9781137034540

Watching the watchers: Parliament and the intelligence services, by Hugh Bochel, Andrew Defty and Jane Kirkpatrick, Palgrave Macmillan, £68, ISBN 9781137270429

Law making and the Scottish parliament: the early years, by Elaine Sutherland et al (eds), Edinburgh University Press, ISBN 9780748696765

Legislatures of Small States: A Comparative Study, by Nicholas Baldwin (ed.), Routledge, ISBN 9781138830301

Parliament and the Law, by Alexander Horne, Gavin Drewry and Dawn Oliver (eds), Hart Studies in Constitutional Law, £55, ISBN 9781849462952

Nicolas Besly, editor of *The Table*, wrote the following review of this book:

This book, the third volume in the series of Hart Studies in Constitutional Law, comprises 13 essays on how the law applies to Parliament, and how the disciplines of legislating and lawyering interact. The book is sponsored by the Study of Parliament Group, a body which brings together academics and parliamentary officials from across the United Kingdom. Most of the authors of the essays are academics, constitutional lawyers or House of Commons officials.

The book is in three parts. The first part covers parliamentary privilege and members' conduct. It begins with a comprehensive overview of privilege with a particular focus on exclusive cognisance. The first chapter concludes by foreshadowing the 2013 Joint Committee on Parliamentary Privilege; as relayed in the last edition of *The Table*, this joint committee departed from its 1999 predecessor by concluding against codifying privilege.

The second chapter covers the other side of privilege: freedom of speech. It deals especially with the saga of so-called "super injunctions", by which individuals (including high-profile public figures) can prevent publication of material considered to infringe their right to privacy. There was a good deal of media coverage of these in 2010–11, reaching a peak when material protected by an injunction obtained by a famous footballer to prevent disclosure of an extra-marital affair was revealed in the House of Commons, and thence reported by the media. The member who revealed the affair was, of course, protected by privilege from any action against him for contempt of court. Stoked by concerns about press intrusion, the Joint Committee on Privacy and Injunctions was established. It concluded against Parliament creating new rules to prevent members revealing injuncted material. The authors of this chapter hint at the desirability of confining the scope of the protection offered by privilege, particularly as regards the admissibility of select committee reports and evidence in court proceedings. The suggestion is also made that Parliament's *sub judice* resolutions could be extended to prevent disclosure of

injuncted material.

The third chapter focuses on privilege and the criminal law. It looks particularly at the cases of Damian Green, an MP who had his parliamentary office searched by police without them obtaining a warrant, and *R v Chaytor*, in which the Supreme Court ruled that the process of claiming parliamentary expenses was not protected by privilege, and therefore fraudulent claims could be prosecuted. The law on the latter case is now clear. Conclusions to be drawn from the Damian Green case are less clear. Both Houses now have protocols in place to govern police searches, but there has been no repetition of the events that gave rise to the episode.

The next chapter is on the law concerning the conduct of MPs. It details the tension between the inherent power of the House of Commons to regulate its own affairs and the pressure for external regulation of ethics. In some cases—such as members' pay and expenses—external regulation has prevailed. In others—such as the regulation of members' financial interests—there has been a degree of external involvement in the framework of self-regulation. It concludes with a reflection that most reforms in this area have been in response to crises; and although there was resistance to attenuating self-regulation, in the end the reforms have generally been accepted and not reversed.

The second part of the book is entitled "Parliament: Internal Arrangements" and is more diverse than the first part. It opens with a chapter on the many sources of legal advice available to Parliament. This sets out how legal advice is available for almost all areas of parliamentary work, save for MPs' constituency casework (though the author questions whether provision of legal advice to constituents is properly the role of MPs). The chapter understandably focuses on legal advice to MPs. There is a different dynamic in the House of Lords, which until 2009 contained the most senior judges in the land. As well as hearing cases the Law Lords would sit on relevant committees and occasionally advise the House on the legal effects of legislation or its impact on the administration of justice. The House still contains a number of former Law Lords, but it remains to be seen whether the level of legal expertise in the Lords will be maintained.

There is a chapter on freedom of information and Parliament. The Freedom of Information Bill as first introduced did not extend to Parliament. It was only following a recommendation by the Public Administration Committee that the bill was amended to include Parliament (and to include an exemption for information the disclosure of which would infringe parliamentary privilege). The chapter examines the effect of freedom of information on Parliament—undoubtedly the biggest effect being the disclosure of material on members' expenses in 2009.

Another chapter in this part explores the functions and powers of select committees. This looks *inter alia* at some recent developments in select

committee activity, such as post-legislative scrutiny (which is now undertaken systematically in the House of Lords), pre-appointment hearings and the appointment of lay members to the Commons Committee on Standards (the number of which is to increase dramatically in the 2015–20 Parliament). The chapter also analyses the vexed question of select committee powers—in particular what to do with recalcitrant witnesses.

Part 2 of the book concludes with a chapter of the impact of devolution on Parliament. This is a fast-changing area: since the book was published proposals have been announced for bills to devolve further powers to Northern Ireland, Scotland and Wales. In addition, the Government propose to address the "West Lothian question" by amending House of Commons standing orders so that only members representing English (or English and Welsh) constituencies may vote on certain stages of legislation affecting those countries. This notable development will no doubt be covered in future editions of *The Table*.

The final part of the book is entitled "Rights, the Constitution and the Legal System". It explores in detail two select committees with jurisdiction in this area: the Joint Committee on Human Rights and the (Lords) Constitution Committee. Both of these committees examine legislation and both conduct general thematic inquiries. Yet they have developed different *modi operandi*, which are explained in these chapters.

There is also a chapter on the Human Rights Act 1998 and proposals for a British bill of rights. This contentious area is also fast-moving, with proposals announced in the 2015 Queen's Speech for consultation on the matter. There is a chapter taking an alternative look at parliamentary sovereignty, describing it as a pragmatic outcome of the need for comity between Parliament and the courts. The volume concludes with a chapter on how Parliament holds to account those responsible for the administration of justice. This is a sensitive area, touching as it does on the independence of the judiciary. The chapter sets out how parliamentary scrutiny has moved from being almost non-existent to the present position, whereby the Ministry of Justice is held to account for its running of the courts in almost the same way as any other department is accountable for any other function—though the substance of court judgments is still largely considered unsuitable for parliamentary scrutiny.

Overall this book is a thoughtful, thorough and authoritative volume. The contributions are well-written and diverse. It is not a bedtime read, but it is not intended to be. It is aimed at academics and practitioners in the fields of Parliament and the law, and it will reward even the most experienced of them.

CONSOLIDATED INDEX TO VOLUMES 79 (2011) – 83 (2015)

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;	N. Terr.	Northern Territory;
Austr.	Australia;	NZ	New Zealand;
BC	British Columbia;	PEI	Prince Edward Island;
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.
NSW	New South Wales;		

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.

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Comparative studies

Book reviews